



November 12, 2020

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

Re: *File No. 4-757; Filing of a National Market System Plan Regarding Consolidated Equity Market Data*

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ respectfully submits this letter to the U.S. Securities and Exchange Commission (“Commission” or “SEC”) to comment on the proposal filed by the national securities exchanges and FINRA (collectively, the “SROs” or “Participants”) to establish under Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”) a new single national market system plan governing the public dissemination of real-time consolidated equity market data for national market system (“NMS”) stocks (the “CT Plan”).² The CT Plan responds to the Commission’s order³ directing the SROs to consolidate the three current market data plans (i.e., the CTA Plan, CQ Plan and Nasdaq UTP Plan) into a single plan to govern the distribution of equity market data. SIFMA supported that Commission order, which is designed to reduce unnecessary duplication among the three current market data plans and to address the exchanges’ conflict of interests as operators of the securities information processors (“SIPs”) under the plans and sellers of proprietary market data products that compete with SIPs.⁴ We therefore broadly support the CT Plan for consolidating the three current market data plans and providing industry representatives with a vote in the governance of the new NMS plan for the collection and dissemination of equity market data. Adding industry member representation to the governance of the plan (“Non-SRO Voting Representatives”) represents a necessary first step to improving and modernizing the current market data

¹ 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>.

² Exchange Act Release No. 90096 (Oct. 6, 2020), 85 Fed. Reg. 64565 (Oct. 13, 2020) (“Proposal”). Capitalized terms used in this letter have the same meaning as they do in the Proposal.

³ Exchange Act Release No. 88827 (May 6, 2020), 85 Fed. Reg. 28702 (May 13, 2020) (“Governance Order”).

⁴ Letter from Ellen Greene, SIFMA to Vanessa Countryman, SEC (Feb. 28, 2020).

infrastructure.⁵ SIFMA appreciates the SROs' submission of the CT Plan and is providing below certain recommendations in response to the Commission's questions in the Proposal to assist with a timely implementation of the CT Plan.

I. Overview of Proposal

The SROs propose that the CT Plan, in the form of a limited liability company ("Company") agreement, replace the three current market data plans. Each SRO will be a "Member" of the new Company, CT Plan LLC. Further, while the Governance Order requires Operating Committee approval for actions other than the selection of Non-SRO Voting Representatives and the decision to enter executive session, because the CT Plan would be in the form of an LLC agreement for the Company, the SROs propose that certain provisions of the CT Plan concerning solely the operation of the Company as an LLC, and unrelated to consolidation and distribution of equity market data, will require a majority vote of the Members as opposed to the augmented majority vote of the Operating Committee that would include Non-SRO Voting Representatives. In particular, the SROs propose that in addition to selecting Non-SRO Voting Representatives and deciding when to enter executive sessions, only Members of the Company will vote on provisions unrelated to consolidation and distribution of equity market data, such as the selection of Officers of the Company and other decisions solely concerning the operation of the Company as a LLC. The CT Plan would become effective until the later of the Commission's approval of it or the formation of the CT Plan LLC ("Effective Date"). The CT Plan will not become operative until the first day of the month that is at least 90 days after the last of certain conditions have been met ("Operative Date"), which include selecting representatives of the Operating Committee, establishing market data fees, entering into agreements between the CT Plan LLC and the necessary Processor(s), Administrator, Vendors and Subscribers, and the approval of all policies and procedures by the Operating Committee.

II. Discussion

SIFMA broadly supports the proposed CT Plan as it consolidates the three existing market data plans and will provide for the inclusion of Non-SRO Voting Representatives in the governance of the plan. SIFMA believes, however, that certain areas of the proposed CT Plan should be changed to enhance its effectiveness. These enhancements are discussed below. Most importantly, whether it is the CT Plan or another form of the plan as amended by the Commission, SIFMA urges the swift adoption and implementation of a single new equity market data NMS plan with industry member representation in the governance of the plan so that the industry and investors can quickly move away from the antiquated and non-representative NMS plans currently governing the distribution of equity market data today.

