



November 12, 2020

Submitted via electronic filing: www.sec.gov/rules/proposed.shtml

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Joint Industry Plan; Notice of Filing of a National Market Data System Plan Regarding Consolidated Equity Market Data (File No. 4-757)

Dear Ms. Countryman:

BlackRock, Inc. (together with its affiliates, “BlackRock”)¹ respectfully submits this comment letter to the Securities and Exchange Commission (“SEC” or “Commission”) in response to the proposal filed by the Financial Industry Regulatory Authority, Inc. and the national securities exchanges (collectively, the “SROs”) to establish a new national market system (“NMS”) plan governing the public dissemination of real-time consolidated equity market data for NMS stocks (the “CT Plan”).

BlackRock believes that consolidated market data plays an integral role in unifying otherwise dispersed buyers and sellers across a fragmented equity ecosystem into a true national securities market. Furthermore, market data integrity promotes fair and efficient markets and facilitates the ability of broker dealers to achieve best execution for their clients. However, our current market data model is rife with inherent conflicts of interest and this has perpetuated an inequitable two-tiered system with increasing costs and administrative burdens for consumers. Accordingly, reforming the governance of the securities information processors (“SIPs”) is a crucial first step towards improving our market data system. Further, as BlackRock currently has a representative serving on the advisory committee for the existing market data plans, we believe that we have an informed perspective to offer on matters of governance.

BlackRock welcomes the filing of the CT Plan by the SROs and applauds the Commission for directing them to act jointly in developing a new unified equity market data plan. We believe the proposed CT Plan makes substantial progress towards simplifying and strengthening the governance of our market data system. Specifically, we are supportive of the provisions to redistribute votes from exchanges to exchange groups, formalize voting representation for non-SRO entities, and establish the independence of plan administrators. However, certain aspects of the proposed plan require additional clarification or modifications. BlackRock recommends amending the CT Plan in order to:

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals around the world. BlackRock is the investment advisor to the iShares family of exchanges-traded funds (“ETFs”). BlackRock also advises non-US ETFs.

- Ensure more effective representation from non-SRO members;
- Increase transparency and accountability regarding plan operations; and
- Mitigate fundamental conflicts of interest in furtherance of the plan.

While governance reform continues to be of pivotal importance, there are many other elements of the market data landscape which require further improvement. We appreciate the SEC's efforts to comprehensively address the market data ecosystem, including through the recent proposal on infrastructure,² and look forward to continuing to work with the Commission to modernize equity market structure.³

Non-SRO Participation

BlackRock supports the establishment of full voting representation for non-SRO entities in the proposed CT Plan. Broadening the governance of NMS plans to include a more diverse set of market participants, including broker-dealers, investors, issuers, and vendors would make them better informed and more impartially operated. As a result, it's essential to ensure that the CT Plan is designed to foster effective participation from non-SRO representatives.

Term Limits

The CT Plan proposes that Non-SRO Voting Representatives would serve two-year terms with a lifetime maximum of two terms, whether consecutive or non-consecutive. The terms of service would also be staggered so that the initial terms of half the non-SRO members would expire two quarters later to allow for continuity of representation.

We believe that this structure creates an impediment to productive representation from non-SRO participants. It takes at least a year for individuals to become sufficiently knowledgeable on issues and SIP operations that they can provide meaningful input. Frequent turnover in non-SRO members would exacerbate this learning curve and lead to ineffectual representation. Further, we are concerned that the pool of qualified and interested non-SRO candidates is limited. As such, disproportionate restrictions on non-SRO service given that SRO Voting Representatives have no corresponding term limits will unbalance the Operating Committee, leaving non-SRO participants at a disadvantage and less informed.

BlackRock recommends that the term limits for Non-SRO Voting Representatives should be extended beyond the current maximum of four years. We suggest requiring Non-SRO Voting Representatives to take a gap period of two years after serving for two terms. This would promote qualified participation by non-SROs, while preserving an egalitarian process which allows for a rotation of representatives and provides any interested candidate the opportunity to serve. Additionally, we believe that non-SRO terms should be staggered by at least one or two years in order to ensure sufficient continuity and consistency in representation. Otherwise, the slate of incoming non-SRO members will lack the required knowledge and experience to participate effectively, if they are all starting around the same time.

