



May 26, 2020

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE., Washington, DC 20549

**Re: *File No. S7-03-20; Market Data Infrastructure Proposed Rule***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> respectfully submits this letter to the U.S. Securities and Exchange Commission (“Commission”) to comment on the proposal to amend 17 CFR 242, Rules 600 and 603 and to adopt new Rule 614 of Regulation National Market System (“Regulation NMS”) under the Securities Exchange Act of 1934 (“Exchange Act”) to update the national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system (“NMS”) stocks (“Infrastructure Proposal”).<sup>2</sup> SIFMA commends the Commission for its efforts to improve and modernize the current market data infrastructure and supports the Infrastructure Proposal in this respect as another positive step in these efforts. This support also extends to the Commission’s recently approved market data governance proposal (“Governance Proposal”).<sup>3</sup> We believe that the Infrastructure Proposal, if adopted with targeted revisions noted in this letter, would modernize the current market data infrastructure, especially regarding the need to disseminate additional content in the feeds by the Securities Information Processors (“SIPs”) and to put forth a solution to address latency in the SIPs. We therefore urge the Commission to adopt the majority of the Infrastructure Proposal that relates to these market data infrastructure changes.

We further recommend that the Commission consider making the proposed changes related to the definition of “protected bid or protected offer” that affect the application of Rule 611 of Regulation NMS (“Order Protection Rule” or “OPR”) and Rule 610(d) of Regulation NMS (“Locked and Crossed Markets Requirement”) in a separate proposal, as they warrant further industry dialogue and consideration given the broader market structure implications,

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726 (Mar. 24, 2020).

<sup>3</sup> Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020).

added complexity and potential impact on trading associated with these changes. Most importantly, these changes raise significant best execution concerns that are not addressed in the Infrastructure Proposal and that warrant additional, separate consideration from the changes to enhance the market data infrastructure.

SIFMA notes at the outset that the Infrastructure Proposal builds on the Governance Proposal. SIFMA believes that from a staging perspective, the adoption and implementation of the Governance Proposal allows for a smoother and more efficient adoption of the changes contemplated in the Infrastructure Proposal. In particular, creating a single NMS plan for the collection and dissemination of market data will set the stage for an effective implementation of the system changes contemplated under the Infrastructure Proposal to improve and modernize the current market data infrastructure.

## **I. Background and Overview of SIFMA's Prior Views**

As SIFMA has previously stated, we do not believe that the SIPs currently provide the necessary data to market participants at the requisite speed to efficiently trade in today's high speed and automated marketplace. As a result, many broker-dealers, asset managers and other market participants are forced to purchase proprietary data feeds from individual exchanges to create a consolidated and robust view of the market, while additionally bearing the economic burden of having to purchase consolidated data from the SIPs. This results in an enormous cost burden on the marketplace and creates a two-tiered market for market data by limiting access to critical market data at the fastest speeds to those who can afford to pay the exorbitant fees charged for it by the exchanges.

### *Current Sources of Consolidated Market Data*

The SIPs provide exchange-level quote information on NMS stocks, consolidated information on the market-wide best-displayed quotes for NMS stocks and real-time reports of executed trades in such stocks (collectively, "core data") pursuant to Regulation NMS. The fundamental rules governing the content and distribution of such market data have not been significantly updated since their initial implementation in the 1970s. There are currently three NMS Plans ("Plans") governing the collection of core data: (1) The Consolidated Trade Association ("CTA") Plan; (2) the Consolidated Quotation ("CQ") Plan; and (3) the Nasdaq Unlisted Trading Privileges ("Nasdaq UTP") Plan.<sup>4</sup> In turn, there are two exclusive SIPs that consolidate and disseminate the data collected pursuant to these Plans: (1) the CTA/CQ SIP for the CTA and CQ Plans, which covers Tape A (*i.e.*, securities listed on the New York Stock Exchange ("NYSE")) and Tape B (*i.e.*, securities listed on exchanges other than NYSE or Nasdaq), and (2) the Nasdaq UTP Plan SIP, which covers Tape C (*i.e.*, Nasdaq-listed securities). NYSE via SIAC administers the CTA/CQ SIP and Nasdaq administers the UTP SIP. The self-regulatory organizations ("SROs") as the sole members control the operating committees of the

<sup>4</sup> See Exchange Act Release Nos. 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan).

three Plans and consequently set the fees for SIP data, which are effective upon filing with the SEC, leaving market participants with little to no opportunity for input.<sup>5</sup> The Exchange Act requires consolidated market data to be available for fair and reasonable fees.<sup>6</sup>

In addition to the core data provided by the SIPs, market participants can also purchase proprietary data directly from each exchange and consolidate such data to obtain their own consolidated view of the market. The SROs are the exclusive source of their own market data and the proprietary data feeds offer core data as well as additional data. Despite the requirement that exchanges not provide their proprietary data to subscribers on a more timely basis than they provide such data to the SIPs, the geographical and transmission latencies of the SIPs means subscribers of proprietary data feeds receive that data faster than subscribers of the SIPs.