⁵ See also, Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726 (Mar. 24, 2020).

A. Effective and Operative Dates

While we recognize that there will be some work in adopting and implementing the CT Plan, the lack of any real deadlines regarding the Effective and Operative Dates and the number of conditions associated with them is very concerning. We therefore recommend that the Effective Date be simplified to mean the date of approval of the CT Plan by the Commission and that the Operative Date be one year from that Commission approval date. The majority of the changes in the CT Plan are organizational changes—instead of operational changes that require building or changing systems—that can be implemented within one year of the Commission’s adoption of the CT Plan. If it is determined close to the end of the one-year period that more time is needed, the SROs can seek an extension and the SEC will be in the position of determining whether such extension is necessary.

Similarly, SIFMA is troubled by the lack of analysis by the SROs in the CT Plan regarding the possibility that the Commission may approve its proposal to update the equity market data infrastructure (“Infrastructure Proposal”) before the CT Plan has been implemented.⁶ We therefore suggest that some thought be given to this possibility, even if it is as basic as noting that the plan may be further amended to accommodate the new completing consolidator model contemplated under the Infrastructure Proposal if it were to be adopted. Along these lines, we agree with the Commission’s question in the Proposal that the plan should specify in detail the minimum performance standards applicable to the Administrator, as such standards clearly will be needed if the competing consolidator model is adopted by the Commission.

B. Composition and Selection of Operating Committee

We recommend amending the CT Plan to allow Non-SRO Voting Representatives to serve for longer than a maximum of four years. The CT Plan proposes that Non-SRO Voting Representatives serve for two-year terms for a maximum of two terms total.⁷ Consistent with the Commission’s order, we agree that the CT Plan should establish a maximum term for Non-SRO Voting Representatives to allow fresh perspectives from new industry representatives. However, given that there are a limited number of experts who are qualified and interested in serving on the Operating Committee, a four-year limitation would impede meaningful and informed participation of Non-SRO Voting Representatives. Additionally, a four-year limitation does not allow sufficient time for the representative to provide meaningful contribution as it may take new members, including members of the SIP advisory committees, some time to get up to speed on the many diverse and complex issues. Accordingly, we recommend that Non-SRO Voting Representatives be allowed to serve a maximum of three consecutive terms, for a maximum of six consecutive years total, with the ability to serve again subject to the same limits after taking a one term (i.e., two-year) break.

⁶ *Id.*

⁷ Proposal at 64569.

C. Meetings of the Operating Committee

We recommend that the proposed CT Plan be amended to further clarify the types of “Member Observers” who can attend meetings and subject their participation in the meetings to the proposed conflicts of interest policy. The CT Plan defines “Member Observer” to mean any individual, other than a Voting Representative, that a Member, in its sole discretion, determines is necessary in connection with such Member’s compliance with its obligations under Rule 608(c) of Regulation NMS to attend Executive Session, Operating Committee and subcommittee meetings. The requirement that a Member Observer only be permitted to attend meetings of the Operating Committee when necessary for a SRO to comply with the terms of the NMS Plan, as provided in Rule 608(c), is a high standard, and therefore, we do not anticipate many Member Observers to meet this criteria. Nonetheless, we have concerns with SRO representatives who work in the proprietary market data operations of the SROs having the ability to attend these meetings as they have a clear conflict of interest. It is not clear from the proposed CT Plan whether such individuals would be required to be recused, and in any event, such a recusal approach here is fraught with problematic judgment calls. We therefore recommend a clearer approach in which Member Observers would be limited to persons of the SRO who are not involved in the management, marketing, sale or development of proprietary equity data products at the SRO.

