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

Submitted via email: rule-comments@sec.gov

Re: Notice of Proposed Order Directing the Exchanges and FINRA to Submit a New NMS Plan Regarding Consolidated Equity Market Data (Release No. 34-87906; File Number 4-757)

Dear Ms. Countryman:

Bloomberg L.P. respectfully submits this letter in response to the Securities and Exchange Commission's Notice of Proposed Order Directing the Exchanges and FINRA to Submit a New National Market System Plan Regarding Consolidated Equity Market Data ("Proposal").¹ Bloomberg applauds the Commission for taking another important step in responding to the challenges posed by the current governance arrangements under which the national market system plans operate. Bloomberg encourages the Commission to move forward with this Proposal and issue a final order, as well as continue to pursue the Commission's broader efforts in national market system reform, including the Commission's recent Market Data Infrastructure Proposal,² which further evidences the Commission's resolve to tackle these difficult issues.

Bloomberg – the global business, financial information, and news leader – increases access to market data by connecting market participants of all stripes to a dynamic network of information, people, and ideas. The company's strength – quickly and accurately delivering data, news, and analytics through innovative technology – is at the core of the Bloomberg Terminal. The Terminal provides financial market information, data, news, and analytics to banks, broker-dealers, institutional investors, governmental bodies, and other business and financial professionals worldwide.

Overview

The Proposal, if adopted, will require the participants in the existing national market system plans (the "Equity Data Plans") to propose a single, new equity data plan ("New Consolidated Data Plan"), thereby reducing the number of plans from three to one. The Proposal would also, for the

¹ Securities Exchange Act Release No. 87906; File No. 4-757 (Jan. 8, 2020).

² Securities Exchange Act Release No. 88216; File No. S7-03-20 (Feb. 14, 2020).

first time, give votes on the operating committee to non-SRO participants and concurrently reduce the voting powers of the existing exchange groups. Finally, the Proposal sets forth clear responsibilities for the operating committee of the New Consolidated Data Plan that will bring some much-needed transparency and accountability to the operation and administration of the securities information processors (“SIPs”).

Bloomberg broadly supports these initiatives as set forth in the Proposal. Our comments focus on (i) non-SRO participant voting, (ii) the responsibilities of the operating committee under the New Consolidated Data Plan, and (iii) the need for continued and additional Commission action to reform the national market system and ensure that market data fees comply with the requirements of the Securities Exchange Act of 1934.

Non-SROs Should Fully Participate in the Governance of the National Market System to Ameliorate the Conflicts of Interest Inherent in the Current Governance Model

Under the Proposal, the New Consolidated Data Plan would require a number of non-SRO participants to receive voting representation on the operating committee.³ Bloomberg believes that non-SRO representation on the operating committee constitutes an important step in the right direction toward more balanced governance and the development of a plan that accounts for the interests of all stakeholders that participate in the national market system.

The Equity Data Plans are intended to function as the market’s broadest and most fundamental means of transparency and access.⁴ These plans are responsible for the collection, consolidation, and distribution of real-time core data. This core data is essential to investors and others who wish to participate in the market.⁵ Market participants must purchase consolidated core data for a number of reasons: performing checks required by Rule 15c3-5 under the Exchange Act, maintaining redundancy, complying with Rule 611, and meeting best-execution obligations. Market participants also receive certain regulatory data through the Equity Data Plans, including information relating to regulatory halts, market-wide circuit breakers, and information related to the short-sale price test pursuant to Rule 201 of Regulation SHO.

Yet, since the Commission adopted Regulation NMS in 2005, the structure of the equity markets and the exchanges have changed significantly. Most exchanges have converted from entities mutually owned by their members to demutualized entities that are owned by shareholders. These exchanges are no longer disciplined by their membership to charge reasonable fees tied to the costs of distributing market data.⁶ To the contrary, they are motivated to maximize every source of revenue. Many of these exchanges have begun offering proprietary data products, which compete

³ Proposal at A-47. The non-SRO participant categories include an institutional investor, a retail broker-dealer, an institutional broker-dealer, a data vendor, an issuer, and a retail investor.

⁴ See Exchange Act § 11.

⁵ See *Order Granting Motion for Stay, Consolidating Proceedings, and Scheduling Briefs*, Exchange Act Release No. 83755, at 2–4 (July 31, 2018) (“SEC SAPI Order”), available at <https://www.sec.gov/litigation/opinions/2018/34-83755.pdf>.

⁶ *NetCoalition I*, 615 F.3d 525 (D.C. Cir. 2010).

with the core data distributed by the SIPs.⁷ As the Commission makes clear in the Market Data Infrastructure Proposal, core data has also changed since 2005. Opening and closing auctions are now two of the most liquid times during the trading day, and odd lots are prevalent, particularly in higher priced stocks.