Even if a broker-dealer elects to consolidate market data through proprietary feeds, it must also purchase the core data from the SIPs for a number of reasons, such as to comply with the Vendor Display Rule,<sup>7</sup> receive regulatory messages like trading halts and have a backup source of data in case an exchange experiences issues with its proprietary feeds. Similar to the SIPs currently, the exchanges establish and can increase fees for their proprietary data feeds simply by filing the fees for immediate effectiveness with the Commission under Section 19(b)(1) of the Exchange Act.

#### *The Problem with the Current SIPs*

The fundamental problem with today's market data infrastructure is that the SIPs no longer provide enough market data at sufficient speeds for today's marketplace. This causes many firms to have no other choice but to rely on exchanges' proprietary feeds to meet best execution obligations and remain competitive when routing customers' orders. With the lack of a viable alternative to exchanges' proprietary feeds, exchanges are able to increase the cost of their proprietary market data and market access at supra-competitive prices. The SROs as operators of the SIP Plans have not made—or have been slow to make—similar investments in the SIPs that they have made to their proprietary data feeds.<sup>8</sup> This is not surprising, as the current market data infrastructure does not provide them with an incentive to do so.

The availability of additional information in the SIPs—namely, certain odd lot quotes, depth of book quotes and auction imbalance information that are only available today on exchange proprietary feeds—could help enhance the best execution analyses of market

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<sup>5</sup> 17 C.F.R. 242.608(b)(3).

<sup>6</sup> See generally 15 U.S.C. 78k-1. The Commission has addressed the concept of “fair and reasonable” in several contexts and has noted that costs to produce market data factor into the assessment of whether the fees charged for it are fair and reasonable. See Exchange Act Release No. 84432 (October 16, 2018) (holding that neither NYSE Arca, Inc. nor Nasdaq Stock Market LLC had met its burden to show that fees for certain proprietary market data products were fair and reasonable under the Exchange Act).

<sup>7</sup> 17 C.F.R. 242.603(c)(1).

<sup>8</sup> Infrastructure Proposal at 16767.

participants who seek to rely on SIP data. Moreover, addressing the following three sources of latency for the SIPs - (1) geographic latency, (2) aggregation or consolidation latency, and (3) transmission or communication latency – could allow market participants the ability to choose to rely on SIP data without being forced to also purchase multiple exchange proprietary data feeds.<sup>9</sup>

*SIFMA's Previous Comments on Market Data Infrastructure*

Market data reform has long been an important priority for SIFMA and its member firms, and SIFMA has been active in this area for many years. We appreciated, and our members participated in, the SEC's 2018 Roundtable on Market Data and Market Access. In preparation for this important event, SIFMA provided comments and organized an industry study showing the significant increase in the cost of proprietary data products—increasing by over 1,100% over eight years—and yet despite this irrational pace of fee growth, SIFMA members felt compelled to continue to purchase both SIP and proprietary data.<sup>10</sup> Notably, these increases in the cost of market data have occurred when the cost to trade equities has fallen significantly for investors, as many retail broker-dealers now charge no commissions for trading.

Along with several other trade organizations and capital market participants, in 2019, SIFMA also submitted a public petition for transparency on the funding of consolidated market data by requiring public disclosure about the amounts of fee revenue received by the SIPs, amounts paid to operate and enhance the SIPs and amounts distributed to the SROs operating the SIPs.<sup>11</sup> In addition, SIFMA submitted a letter in September 2019 with certain recommendations to improve the market data infrastructure, a number of which we appreciate are reflected in the Commission's Infrastructure Proposal.<sup>12</sup>

SIFMA also submitted comments supporting the Commission's proposal to rescind the provision in Regulation NMS that allows a proposed amendment to an NMS plan to establish or change a fee to become effective upon filing.<sup>13</sup> If adopted, the proposal would require a proposed fee change to any NMS plan governing the distribution of market data to be published for notice and comment and approved by the Commission before it can become effective.

More recently, SIFMA submitted a 2020 paper by Professor Lawrence R. Glosten of Columbia Business School showing that exchanges can charge supra-monopoly prices for

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<sup>9</sup> Infrastructure Proposal at 16765.

