



February 28, 2020

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

Re: **SIFMA Comment Letter on the SEC Order on the Governance and Operation of the SIPs; File No. 4-757**

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”) to comment on the Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data (“Proposal” or “Governance Proposal”).² At the outset, SIFMA commends the Commission for taking this important first step in seeking to resolve the current challenges with market data. SIFMA supports the Commission’s Proposal to issue a final order requiring the Plan Participants to file a New Consolidated Data Plan that will consolidate the three existing plans into one plan with an improved governance structure.³ Market data reform has long been an important priority for SIFMA and its member firms.⁴ SIFMA sees this Proposal as a positive initial step and looks forward to engaging with the Commission on other necessary enhancements to the current market data system, including those that would address content, latency, transparency and fees concerns, many of which are addressed in the Commission’s recent Proposal on 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 Securities Exchange Act Release No. 87906; File No. 4-757 (Jan. 8, 2020).

³ Proposal at A-3.

⁴ See Letter from Melissa MacGregor and Theodore R. Lazo, SIFMA to Brent J. Fields, SEC at 3-4 (Oct. 24, 2018); See Capital Markets Report – Modernizing and Rationalizing Regulation of the U.S. Capital Markets, SIFMA at 25-27 (Aug. 10, 2017); See Letter from Theodore R. Lazo, SIFMA to Brent J. Fields, SEC, at 4 (June 5, 2015); See Letter from Theodore R. Lazo, SIFMA to Chair Mary Jo White, SEC at 8-11 (Oct. 24, 2014).

Infrastructure⁵, which we look forward to commenting on separately.

The Governance Proposal will assist with addressing the current conflict of interests for exchanges which operate the Securities Information Processors (“SIPs”) while simultaneously selling proprietary market data products. As the Commission noted,⁶ the current conflicts of interests for exchanges have contributed to the significant differences in content and speed between the SIPs and exchanges proprietary feeds. This results in broker-dealers becoming unable to rely solely on data provided by the SIPs to remain competitive in today’s markets and provide best execution to their customers. We support the Commission mandating these governance changes and recommend finalizing the order as quickly as possible with our proposed changes described below. In addition to our specific comments on the Proposal, we ask that the Commission, and SROs, consider our recommendations for further market data improvements highlighted in our previous letter.⁷

I. SIFMA Agrees that the Governance of the SIPs Needs Reform

When exchanges converted from mutually owned member organizations to publicly owned companies, conflict of interests ensued between the exchanges’ mandate to oversee the SIP and their interest in maximizing the viability of proprietary data products that they sell to market participants.⁸ When the exchanges were designated as SROs under the Securities Exchange Act in the 1970s, each exchange was a member-owned non-profit utility that maintained centralized markets. Today, exchanges are for profit entities seeking to maximize shareholder value and are more likely to pursue commercial interests that do not necessarily further the regulatory objective to preserve the integrity and affordability of the SIPs.⁹ Additionally, exchanges now directly compete with broker-dealers by providing similar types of order matching services, but only the exchanges currently control the SIPs.

Today, few market participants can rely on the SIP for order routing because the necessary improvements to the SIPs have not been made under the current governance structure. The technological advances to increase the speed and automation of markets and trading strategies have incentivized exchanges to develop enhanced proprietary data products that they sell to the same market participants that subscribe to core data feeds.¹⁰ However, the SIPs have not been similarly improved to reflect new innovations in market data. As a result, exchanges can continue to increase the demand for proprietary data, for their financial benefit, by allowing

⁵ Securities Exchange Act Release No. 88216; File No. S7-03-20 (Feb. 14, 2020).

⁶ Proposal at A-14.

⁷ See Letter from Theodore R. Lazo, SIFMA to Vanessa Countryman, SEC, (Sept. 18, 2019).

⁸ Proposal at A-8.

⁹ Proposal at A-26.

¹⁰ Proposal at A-13.

differences between the SIPs and proprietary feeds to increase.¹¹ Improving the governance structure should help to ensure that the SIPs keep up with market data innovations in the future.

As exchange groups have emerged, much of the voting power and control of the data plans have been consolidated with 14 of the 17 votes now controlled by Cboe, ICE and Nasdaq.¹² Thus, two exchange groups can effectively block any improvements to the SIPs. SIFMA therefore agrees with the Commission that the SIPs are in need of reform to account for this evolution.

II. SIFMA Offers the Following Comments and Recommendations on the Proposal

Due to the conflict of interest exchanges face, SIFMA supports adding non-SRO members to the SIP operating committee to provide greater transparency and more inclusive governance. Additionally, SIFMA supports the consolidation of the three-market data plans and agrees that the administrator of the New Consolidated Data Plan should not be owned or controlled by a corporate entity that separately offers a market data product. Governance reforms will enhance constituent diversity and should address conflict of interest concerns raised by the SROs currently being the sole formal voice. Allowing meaningful industry input will lead to SIP data that will be useful to a broad range of market participants.