² Letter from Hubert De Jesus and Samantha DeZur, BlackRock, Inc. (May 26, 2020), available at <https://www.blackrock.com/corporate/literature/publication/sec-market-data-infrastructure-052620.pdf>

³ BlackRock ViewPoint, “[Mark-to-market structure: An end-investor perspective on the evolution of developed equity markets](#),” February 2019

Non-SRO Observers

As proposed, the CT Plan would allow SROs to select Member Observers who can attend operating committee meetings, subcommittee meetings and executive sessions. BlackRock recommends that a new “Non-SRO Observer” category should be added to the CT Plan or the definition of Member Observers should be expanded to permit Non-SRO Voting Representatives the analogous ability to select observers who can attend meetings. This is a more consistent approach for non-SRO participation which would substantially enhance the governance of the CT Plan.

The existing market data plans established an advisory committee composed of specific categories of representatives (Alternative Trading System, Investor, Institutional Broker, Retail Broker, and Data Vendor) in addition to industry members selected by the SROs. Currently, 10 to 11 individuals serve as advisors which is beneficial for the plan as it provides broad participation, improves transparency and enhances the quality of guidance. However, the CT Plan proposes to shrink the number of non-SRO participants to only six categories, eliminating the SRO selected representatives and effectively negating these benefits. The introduction of Non-SRO Observers would essentially be a continuation of the existing practice and degree of participation which will preserve the accessibility of the CT Plan to the industry. Failure to correct this deficiency would paradoxically reduce both transparency and industry representation when these are the most flagrant defects of our market data system.

The addition of Non-SRO Observers would have the ancillary benefit of creating a pool of seasoned candidates for potential future service as Non-SRO Voting Representatives. Individuals who have been attending meetings as Non-SRO Observers will be better informed and more experienced with the market data plans. This would enable a smoother transition between outgoing and incoming representatives.

Issuer Representation

The proposed CT Plan follows the SEC’s order in prohibiting the non-SRO member representing issuers from being affiliated with an SRO, a broker-dealer, or an investment adviser. However, we continue to assert that this restriction is detrimental towards forming an inclusive governing body of market participants. As discussed in our previous letter to the SEC, this limitation would eliminate a significant portion of qualified issuer representatives with the industry experience necessary to be effective non-SRO members.⁴ In addition, this would also unreasonably discriminate against ETF issuers as they are typically affiliated with a broker-dealer or investment adviser, denying representation to a significant segment of the market. Such stakeholders are responsible for issuing 2096 NMS securities that accounted for an average of 26 percent of trading volume in the US equity market in 2019.⁵ This makes the exclusion of ETF issuers from plan governance an egregious oversight.

Exculpation and Indemnification

Under Article XII of the proposed CT Plan, SRO representatives are exculpated and indemnified from liability. We recommend that these protections should naturally be extended to non-SRO representatives as well. This practice is customary and widespread in corporate situations to

⁴ Letter from Hubert De Jesus and Joanne Medero, BlackRock, Inc. (February 28, 2020), available at <https://www.blackrock.com/corporate/literature/publication/sec-proposed-order-directing-exchanges-and-financial-industry-regulatory-authority-submit-new-national-market-system-plan-regarding-consolidated-equity-market-data-022820.pdf>

⁵ Investment Company Institute, *2020 Investment Company Fact Book*, (May 6, 2020), available at https://www.ici.org/pdf/2020_factbook.pdf

minimize potential personal liability for the directors of a company. As voting representatives, non-SRO participants may be equally exposed to the risk of litigation and penalties. Without comparable exculpation and protection from liabilities, the CT Plan may find it difficult to attract and retain qualified representatives, decreasing the pool of interested candidates. Further non-SRO members facing the risk of losses or penalties may be reticent to vote or provide input on matters freely, defeating the Commission's purpose in granting voting rights to non-SROs.