<sup>10</sup> See Letter from Melissa MacGregor and Theodore R. Lazo, SIFMA to Brent J. Fields, SEC (Oct. 24, 2018) and accompanying Expand Study "An Analysis of Market Data Fees."

<sup>11</sup> See Letter from Theodore R. Lazo, SIFMA; Susan Olson, ICI; Jennifer Han, MFA; Ken Bertsch, CII; and various capital markets participants to Vanessa Countryman, SEC (Sep. 17, 2019); File 4-754 ("Transparency Petition"). While the Commission provides some of this information in the Infrastructure Proposal, as requested in the petition, we would like to see an ongoing requirement for the exchanges to provide this public disclosure related to fee revenues.

<sup>12</sup> See Letter from Theodore R. Lazo, SIFMA to Vanessa Countryman, SEC (Sept. 18, 2019).

<sup>13</sup> See Letter from Theodore R. Lazo, SIFMA to Vanessa Countryman, SEC (Dec. 6, 2019).

proprietary market data because each exchange has a de facto monopoly over its own market data and the utility and value of its market data increases with the addition of complementary market data products from other exchanges.<sup>14</sup>

In addition, SIFMA supported the Commission's Governance Proposal to reform the governance structure of the SIPs to help address the exchanges' conflict of interests as operators of the SIPs and sellers of proprietary market data products.<sup>15</sup> The Governance Proposal would consolidate the current three market data plans (i.e., the CTA Plan, CQ Plan and Nasdaq UTP Plan) into a single plan to govern the distribution of market data, thereby reducing unnecessary duplication and inefficiencies.<sup>16</sup> SIFMA thanks the Commission for approving this proposal and stands ready and willing to assist with its timely implementation.

Collectively, these proposals, along with the Infrastructure Proposal, are necessary steps to improving and modernizing the current market data infrastructure.

## **II. Discussion**

SIFMA broadly supports the market data-related aspects of the Infrastructure Proposal and believes that they are appropriately designed to significantly improve the utility of consolidated market data distributed pursuant to an NMS plan. We also support the introduction of competition in the consolidation and dissemination of market data to mitigate the inherent conflicts of interest in the existing exclusive SIP model, as well as to address the speed advantages provided to those able to afford the exchanges' proprietary data feeds. These changes are designed to make the market data provided by competing consolidators, and obtained for self-aggregation, viable alternatives to subscribing to exchanges' proprietary data feeds for many firms.

At the outset, SIFMA notes that the Exchange Act clearly gives the Commission the authority to adopt the Infrastructure Proposal. In particular, Section 11A(a)(1) of the Exchange Act provides that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." Section 11A(c)(1) further provides that the Commission is authorized to, among other things, prescribe rules "that assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of quotation and transaction information, as well as the fairness and usefulness of the form and content of such data."<sup>17</sup>

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<sup>14</sup> See Letter from Robert Toomey, SIFMA to Vanessa Countryman, SEC (Jan. 13, 2020) and accompanying study "Economics of the Stock Exchange Business: Proprietary Market Data" by Lawrence R. Glosten.

<sup>15</sup> Letter from Ellen Greene, SIFMA to Vanessa Countryman, SEC (Feb. 28, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> 15 U.S.C. 78k-1(c)(1)(B).

*Infrastructure Proposal to Enhance the SIP Data by Adding Auction Imbalance, Five Levels of Depth of Book Information and Round Lots Redefined in Five Tiers*

The Infrastructure Proposal expands the concept of core data to include odd-lot data, depth of book data and auction imbalance information. In particular, the Infrastructure Proposal would require odd-lot quotes that when aggregated equal a round lot, as newly defined and described below, to be included in the definition of core data. The Infrastructure Proposal also would expand core data to include depth of book data (i.e., information about orders that are outside the best bid and best offer) by exchange that includes five price levels above the protected offer and below the protected bid at each exchange.<sup>18</sup> In addition, the Infrastructure Proposal would expand core data to include the information specified by each exchange related to their auctions such as estimated opening (or reopening) prices, the quantity of buy and sell orders during the pre-auction period and order imbalance indicators (e.g., more buys than sells).<sup>19</sup>

Under Regulation NMS, the SIPs only disseminate round lot quotations, which are currently defined by the exchanges and generally refer to quotations to buy or sell 100 shares of a given NMS stock. The Infrastructure Proposal would establish for the first time in Regulation NMS a definition of a “round lot,” changing the traditional 100-share concept of a round lot by assigning different round lot sizes to individual NMS stocks based upon their average closing price on the listing exchange over the prior month.<sup>20</sup> By making this change, the Infrastructure Proposal would have the effect of including additional information in core data by defining the term round lot to include certain quotes that are currently treated as odd-lots. In particular, the Commission proposes a five-tiered definition of round lot based on the stock price under which a round lot would be 100 shares for NMS stocks priced \$50.00 or less, 20 shares for stocks priced \$50.01 - \$100.00, 10 shares for stocks priced \$100.01 - \$500.00, 2 shares for stocks priced \$500.01 - \$1,000.00, and 1 share for stocks priced \$1,000.01 or more.