We further recommend that the Proposal be amended to limit the topics that can be discussed in Executive Sessions considering that only SROs get to decide the topics that are appropriate to exclude Non-SRO Voting Representatives for discussion within an Executive Session. The provision in the CT Plan stating that the enumerated items regarding Executive Sessions are “not dispositive of all matters that may be by their nature require discussion in an Executive Session”⁸ is too broad. We recognize that certain information may be appropriate to be discussed in Executive Sessions, but we do not support a broad carve out for other matters to be decided exclusively by the SROs at will. Accordingly, we recommend removing Section 4.4(g)(ii) of the CT Plan and only allowing Executive Sessions for the topics specifically listed in the CT Plan. Additionally, “personnel matters” under the definition of “Highly Confidential Information,” for which SROs can discuss within an Executive Session, should be limited to matters that exclusively affect the employees of SROs or the Company.

D. Company Opportunities

The CT Plan does not address situations when an SRO’s interest conflicts with their obligations to the CT Plan. When entering into investments or other business relationships, the SROs do not have to recommend or take action that prefers the interests of the Company over their own interests.⁹ Thus, the CT Plan should require that an SRO Voting Representative be

⁸ *Id.* 64569.

⁹ *Id.* at 64582-83.

recused from voting on matters relating to opportunities, relationships or investments when the interests of the SRO employing the voting representative conflict with the interests of the Company.

E. Disclosure of Potential Conflicts of Interest: Recusal

The CT Plan does not address the impact on voting share in the event of a recusal. We therefore recommend that the CT Plan be amended to clarify that Non-SRO Voting Representatives will always equal one-third of the aggregate number of votes attributed to the Operating Committee. As noted in the Commission's Governance Order, each non-SRO member will be allocated proportionate fractional votes to preserve the aggregate one-third voting power of non-SRO members on the operating committee.¹⁰ This is designed to ensure that in those instances where a Non-SRO Voting Representative is recused, the group of such representatives maintains one-third voting power in connection with the consideration of any market data matters by the Operating Committee.

F. Subcommittees and Officers

The CT Plan should permit all qualified persons to serve as an Officer, including Chair, of the Company and chair of any subcommittee established by the Operating Committee. We note that an Officer of the Company, other than the Chair, does not have to be a Voting Representative; therefore, Non-SRO Voting Representatives are eligible to be officers. Furthermore, if only SRO Voting Representatives and Member Representatives are eligible to serve as Chair of the Operating Committee and chair of any Subcommittee, the Company may miss out on other persons with expertise and experience to lead the CT Plan effectively.

G. Liability and Indemnification

The proposed CT Plan explicitly addresses liability and indemnification with respect to Members, who are SRO representatives. SIFMA believes that it should be made explicitly clear in the CT Plan that the no liability can be imputed to Non-SRO Voting Representatives acting in their role on the Operating Committee and that the Non-SRO Voting Representatives, similar to the Members, would also be indemnified against any claims related to their role on the Operating Committee.

H. Other: Market Data Fees

The CT Plan does not address the market data fees, which as noted by Exhibit E, will be determined by the Operating Committee. SIFMA anticipates the current market data revenue formula will remain in effect until the Operating Committee considers and establishes new market data fees. We therefore request that the Commission clarify that this is in fact what is intended. Furthermore, any market data fee and revenue structure contemplated by the new plan

¹⁰ Governance Order at 28720.

Ms. Vanessa Countryman, Securities and Exchange Commission
SIFMA Letter on NMS Plan Regarding Consolidated Equity Market Data
November 12, 2020
Page 6

should be subject to appropriate notice and comment. In addition, we request that any fees determined by the CT Plan for a new SRO entity to become a member of the CT Plan be publicly available so that such an entity can appropriately plan for the costs associated with becoming a CT Plan Participant.

* * *

SIFMA greatly appreciates the Commission's consideration of these comments and would be pleased to discuss them in greater detail. If you have any questions or need any additional information, please contact me at 212-313-1287 or 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
The Honorable Caroline A. Crenshaw, Commissioner

Brett Redfearn, Director, Division of Trading and Markets