Transparency

Providing transparency is critical to improving the governance of the equity market data system. However, today, public disclosure regarding processor and administrator operations and standards of service are inadequate. The proposed CT Plan clearly acknowledges the existence of minimum technical and operational requirements for the processors and administrator. We recommend that such standards along with any contractual terms and responsibilities of the processors and administrator should either be detailed in the plan or be made publicly available (for instance via the plan websites). Full disclosure of performance standards improves transparency over the operation of the SIP and increases public confidence in the technical capability and operational resiliency of our market data system. Further, if the SEC's infrastructure proposal is approved, uniform standards and comparable metrics for evaluating competing consolidators will need to be established and published.

Conflicts of Interest

A signature objective of the Commission in reforming the governance of the market data plans was to address "the inherent conflicts of interest of the SROs, which have affected the provision of core data."⁶ Consequently, BlackRock believes that it's imperative to amend those elements of the CT Plan which continue to perpetuate potential conflicts of interest for participants. We propose that the following recommendations will mitigate these conflicts and foster more effective governance of the SIP.

Member Observers

As previously noted, under the proposed CT Plan, SROs may select Member Observers who are eligible to participate in the governance of the market data plan and attend committee meetings. However, this authority appears to be entirely unconditional in nature, as it is at the sole discretion of an SRO to determine who is necessary in connection with its obligations under Rule 608(c) of Regulation NMS to become a Member Observer. Further, once appointed, Member Observers are conspicuously unencumbered by any policies or procedures, which casts doubt on the principles and accountability of such individuals. We believe that there should be limitations on the selection of Member Observers and that they should be subject to the same policies as other plan participants.

Section 4.10(b)(i) prohibits SROs from appointing as its voting representative any individuals that are conflicted due, for example, to responsibilities or compensation which are tied to the sale of proprietary market data. We believe that such individuals should also be barred from becoming Member Observers. To the extent that Member Observers attend executive sessions

⁶ Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data, 85 Fed. Reg. 28708 (May 13, 2020) ("Governance Order")

and receive highly confidential information, any continued involvement with proprietary data businesses constitutes a clear conflict of interest.

Member Observers should also be held to the same conflicts of interest and confidentiality policies as other plan participants. Specifically, Member Observers should be required to fill out a conflicts disclosure form and abide by the confidentiality policy regarding any information or materials that they receive from attending operating committee or subcommittee meetings. Sections 4.10(a) and 4.11(a) of the proposed CT Plan should be amended to expressly apply these provisions to Member Observers.

Executive Sessions

Under the proposed CT Plan, SRO Voting Representatives, Member Observers, SEC staff, and other persons as deemed appropriate by the SRO Voting Representatives may meet in executive session to discuss a specific list of topics, including highly confidential information, vendor or subscriber audit findings, and litigation matters. However, the plan notes that this list “is not dispositive of all matters that may by their nature require discussion in an Executive Session.”⁷ This caveat gives SROs too much latitude to meet without the input of non-SRO members and creates inherent conflicts of interest. The Commission intended to confine the use of executive sessions to situations where it would be appropriate to exclude non-SRO members such as matters that exclusively affected the SROs only.⁸ We recommend removing this carve out and limiting the topics which can be discussed in executive session to the enumerated list.

BlackRock thanks the Commission for the opportunity to comment on the proposed CT Plan. While we provide some recommendations for improving the CT Plan, overall, we believe that the proposal would materially enhance the governance of the SIP and create a sustainable foundation for driving further accountability and transparency in our market data ecosystem. Consequently, we urge the Commission and SROs to swiftly adopt and implement a new market data plan to replace the outdated governance structure which is in effect today. We welcome any additional questions or further discussion.

Sincerely,

Hubert De Jesus
Managing Director, Global Head of Market Structure and Electronic Trading

Samantha DeZur
Director, Global Public Policy

⁷ Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, 85 Fed. Reg. 64569 (Oct. 13, 2020)

⁸ Governance Order, FR at 28727