By amending the definition of “protected bid or protected offer” in Regulation NMS, the Infrastructure Proposal also would change the scope of the orders protected by the OPR from round lots to 100 share quotations. In particular, the Infrastructure Proposal would change the concept of the protected best bid and offer (“PBBO”) so that only the best bid and the best offer of at least 100 shares would be protected for purposes of the OPR.<sup>21</sup> As discussed further below, this change coupled with the new round lot dissemination concept described above would significantly change the current application of the OPR. Under the OPR today, the PBBO is effectively the same as the national best bid and national best offer (“NBBO”) most of the time and applies to round lots of any size. Under the Infrastructure Proposal, for a given NMS stock there could now be a separate and distinct NBBO and PBBO, with the NBBO potentially being

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<sup>18</sup> Infrastructure Proposal at 16751-52.

<sup>19</sup> Infrastructure Proposal at 16756.

<sup>20</sup> Infrastructure Proposal at 16738.

<sup>21</sup> Infrastructure Proposal at 16748-49.

better priced while not being protected under the OPR if it represents an order of less than 100 shares. For example, the NBBO for BRK.A, with a closing price of \$261,906 on May 21, 2020, very likely would have a better-priced NBBO than PBBO under the proposal, as the notional value for a 100-share protected quotation would be in excess of \$26 million.<sup>22</sup>

*SIFMA Recommends that the Commission Adopt the Proposal to Include Auction Imbalance and Five Levels of Depth of Book Information in the Definition of Core Data*

SIFMA supports the addition of auction imbalance information and five levels of depth-of-book information to the definition of core data. The growth of passive, index-tracking investment strategies, along with other factors, has resulted in the data associated with exchange opening and closing auctions becoming essential to market participants. Accordingly, SIFMA agrees that information about auction order imbalances should be added to the definition of core data, especially given that this information is currently only available to those who can afford to pay for exchange proprietary data feeds. SIFMA additionally supports adding five levels of depth-of-book information to the definition of core data as a review of our institutional member firms found that while some used less than five levels and others used more, five levels of depth strikes an appropriate balance for the order routing purposes of most. We recommend that the Commission provide clarification as to how the depth-of-book data is determined and made available on an individual exchange basis, particularly because the aggregation process appears to work differently for the PBBO versus the NBBO, BBO and depth-of-book determinations.

Both the auction imbalance information and five levels of depth-of-book information are critical to the trading strategies of many investors in today's marketplace. Adding this data to the definition of core data would assist with alleviating some of the discrepancies in content between the exchange proprietary feeds and the current SIP feeds and provide market participants with the ability to rely on SIP feeds rather than incurring the substantial costs in being forced to purchase both the proprietary data and the SIP data.

Further, this data should not be considered the intellectual property of any exchange, and should be made available as core data under the Infrastructure Proposal. A determination that the auction imbalance and depth-of-book information is the intellectual property of an exchange would ignore the fact that the broker-dealers who submit the orders and the investors who generate the orders are the source of this data, and, but for this contribution by investors and broker-dealers, the exchanges would not have such data to even claim as their intellectual property. Thus, if exchanges seek to claim intellectual property or other rights on auction imbalance and depth-of-book information, such a claim would contravene broker-dealers and investors' ownership rights in the underlying data and would lack merit because the auction imbalance and depth-of-book information is merely a reflection of that underlying data (i.e., the resting orders of broker-dealers and customers that comprise the auction).

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<sup>22</sup> It is also worth noting that the current round lot size for BRK.A is 1 share and thus an order for 1 share in the stock at the BBO currently would be protected under the OPR.

*SIFMA Recommends that the Commission Adopt Three Tiers of Round Lots and that the OPR Should Continue to Apply to All Round Lots*

SIFMA believes that redefining the round lot size for certain high priced stocks is necessary to address concerns around the inside odd lot market for such stocks. Additionally, SIFMA has recommended before that the Commission consider including odd lot quotes for high-priced stocks in the SIP data because these quotes represent an increasingly significant proportion of the current market volume for such stocks.<sup>23</sup> SIFMA previously supported adding such odd lot quotations to the SIPs to provide additional transparency regarding odd-lot liquidity.