We offer the following recommendations to further enhance the Proposal overall and the proposed governance structure specifically.

1. SIFMA Supports Consolidation of the Three Market Data Plans into a Single Plan

SIFMA supports the consolidation of the three market data plans into a single new plan. The historical reasons that resulted in the three plans for NYSE-listed, Nasdaq-listed and other exchange-listed stocks no longer exist today in a post-Regulation NMS world. Consolidation will reduce unnecessary duplication and reduce inefficiencies related to the operation of three different plans. Such consolidation is a good first step to reforming the current market data infrastructure.

2. SIFMA Supports Providing Non-SROs with Voting Representation

SIFMA agrees with the Proposal to grant non-SROs a vote. Expanding the participation of non-SROs in NMS Plan governance will increase transparency and allow non-exchange market participants a formal voice. Neither the Exchange Act nor Regulation NMS prohibit non-SROs from participating in the governance of the plans. SIFMA recommends that non-SRO representatives should serve on the operating committee for two years, with the ability to extend for an additional term (for a total of four continuous years) to allow enough time for representatives to get up to speed and effectively participate while allowing for appropriate

¹¹ Proposal at A-16.

¹² Proposal A-8.

turnover for new perspectives. SIFMA also agrees that, to the extent they are willing, the current advisory committee members should serve in their current role until the initial non-SRO members are selected. Current advisory committee members can provide the necessary continuity for transitioning to the new governance structure.¹³ Importantly, to ensure a wide spectrum of views, the SROs should not be permitted to select the non-SRO representatives and that the operating committee should provide for a process to publicly solicit, and make available for public comment, nominations for non-SRO members.¹⁴

SIFMA recommends further tailoring to the Commission's proposal to allow for representation and provide an additional vote to an ATS. Even though ATSS' views could be represented through a large institutional broker-dealer,¹⁵ not all institutional broker-dealers operate an ATS and there are standalone ATSS not affiliated with a large institutional broker-dealer. ATSS represent an important segment of the market and are material consumers of market data. Accordingly, the operating committee would benefit by including their views, which may differ from the views of an institutional broker-dealer.

Additionally, while we support providing voting representation to a representative for an issuer of stock,¹⁶ considering a NMS stock issuer does not necessarily consume data from the SIP, the Commission should provide certain objective requirements to ensure each representative has the necessary experience and knowledge to understand the technical operations of equity market structure. When selecting an individual investor representative, deference should be given to appropriate investor trade organizations (e.g., the SEC's Equity Market Structure Advisory Committee had a representative from AARP).

3. SIFMA Supports the Proposed Voting Power Construct for SROs and non-SROs

SIFMA supports this aspect of the Proposal as an initial step to updating the governance structure of NMS Plans to reflect the demutualization of exchanges and consolidation of voting power through exchange groups. Accordingly, SIFMA supports providing each exchange group with an operating equity trading venue with one vote and providing a second vote to exchanges with greater than 15% market share on four of the six previous months to reward exchanges with market share while balancing potential fluctuations in market share and preventing further consolidation of voting power.¹⁷ Although we believe that non-SROs should collectively have 50% of the voting power,¹⁸ SIFMA agrees that providing non-SROs with one-third of the voting power will improve the transparency and allow the views of other non-SRO market participants to be considered in the decision making process. Further, keeping the voting power percentage

¹³ Proposal at A-49.

¹⁴ Proposal at A-48.

¹⁵ Proposal at A-47.

¹⁶ Proposal at A-47.

¹⁷ Proposal at A-35.

¹⁸ September 2019 Letter.

static between SROs and non-SROs will ensure continuity and prevent dilution of non-SRO voting power percentage with new exchange entrants. With the augmented majority, and augmented voting requirement, we agree that unanimous voting requirements for plan amendments are no longer necessary.

4. SIFMA Agrees with the SEC's Rationale to Instruct the SROs to Consolidate the Plans and to Include Non-SRO Representation

Section 11A of the Act authorizes the Commission, by rule or order, to authorize or require the SROs to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a facility of the national market system.¹⁹ This gives the SEC broad authority to instruct the SROs to revise the current SIP Plans and consolidate them into a single plan.