Considerable conflicts of interest inhere in this business model. Participants who are responsible for gathering, pricing, and disseminating essential core data under the Equity Data Plans simultaneously have a considerable interest in selling proprietary data feeds that compete with those same Equity Data Plans. The exchanges' understandable desire to promote and invest in proprietary products means that the SIPs have continued to meaningfully lag behind the proprietary data products and their related infrastructure with respect to content and speed.⁸

Under the current governance structure of the Equity Data Plans, the requisite improvements to the SIPs have not occurred. Since the adoption of Regulation NMS in 2005, these conflicts have influenced the conduct and voting of the Equity Data Plan decision makers. As the Commission notes, after the adoption of Regulation NMS, many of the exchanges began to more actively pursue commercial interests that did not necessarily further the regulatory objective to preserve the integrity and affordability of the consolidated data stream as a means of accessing U.S. equity markets.⁹

The presence of these conflicts increases the need to incorporate broader representation of non-SRO participants on the operating committee, and we support the Commission in proposing to take this step. Governance of the national market system plans would be improved with the input from a broad class of non-SRO stakeholders, including broker-dealers, asset managers, data vendors, issuers, and retail investors. As the Commission notes, neither the Exchange Act nor the applicable rules thereunder, including Rule 608 of Regulation NMS, prohibit non-SROs from participating in the governance of any NMS plan or from having voting rights in the administration of NMS plans.¹⁰

The Proposal should require the operating committee to disclose cost data.

The Proposal sets forth a number of responsibilities that the operating committee will be tasked with discharging under the New Consolidated Data Plan.

We believe the Proposal should set forth one additional responsibility for the operating committee. The operating committee should be required to publish annually, and with sufficient detail, the costs of collection, consolidation, processing, and dissemination of SIP data.

⁷ See e.g. Letter from Stephen Luparello, SEC, to Eric Swanson, BATS Global Markets, July 22, 2015, available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2015/bats-one-072215-vendor-display.pdf>

⁸ Proposal at A-23

⁹ Proposal at A-26.

¹⁰ Proposal at A-49.

The SIPs have significant market power in the market for core and aggregated market data products and are sole-source providers of certain market information,¹¹ which means that for all such products they would have the market power to charge supracompetitive prices. Not only is the full, aggregated complement of core data across exchanges available only through the SIP, but certain information within that set, such as the Limit Up Limit Down plan price bands, is not available anywhere else besides the SIP.

Congress, in directing the Commission to establish a national market system for the trading of securities, assigned the Commission the responsibility to ensure that national market system data is made available on terms that are fair and reasonable and not unreasonably discriminatory.¹² These provisions ensure that market participants have access to a “comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock,”¹³ which promotes fair and efficient markets and trading.

To be sure, the Equity Data Plans have, over the past two years, provided the market with a number of subscriber metrics. But these disclosures do not include the costs of operating the SIPs (or comparable information that would enable market participants to determine these costs).

Moreover, cost data is essential to the fulfillment of other portions of the Commission’s Proposal. For example, the Proposal would charge the operating committee with “assessing the marketplace for equity market data products.”¹⁴ It would “ensur[e] that SIP data offerings are priced in a manner that is fair and reasonable, and designed to ensure the widespread availability of SIP data to investors and market participants.”¹⁵ And it would help with “developing and maintaining fair, reasonable, and consistent terms and fees for the distribution, transmission, and aggregation of core data.”¹⁶

Accordingly, we urge the Commission to propose a provision to the Proposal that would require the operating committee of the New Consolidated Data Plan to publish the costs associated with the collection, consolidation, processing, and dissemination of core data.

The Commission should take additional steps to ensure that core market data is provided at rates that are fair and reasonable.

We commend the Commission for undertaking the most serious and thoughtful reforms in the market-data space, many of which discuss the concerns that Bloomberg and other market participants have previously raised.¹⁷ The Proposal comes at a time of rising market-data

¹¹ Proposal at A-8.

¹² Exchange Act of 1934, Section 11A(c)(1)(C)-(D).

¹³ Proposal at A-4.

¹⁴ Proposal at A-61.

¹⁵ *Id.*

¹⁶ Proposal at A-73.

¹⁷ See Equity Market Structure Roundtable on Market Data and Market Access (October 26, 2018), *available at* <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-marketdata-market-access-102618-transcript.pdf>; *In re SIFMA*, Exchange Act Release No. 84432 (October 16, 2018).

expenditures.¹⁸ The costs of relevant technology and the provision of market data, however, should result in fees far lower than those imposed by the exchanges for both core and non-core data.¹⁹

In support of the Commission's efforts, Bloomberg reiterates its position, shared across the landscape of market participants, that broader NMS reforms remain warranted.²⁰ These NMS-specific issues outlined above come in addition to, not in lieu of, the broader concerns the industry and the Commission has raised with respect to non-core "proprietary" data fees.²¹ The proliferation of both NMS and SRO fees, and the usage restrictions that SROs seek to place on the use of the data, serve as a burden on U.S. investors, innovation, and market efficiency, and both amply deserve the Commission's commendable investment of its policymaking resources.

We appreciate the opportunity to provide our comments on the Proposal, and would be pleased to discuss any question that the Commission may have with respect to this letter. Thank you again for the Commission's efforts.

Very truly yours,



Gregory Babyak
Global Head of Regulatory Affairs, Bloomberg L.P.

¹⁸ See SIFMA comment letter, Market Data Roundtable comment file (No. 4-729) (attaching Ascent data-fees study), available at <https://www.sec.gov/comments/4-729/4729-4559181-176197.pdf>.

¹⁹ See IEX, *The Cost of Exchange Services* (Jan. 2019), available at <https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>.

²⁰ See generally SIFMA Letter to SEC Market Data Roundtable file (Oct. 24, 2018) at 21–28, available at <https://www.sec.gov/comments/4-729/4729-4559181-176197.pdf>; *Rulemaking Petition Concerning Market Data Fees*.

²¹ *In re SIFMA*, Exchange Act Release No. 84432 (October 16, 2018).