The Commission's Infrastructure Proposal goes well beyond redefining the round lot size for high priced stocks to redefining the round lot size for all stocks based on their stock price, and as discussed above, limits OPR solely to those round lots of 100 shares or more. The Infrastructure Proposal also provides for aggregation of odd lot orders but the aggregation methodology appears to be different for the PBBO versus the NBBO, BBO and depth-of-book data, thereby raising additional technical issues.

To balance the additional complexity and cost to the industry associated with disseminating these different round lot sizes, SIFMA believes that the Commission should simplify the proposal by solely focusing on the predominant concern around odd lot quotations related to high-priced stocks. This would lead to simply establishing new round lot sizes for high-priced stocks to protect the real inside odd lot market. Ample data to support this focus is discussed in the Infrastructure Proposal,<sup>24</sup> and SIFMA provided additional data to show the importance of odd lot information in a previous letter.<sup>25</sup> In creating the five tiers across all stocks, the Commission does address the concerns around odd lot trading in high priced stocks, but appears to go further to attempt to address the possibility of enhanced price improvement for lower-priced stocks. However, as discussed below, this goal is undermined by not providing protected order status to round lots of less than 100 shares. Under the Commission's Infrastructure Proposal, the redefined smaller round lot sizes for high-priced stocks would not be protected.

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<sup>23</sup> See, e.g., Letter from Theodore R. Lazo, SIFMA to SIP Operating Committees (Nov. 26, 2019) (“SIFMA Letter to SIP Operating Committee”).

<sup>24</sup> See, e.g., Infrastructure Proposal at 16740 (“Staff also evaluated the frequency of trades in odd-lot sizes for the top 500 securities by dollar volume and found that frequently traded, high priced securities are likely to have a substantial portion of executions occur in odd-lot sizes. More than 25 percent of the on-exchange share volume of the 50 securities with the highest share prices occurred in odd-lot sizes. In comparison, less than 2% of the on-exchange share volume of the 50 securities with the lowest share prices occurred in odd-lot sizes.”)

<sup>25</sup> See, e.g., SIFMA Letter to SIP Operating Committee at 2 (“According to the SEC’s Market Structure website, over the last 5 years, the percentage of odd lot volume has increased from ~9% to ~20% and the percentage of odd lot trades has increase from ~25% to ~55%. This increase is especially more pronounced in this last year based on the SEC’s MIDAS data. In high-priced stocks like Google and Amazon, odd lot quotations are inside the NBBO almost 70% of the time.”)



SIFMA therefore recommends that the proposed round lot definition be simplified to three tiers to provide more transparency into the quoting and trading of high-priced stocks without introducing greater complexity and cost to the market. Accordingly, SIFMA recommends round lots be defined as 100 shares for stocks priced from \$500.00 or less, 10 shares for stocks priced from \$500.01 - \$1,000.00 and 1 share for stocks priced from \$1,000.01 or more. The recommended round lot sizes of 1, 10 and 100 shares are ones that are used today and that market participants are accustomed to seeing. Starting with these high-priced stocks priced over \$500 will allow the Commission and the industry to assess the impact of the redefined round lot size on a smaller number of stocks before expanding it to more stocks.<sup>26</sup> Further, redefining round lots in this manner should bring benefits with less complexity and cost than the proposal by potentially reducing the bid-ask spreads for high-priced stocks, which is where they tend to be the widest currently.<sup>27</sup>

Further, we believe that the OPR should continue to apply to all round lots as opposed to establishing protected versus unprotected quotes as contemplated in the Infrastructure Proposal. The current OPR applies to all round lot sizes, including ones that are for less than 100 shares as established under exchange rules for certain high-priced stocks.<sup>28</sup> For example, according to NYSE Trade and Quote Data, as of August 2019, twelve stocks, all of which are listed on NYSE or NYSE American, had a round lot size other than 100. Ten stocks had a round lot of ten and two stocks had a round lot of one. In addition, the current OPR applies to round lots that represent an aggregation of odd-lot orders across multiple price levels that are then displayed at the least aggressive price of such orders under exchange rules.<sup>29</sup> We believe that our proposal is therefore consistent with how OPR is applied today. By limiting protection to orders of 100 shares or more, the proposed changes related to the OPR under the Infrastructure Proposal would constitute a material change to the current application of the OPR. In addition, the OPR changes contemplated by the Commission's Infrastructure Proposal would no longer apply OPR protection to 12 stocks today with less than a 100 share round lot size, nor would it protect the newly defined smaller round lot sizes for the high priced stocks for which the inside odd lot market concern exists.