SIFMA also agrees with the SEC's assertion the proposed reallocation of voting rights among the SROs—combined with the provision of formal voting power to non-SROs, the provision of a two-thirds majority of votes allocated to the SROs, and the provision of an augmented majority vote rather than unanimous vote for amendments to the New Consolidated Data Plan—would further the objectives of Section 11A of the Act.²⁰ Together, these provisions would promote the prompt, accurate, reliable, and fair dissemination of core data²¹ by providing for meaningful input from a broad range of stakeholders while also ensuring that the SROs retain sufficient voting power to act jointly on behalf of the plan pursuant to the requirements of Section 11A of the Act and Rule 608 of Regulation NMS.²² SIFMA agrees that broader representation on the New Consolidated Data Plan operating committee would help to ensure that decisions relating to New Consolidated Data Plan operations support the prompt, accurate, reliable, and fair dissemination of core data.²³ As such, SIFMA believes that the SEC has the broad authority to instruct the SROs to take action to consolidate the existing Plans into a single new Plan and to incorporate its non-SRO representation and voting structure.

5. SIFMA Recommends Imposing Deadlines for the SROs to Implement the New Plan

To address concerns that requiring the SROs to submit a new NMS Plan would require the exchanges to act counter to their commercial benefit,²⁴ the Commission should include concrete milestones that the SROs must meet to ensure the new consolidated plan and the governance structure are implemented in a timely manner. Whenever the SROs do not meet a

¹⁹ See 15 U.S.C. 78k-1(a)(3)(B).

²⁰ Proposal at A-54-55.

²¹ Proposal at A-55.

²² 15 U.S.C. 78k-1 and 17 CFR 242.608.

²³ See 15 U.S.C. 78k-1(c)(1)(B).

²⁴ See Commissioner Robert J. Jackson Jr., Statement on Reforming Stock Exchange Governance (Jan. 8, 2020).

deadline, the SROs should not be eligible to receive market data revenues from the SIP as an incentive for them to meet such deadlines.²⁵ This should more appropriately align the exchanges commercial interest with a timely adoption of new governance structure.

III. SIFMA Suggests that the SEC and SROs Consider Extending the Governance Recommendations to Other NMS Plans

SIFMA recommends that the Commission extend this proposed governance structure to all NMS Plans. The Commission has increasingly used NMS Plans—as opposed to rulemaking—to delegate the regulation of the equity markets to the SROs. Through the NMS Plan structure, the for-profit exchanges and FINRA create regulatory frameworks affecting all markets that may benefit their own commercial interests over their competitors’ and potentially at the expense of what is in the best interest of the market. NMS Plans do not include broker-dealer or asset manager industry members on the operating committee under the current governance structure, even though the Plan requirements are binding on the industry. For example, excluding industry members from meaningful participation in the NMS Plan for the Consolidated Audit Trail (“CAT”), resulted in significant delays, in part to security inadequacies and systems requirements that had not been developed, while attempting to shift virtually all the financial burden to broker-dealers. Providing additional voting industry representation pursuant to the proposed governance structure likely would lead to a more efficient implementation and operation of all NMS Plans.

IV. SIFMA’s Views on Other Related SIP Advisory Committee Comment Letters

SIFMA supports the related NMS Plan SIP Plan proposals related to conflicts of interest and confidentiality policies.²⁶ In particular, SIFMA concurs with recommendations made in the Advisory Committee comments letters.²⁷ The Advisory Committee includes certain buy-side firms and sell-side firms, some of whom are also SIFMA member firms representing views in this letter.

Conclusion

SIFMA commends the SEC on taking this first important step to reform market data, which coupled with the SEC’s recent proposal on Market Data Infrastructure could result in positive, meaningful enhancements to the SIPs. For many years, these reforms have been a key priority for SIFMA and its member firms. We look forward to engaging with the Commission

²⁵ See, e.g., Securities Exchange Act Release No. 86901; File No. S7-13-19 at 24 (Sep. 9, 2019), available at <https://www.sec.gov/rules/proposed/2019/34-86901.pdf>. The Commission has established precedence for this in the CAT NMS Plan which was amended to include “Financial Accountability Milestones” which must be achieved prior to the SROs being permitted to recover related fees, costs or expenses from Industry Members.

²⁶ Securities Exchange Act Release Nos. 87907, 87908, 87909 and 87910 (Jan. 8, 2020).

²⁷ See Letters from CTA/UTP Advisory Committee to Vanessa Countryman, SEC (Jan. 24, 2020).

Ms. Vanessa Countryman, Securities and Exchange Commission
SIFMA Letter on SEC Proposed Order on the SIPs
February 28, 2020
Page 7

on the important market data reforms in both the Governance Proposal and Market Data Infrastructure proposal.

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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. If you have any questions or need any additional information, please contact me at [REDACTED] or [REDACTED].

Sincerely,



Ellen Greene
Managing Director
Equity & 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