



February 18, 2021

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

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

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” or “SEC”) to comment on the Commission’s above-referenced order (“Order”) regarding 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”).<sup>2</sup> The CT Plan was filed by the SROs in response to the Commission’s order 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.<sup>3</sup> SIFMA appreciates the Commission’s continued consideration of the CT Plan. SIFMA continues to support approval of the proposed CT Plan and strongly encourages the Commission to incorporate our previous recommendations to improve the CT Plan as part of that approval.<sup>4</sup>

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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. 90885 (Jan. 11, 2021), (“SEC Order”). Capitalized terms used in this letter have the same meaning as they do in the Proposal.

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

<sup>4</sup> See Letter from Ellen Greene, SIFMA to Vanessa Countryman, SEC dated Nov. 12, 2020 (<https://www.sec.gov/comments/4-757/4757-8011746-225395.pdf>) (“SIFMA Comment Letter”).

### **Summary of SIFMA’s Previous Recommendations to Improve the Proposed CT Plan**

As noted in the SIFMA Comment Letter, SIFMA supports the proposed CT Plan and has identified certain areas of the proposed CT Plan that the Commission should consider changing to enhance its effectiveness. These recommended enhancements, which are discussed in more detail in the SIFMA Comment Letter, include the following modifications to the proposed CT Plan.

- Simplify the Effective Date of the CT Plan to mean the date of approval of the CT Plan by the Commission and specify that the Operative Date of the plan is one year from that Commission approval date.
- Direct the SROs to consider modifying the CT Plan as appropriate to accommodate the new competing consolidator model adopted by the Commission under the Market Data Infrastructure final rule.<sup>5</sup>
- Allow Non-SRO Voting Representatives to serve a maximum of three consecutive two-year 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.
- Clarify that “Member Observers” who can attend CT Plan meetings would be limited to persons designated by the SRO who are not involved in the management, marketing, sale or development of proprietary equity data products at the SRO and subject Member Observers’ participation in the meetings to the proposed CT Plan conflicts of interest policy.
- Remove Section 4.4(g)(ii) of the CT Plan that affords the SROs discretion on topics to be discussed in Executive Sessions and only allow Executive Sessions for the topics specifically listed in the CT Plan.
- Require that an SRO Voting Representative be 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 limited liability company operating the CT Plan.
- Clarify that Non-SRO Voting Representatives will always equal one-third of the aggregate number of votes attributed to the Operating Committee.
- Permit all qualified persons to serve as an Officer, including Chair, of the Company and chair of any subcommittee established by the Operating Committee.
- Clearly state within 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

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<sup>5</sup> Exchange Act Release No. 90610 (Dec. 9, 2020).

Voting Representatives, similar to the Members, would also be indemnified against any claims related to their role on the Operating Committee.

### **SIFMA Recommends the Commission Adopt the CT Plan**

The Commission should adopt the proposed CT Plan and strongly consider incorporating the improvements we included in the SIFMA Comment Letter and summarized above. In this regard, consistent with Rule 608(b) of Regulation NMS, the new governance structure that would be implemented by the CT Plan is a necessary first step to modernizing the distribution of and infrastructure supporting equity market data.<sup>6</sup> The proposed CT Plan is reasonably designed to address the inherent conflict of interest between the Participants' operation of the existing equity data plans and their individual interests in maximizing the profitability of proprietary data products that they sell to market participants. It is also reasonably designed to address the issues associated with the concentration of voting power in the existing equity data plans among a few large exchange groups. We further note that certain exchanges have challenged through litigation the Commission's authority to adopt the Governance Order that directed the SROs to file the proposed CT Plan. We continue to believe the Commission has the authority under Section 11A of the Exchange Act to adopt the Governance Order, and we have detailed our position in this regard in our amicus brief on the exchanges' litigation challenging the Commission's authority.<sup>7</sup> We therefore encourage the Commission to expeditiously approve the CT Plan and incorporate the improvements we recommend in our comment letter.

\* \* \*

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](mailto:egreene@sifma.org).

Sincerely,



Ellen Greene  
Managing Director  
Equity and Options Market Structure

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<sup>6</sup> See, e.g., Commissioner Robert J. Jackson, Jr., Unfair Exchange: The State of America's Stock Markets (remarks at George Mason University, Sept. 19, 2018) (citing Commissioner Daniel M. Gallagher, Market 2012: Time for a Fresh Look at Equity Market Structure and Self-Regulation (remarks at SIFMA's 15th Annual Market Structure Conference, October 4, 2012) and Commissioner Kara M. Stein, Remarks Before Trader Forum 2014 Equity Trading Summit (Feb. 6, 2014)); see also SIFMA, Statement on Commissioner Robert Jackson's Call for Exchange Reform (Sept. 19, 2018) (noting the market's consensus on the need for decisive action in this area).

<sup>7</sup> See (<https://www.sifma.org/wp-content/uploads/2021/01/NASDAQ-v.-SEC-1.15.2021.pdf>).

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cc: Acting Chair Allison H. Lee  
Commissioner Hester M. Peirce  
Commissioner Elad L. Roisman  
Commissioner Caroline A. Crenshaw

Christian Sabella, Acting Director, Division of Trading and Markets