Moreover, allowing the display of a PBBO that is separate and distinct from the NBBO would create additional confusion for and potential harm to investors. In particular, broker-dealers will need to determine whether to show customers the PBBO or NBBO and potentially make difficult determinations as to whether to route orders to access a potentially better-priced NBBO versus the PBBO. Retail investors placing limit orders in round lot amounts of less than 100 shares could be particularly harmed because they could see their orders displayed as part of the new concept of core data, but traded through if certain routing brokers do not access an

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<sup>26</sup> See, e.g., Infrastructure Proposal at 16742.

<sup>27</sup> The Commission notes that bid-ask spreads based only on round lots generally widened by a greater amount than spreads based on round lots and odd lots as the average stock share prices rose. See Infrastructure Proposal at 16740.

<sup>28</sup> See, e.g., NYSE Rule 55 and Nasdaq Rule 5005(a)(39).

<sup>29</sup> See, e.g., NYSE Rule 7.36 and Nasdaq Rule N 4756.

NBBO that is represented by such orders. Applying the OPR to all round lot sizes is especially important given the growing number of retail orders that are for less than 100 shares. Further, off exchange venues would face unnecessary difficulty in determining whether pegging and midpoint pricing should be based on the potentially better priced NBBO versus the PBBO.<sup>30</sup> Thus, we recommend the Commission not change the PBBO in the manner proposed and continue to apply OPR to all round lot quotes regardless of size.

The Infrastructure Proposal also raises very challenging best execution questions that the Commission does not sufficiently address. It is important that FINRA's views on best execution be aligned with the Commission's views on best execution. For instance, as a routing broker, when is it appropriate to route an order to a PBBO versus a better-priced NBBO? Similarly, is a retail investor's limit order for less than 100 shares that establishes a new better-priced NBBO at jeopardy under the Commission's proposal of being traded through? If the Commission seeks to adopt the change to the operation of the OPR as proposed, the Commission should do so in a separate proposal that provides more robust best execution guidance on how to treat protected versus unprotected round lot quotes. A broker-dealer's agency obligation to obtain best execution has been incorporated explicitly in FINRA Rule 5310 and addressed by the Commission through guidance. In particular, the Commission has provided a non-exhaustive list of factors that firms should consider as part of their best execution analysis, including: (1) the size of the order; (2) the trading characteristics of the security involved; (3) the availability of accurate information affecting choices as to the most favorable market center for execution; and (4) the cost and difficulty associated with achieving an execution in a particular market center. Considering these factors do not account at all for a separate PBBO and NBBO as contemplated under the Infrastructure Proposal, broker-dealers' best execution obligations may become even more challenging and fraught with regulatory peril due to the possibility of second-guessing by regulators (both Commission and FINRA) if the Commission adopts these proposed changes related to the OPR without also providing additional guidance around best execution.

*Infrastructure Proposal to Create a Decentralized Consolidation Model that Allows Competing Consolidators and Self-Aggregators*

The Commission proposes to change the method by which market data for NMS stocks is consolidated and disseminated by introducing a decentralized consolidation model where competing consolidators and self-aggregators replace the exclusive SIPs. SROs and non-SRO entities would be eligible to register with the Commission as a competing consolidator by filing the new Form CC. In addition to registering a separate affiliated entity as a competing consolidator, SROs could operate a competing consolidator as a facility of the SRO, which would then be subject to the rule filing requirements of Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder.<sup>31</sup> Competing consolidators would be required to create a consolidated market data product that contains all the core data but can also develop other market data products that contain only a subset of consolidated market data elements (e.g., a top of book

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<sup>30</sup> See, e.g., Letter from Theodore R. Lazo, SIFMA to Vanessa Countryman, SEC (July 18, 2019).

<sup>31</sup> Infrastructure Proposal at 16779.

product) or add additional information beyond the new definition of core data (e.g., a full depth of book product beyond five levels).<sup>32</sup> Registered broker-dealers, as self-aggregators, also may collect and generate consolidated market data for their own internal use without registering as a competing consolidator so long as the broker-dealer does not make consolidated market data available to any other person, including affiliates.<sup>33</sup>

SROs would be required to provide core data to competing consolidators and self-aggregators in the same manner the SROs make available this information to any person.<sup>34</sup> Thus, any access option (fiber, wireless, laser) available to proprietary data purchasers must also be available to self-aggregators and competing consolidators. Additionally, all access options must be provided in a latency-neutralized manner such that all participants within the exchange's data center—such as proprietary data subscribers, competing consolidators, and self-aggregators—would receive the data at the same time, regardless of their location or status within the data center.<sup>35</sup>

