

February 5, 2021

Ms. Vanessa Countryman  
Secretary  
US Securities and Exchange Commission  
100 F Street NE  
Washington DC 20549-1090

Re: Joint Industry Plan; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data (File No. 4-757)

Dear Ms. Countryman:

The Investment Company Institute is writing to reiterate our prior views, and provide additional comments, on the CT Plan.<sup>1</sup> We summarize below our support for certain aspects of the CT Plan's governance structure, which would go a long way towards addressing the exchanges' conflicts of interest in overseeing the National Market System ("NMS") equity data. We then recommend certain changes to make the plan more consistent with Section 11A of the Securities Exchange Act and the Commission's Governance Order.

We support the following main aspects of the CT Plan:

- The Operating Committee would include non-SRO voting representatives, including, importantly, a representative from an institutional investor such as an asset manager.
- Non-SRO voting representatives would have one-third of the voting power on the Operating Committee, with SROs maintaining two-thirds of the voting power, subject to a limit of one vote per exchange group (with the ability to obtain a second vote based on market share).
- The plan would be administered by an independent administrator that does not sell competing proprietary market data products.

These aspects of the CT Plan are consistent with Section 11A of the Exchange Act and the Governance Order because they would help to ensure the availability "of information with respect to

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<sup>1</sup> We previously provided our views on the CT Plan. Letter from Dorothy Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute to Vanessa Countryman, Secretary, US Securities and Exchange Commission, on Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data ("CT Plan") (File No. 4-757) (Nov. 12, 2020) ("ICI October Letter").

quotations for and transactions in securities,” which is “in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets.”<sup>2</sup>

To be more consistent with Section 11A and the Governance Order, however, we believe that the CT Plan needs to provide a better balance between SRO representative and non-SRO representative participation on the Operating Committee. Therefore, the Commission should adopt the changes to the plan that we previously recommended, the more significant of which are summarized below:

- permitting non-SRO representative terms to begin simultaneously with the first quarterly Operating Committee meeting and allowing three of those representatives to initially serve for a two-year term and the other three representatives for three-year terms;
- permitting non-SRO representatives to invite Member Observers to attend Operating Committee meetings, subcommittee meetings, and Executive Sessions, while also limiting the types of SRO employees that can be a Member Observer;
- applying the plan’s conflicts of interest and confidentiality policies to all Member Observers;<sup>3</sup> and
- eliminating the broad latitude that the SROs have to invoke Executive Sessions to the exclusion of non-SRO representatives.

Importantly, we also reiterate that the Commission should monitor the SROs’ progress in implementing the CT Plan and ensure that they do so without delay. Timely implementation of the plan would benefit all market participants in a manner consistent with Section 11A of the Act.

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<sup>2</sup> 15 U.S.C. 78k-1. We previously stated that Congress plainly contemplated the Commission having authority under Section 11A to adopt the Governance Order, which requires the consolidated NMS plan to include non-SRO representatives. *See, e.g.*, Letter from Dorothy Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute to Vanessa Countryman, Secretary, US Securities and Exchange Commission, on Notice of Proposed Order Directing the Exchanges and FINRA to Submit a New National Market System Plan Regarding Consolidated Equity Market Data (Feb. 28, 2020).

<sup>3</sup> We further recommend that the Commission ensure that the confidentiality and conflicts of interest provisions in the CT Plan properly align with the corresponding requirements of the Governance Order. *See* ICI October Letter at 4 n.9 (highlighting potential inconsistencies between the confidentiality policy provisions in the CT Plan and the existing equity data plans).

Ms. Vanessa Countryman

February 5, 2021

Page 3

We appreciate the additional opportunity to comment and look forward to the swift implementation of the NMS equity data governance reforms. If you have any questions, please contact me at [REDACTED] or Nhan Nguyen, Counsel at [REDACTED];

Regards,

/s/ Dorothy Donohue

Dorothy Donohue  
Deputy General Counsel, Securities Regulation

cc: The Honorable Allison Herren Lee  
The Honorable Hester M. Peirce  
The Honorable Elad L. Roisman  
The Honorable Caroline Crenshaw

Christian Sabella, Acting Director, Division of Trading and Markets  
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