*SIFMA Recommends that the Commission Adopt the Proposal for a Decentralized SIP*

Creating competition in market data distribution should help achieve the goal of providing a viable alternative to exchange proprietary feeds by addressing the latency issues that exist with the current exclusive SIPs model. The key to making this proposed change work is the Commission's proposed requirement that the SROs provide their data to competing consolidators and self-aggregators in the same manner that they make available this information to any other person, coupled with the removal of the requirement that there be only one plan processor for each NMS stock.<sup>36</sup> This should help to ensure that proprietary feeds, competing consolidators and self-aggregators operate on a more level playing field with regards to the speed that market participants can obtain market data and access. Thus, for instance, broker-dealers acting as self-aggregators should be able to obtain core market data at the same speed as if it subscribed to proprietary feeds, creating a true alternative to subscribing to and paying for each individual exchange's proprietary feeds. Also, geographical and consolidation latency for market data should be reduced as competing consolidators will compete on the speed to consolidate the core market data and where to provide access.

SIFMA also agrees with the Infrastructure Proposal's concept of providing market participants with more optionality in purchasing market data. In particular, we support allowing competing consolidators, and their subscribers, and self-aggregators to choose to receive certain data elements or products based on their needs. For example, competing consolidators could have the ability to tailor their market data offerings towards retail broker-dealers by creating a

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<sup>32</sup> Infrastructure Proposal at 16836.

<sup>33</sup> Infrastructure Proposal at 16789-90.

<sup>34</sup> Infrastructure Proposal at 16768.

<sup>35</sup> Infrastructure Proposal at 16771.

<sup>36</sup> Infrastructure Proposal at 16768.

less comprehensive market data product composed of a subset of core data for a possibly lower cost, or towards institutional broker-dealers by creating a more comprehensive product that includes all core data and additional proprietary data. This change should allow subscribers to tailor their usage and costs based on their individual needs and use of market data.

The Commission should also allow broker dealers that choose to become self-aggregators to display market data to their customers subject to them complying with the Vendor Display Rule, which requires broker-dealers to show a consolidated display of market data in a context in which a trading or order routing decision can be implemented.<sup>37</sup> Since they are already paying for the newly-defined core data that they will in turn aggregate, allowing broker dealers to disseminate this data to their customers, provided they comply with the Vendor Display Rule, should provide additional competition in the consolidation and dissemination of market data. The Commission should allow self-aggregators to display this market data to their customers, without registering as a competing consolidator or becoming Regulation SCI entities, provided that they adopt policies and procedures reasonably designed to comply the Vendor Display Rule, which would include the establishment of redundant systems to ensure compliance with the rule should their internal self-aggregation system experience issues.

The Commission should also allow self-aggregators to share market data with affiliated entities to avoid significant changes to how firms consume and manage data today. Broker-dealers typically share common operational and technological support infrastructures with affiliates, which includes for broker-dealers who self-aggregate, the sharing of consolidated market data. Further, exchanges typically charge broker-dealers for multiple uses across organizations within the same family. The sharing of market data by self-aggregators among affiliates is a well-established practice that should be allowed to continue, as it does not appear to undermine the goals related to establishing the competing consolidator model. Therefore, the Commission should allow self-aggregators to maintain current practices of sharing such market data among affiliates without being forced to either register as a competing consolidator or develop and maintain redundant consolidated data sets for each affiliate user within the organization.

Increasing competition in the dissemination of market data should enhance investor choice and provide another means for competition to impose downward pressure on the cost of market data.

*SIFMA Believes that the Commission Should Require Disclosures and Assess the Reasonableness of the Cost of Market Data*

Considering each exchange remains the exclusive purveyor of its market data, and that competition for order routing does not constrain the prices for market data, SIFMA believes that the Commission still needs to ensure the fees for core data and proprietary data meet the requirements of the Exchange Act. Each exchange is the sole source of certain market data based on unique transactions occurring on that exchange, so there is no alternative to obtaining such

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<sup>37</sup> See 17 C.F.R. 242.603(c)(1).

market data from other sources. Thus, the economics of allowing competing consolidators and self-aggregators to replace the exclusive SIPs will only provide benefits if each exchange provides its market data on terms that are fair and reasonable. Considering there is no alternative for the competing consolidators and self-aggregators to purchasing the data directly from the exchange, market forces alone will not constrain the cost of market data.

The Commission has already taken some action to ensure market data fees meet the requirements of the Exchange Act<sup>38</sup> and can take further action by requiring the exchanges to provide public transparency on the cost to produce market data. First, the Commission's adoption of its recent Governance Proposal to amend the governance of SIP data plans should help to ensure that the SROs do not continue to have unfettered ability to set market data fees at unreasonable prices.<sup>39</sup> The Commission should also adopt its proposal to no longer allow SIP fee filings to be effective immediately.<sup>40</sup> In addition to adopting these two proposals, the Commission should require SROs to provide public transparency into the cost to produce market data. In particular, we request the Commission require quarterly disclosure, at a minimum, of (i) the amounts of fee revenue, by category, received by the exchanges providing core data and (ii) the amounts that are paid to operate and enhance the SIP feeds.<sup>41</sup> This information on the cost of market data is essential for the Commission to assess the reasonableness of fees associated with market data and to determine whether the fees show a correlation to cost.

*SIFMA Recommends that the Commission Consider Changes Related to the OPR and Locked and Crossed Markets Requirements Separately*

As discussed above, by creating fundamentally different NBBOs and PBBOs, with certain protected quotations while round lots are not protected, the Infrastructure Proposal would make significant changes to the OPR and the handling of customer orders in the marketplace that could result in unintended consequences. These changes would be especially challenging and problematic for broker-dealers because the proposal does not discuss the best execution implications of such changes.

As discussed above, the Commission's proposed changes to OPR would alter the application of the rule by removing OPR protection for the 12 stocks with round lots sizes of less than 100 shares today and by arbitrarily applying OPR protection to some displayed quotations and not others based on stock price and round lot size – with orders resulting in smaller round lot sizes effectively being used to test OPR elimination and removal of the locked and crossed market ban. In this respect, the proposed change to the definition of “protected bid or protected offer” would also alter the application of the Locked and Crossed Markets Requirement such that

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<sup>38</sup> *In the Matter of the Application of Securities Industry and Financial Markets Ass'n For Review of Action taken by NYSE Arca, Inc. and Nasdaq Stock Market LLC*, Exchange Act Rel. No. 84432 (Oct. 16, 2018)

<sup>39</sup> *See* Exchange Act Release No. 87906 (Jan. 8, 2020).

<sup>40</sup> *See* Exchange Act Release No. 87193 (Oct. 1, 2019), 84 FR 54794 (Oct. 11, 2019).

<sup>41</sup> Transparency Petition, *supra* note 11.

it would not apply to the display of orders for less than 100 shares,<sup>42</sup> potentially resulting in many more locked and crossed markets for stocks with a smaller newly-defined round lot size. This could result in significant changes to the overall market structure and the current handling of customer orders, which could potentially lead to investor confusion. The proposed changes to the OPR and the Locked and Crossed Markets Requirement appear to be outside the overall intended goal of the Infrastructure Proposal, which is to improve and modernize the current market data infrastructure. SIFMA therefore recommends that these proposed changes be handled in a separate rulemaking.

With regard to any changes to OPR and the Locked and Crossed Markets Requirement, SIFMA is happy to approach the topics again in this separate rulemaking context.<sup>43</sup> Nonetheless, SIFMA reiterates that the Commission should not use the Infrastructure Proposal, which would modernize the current market data infrastructure, as an opportunity to test the reduction or elimination of OPR and the Locked and Crossed Markets Requirement. If there truly is a belief that competition among broker-dealers, improvements in trading and order routing technology, and the applicability of best execution requirements provide sufficient incentives for the attainment of high-quality executions in the absence of the OPR,<sup>44</sup> the Commission should provide market participants the opportunity to submit comments on a separate rule proposal addressing changes to the OPR.

SIFMA recommends the Commission not proceed with these Regulation NMS aspects of the Infrastructure Proposal without broad industry support, as doing so could jeopardize the approval and implementation of the market data-related changes that the industry has been very supportive of over the years.

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<sup>42</sup> Infrastructure Proposal at 16749.

<sup>43</sup> March 2017 SIFMA Letter.

<sup>44</sup> Infrastructure Proposal at 16749.

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SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail. Again, SIFMA urges the Commission to approve only the aspects of the Infrastructure Proposal related to market data, incorporating SIFMA's suggested changes and recommendations noted above. If you have any questions or need any additional information, please contact me at 212-313-1287 or [egreene@sifma.org](mailto:egreene@sifma.org).

Sincerely,



Ellen Greene  
Managing Director  
Equity and Options Market Structure

cc: The Honorable Jay Clayton, Chairman  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
The Honorable Allison Herren Lee, Commissioner

Brett Redfearn, Director, Division of Trading and Markets