



January 3, 2020

Via Electronic Mail

Hon. W. Jay Clayton, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Potential Reforms Regarding the Provision of Market Data;
Concept Release on Equity Market Structure (Rel. No. 34-61358; File No. S7-02-10); and
Market Data and Market Access Roundtable (Rel. No. 4-729)

Dear Chairman Clayton:

The Healthy Markets Association¹ appreciates the opportunity to offer our current suggestions² on reforming the provision of market data.

In November 2017, we released a comprehensive report on the state of equity market data,³ and called for several reforms. Since then, we have: (1) petitioned the Commission,⁴ (2) offered comments in the Commission's Market Data and Market Access Roundtable,⁵ and (3) commented more than a half-dozen times on the provision

¹ The Healthy Markets Association is an investor-focused not-for-profit coalition working to educate market participants and promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in assets under management, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets. To learn more about Healthy Markets or our members, please see our website at <http://healthymarkets.org>.

² Over the years we have spent focusing on these issues, our views have evolved.

³ Healthy Markets Association, *US Equity Market Data*, Nov. 2017, available at <https://healthymarkets.org/product/market-data-report>.

⁴ Letter from Tyler Gellasch, Healthy Markets Association, to Hon. W. Jay Clayton, Sec. and Exch. Comm'n, Jan. 17, 2018, available at <https://www.sec.gov/rules/petitions/2018/petn4-717.pdf>.

⁵ Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, Sec. and Exch. Comm'n, Oct. 23, 2018, available at <https://www.sec.gov/comments/4-729/4729-4554022-176182.pdf>.

of market data.⁶ Most recently, we offered support to the Commission's proposal to rescind the immediate effectiveness of NMS Plan fee filings.⁷

We understand the Commission is considering proposals to revise how market data is governed and provided to market participants. We further noticed that the Commission is poised to vote on January 8th on a "proposed order" that would "direct[] the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data."⁸ In that vein, we wish to offer a few concrete suggestions:

1. **Address both public and private data streams together.** The Commission has expressly acknowledged that one of its "most important responsibilities is to preserve the integrity and affordability of the consolidated data stream."⁹ In fact, the public market data stream was first explicitly created at the direction of the Commission, and later authorized by Congress, in order to provide market participants with timely and affordable access to key market data.¹⁰ Further, the

⁶ See, e.g., Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, Sec. and Exch. Comm'n, Apr. 11, 2018, available at <https://healthymarkets.org/wp-content/uploads/2018/05/04-11-18-HM-letter-Market-Data-Reforms.pdf> (objecting to fee changes to the CTA/CQ Plans, as well as providing an extensive history of the public market data streams).

⁷ Letter from Tyler Gellasch, Healthy Markets Association, to Vanessa Countryman, Sec. and Exch. Comm'n, Dec. 12, 2019, available at <https://www.sec.gov/comments/s7-15-19/s71519-6540703-200569.pdf>.

⁸ Open Meeting Agenda for Jan. 8, 2020, Sec. and Exch. Comm'n, available at <https://www.sec.gov/news/openmeetings/2019/agenda010820.htm>.

⁹ *Regulation NMS*, Sec. and Exch. Comm'n, 70 Fed. Reg. 37496, 37503 (June 29, 2005).

¹⁰ In 1972, the then-Chairman of the Commission called for the creation of a public market data stream, saying that it would, "for the first time give us truly nationwide disclosure of prices and volume in listed stocks, and provide the basis for a truly national market in which investors will know where they can get the best price." Remarks of William J. Casey, Chairman, Sec. and Exch. Comm'n, before the Economic Club of New York, Mar. 8, 1972 (summarized at SEC News Digest, 72-45 (Mar. 9, 1972), available at <https://www.sec.gov/news/digest/1972/dig030972.pdf>). A copy of the remarks as prepared for delivery are available at <https://www.sec.gov/news/speech/1972/030872casey.pdf>. On March 2, 1973, the New York, American, Midwest, Pacific and PBW Stock Exchanges and the National Association of Securities Dealers, Inc. filed with the Commission a "consolidated tape plan." *New York, American, Midwest, PBW, and Pacific Coast Stock Exchanges and NASD: Notice of Receipt of Plan*, Sec. and Exch. Comm'n, 38 Fed. Reg. 6443, available at <https://cdn.loc.gov/service/ll/fedreg/fr038/fr038046/fr038046.pdf>. The Commission responded with numerous recommended adjustments to the plan to ensure proper oversight, particularly to ensure that the plan would have proper governance and provide transparency to public amendments. See *Notice of Commission Comments on Consolidated Tape Plan Filed Pursuant to Rule 17a-15 Under the Securities Exchange Act of 1934*, Sec. and Exch. Comm'n, Rel. No. 10218, June 13, 1973. A revised plan was submitted to the Commission on April 17, 1974. See Letter from Michael Tobb, Midwest Stock Exchange to George Fitzsimmons, SEC, Apr. 17, 1974 (attaching *Plan Submitted Pursuant to Rule 17a-15 of the Securities and Exchange Commission Under Securities Exchange Act of 1934*, April 17, 1974). On May 17, 1974, the SEC declared the revised CTA Plan effective. 39 Fed. Reg. 17799 (May 20, 1974). Congress adopted the 1975 Amendments to the Securities Exchange Act of 1934 afterwards to enshrine into law the "national market system." Pub. L. No. 94-29, 89 Stat. 97 (1975), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-89/pdf/STATUTE-89-Pg97.pdf>; see also H.R. Rep.

cost, quantity, quality, and timeliness of the information provided in the public market data stream directly impacts the utility and value of the information provided via proprietary data feeds.¹¹ Accordingly, one cannot address these issues independently.

2. **Modernize the definition of “core” data.** The Commission should modernize the definition of minimum “core” data to include odd lot orders, at least five layers of depth-of-book information, and auction information, as well as such other information as the Commission deems appropriate.¹² Further, to ensure that the definition remains consistent with evolving market demands, the Commission should establish a process wherein it reviews the definition not less than once every two years.
3. **Promote competition by ensuring fair access to information.** All distributors of market data (including those affiliated with an exchange) should receive the same data, at the same time, and at the same cost. This will mean that the proprietary data feeds of the exchanges may have to be modestly delayed, so as to match the receipt time of that information by any affiliated or third-party SIPs. From there, an exchange, its affiliates, and any third-parties should be able to compete to provide the highest quantity, highest quality, fastest, and lowest cost data to market participants.
4. **Do not simply add more conflicts to a conflicted public market data governance system.** Since the NMS Plan process was statutorily enshrined by the 1975 Amendments, the exchanges have become for-profit entities largely owned by third-party shareholders. There are, of course, significant concerns about the fairness of having one set of for-profit market participants setting the rules and costs for others. Historically, this has led to material gaps in quality and timeliness between the different data streams, as well as significant complexity and costs for market participants. In the absence of more significant Commission action, many market participants (including Healthy Markets) have argued that advisers, brokers, and others should have voting powers over the plans. Further,

No. 94-229, 94th Cong., 1st Sess. 93 (1975). Although the Commission had already initiated and deemed effective the CTA Plan by 1975, the Congressional action was deemed necessary to remove ambiguities and clearly outline the roles and authorities of the Commission and Plan Participants (and avoid potential lawsuits from exchanges related to purported property rights to the market data).

¹¹ See e.g., Joint Hearing before the Subcommittee on Sec. Ins. and Investment of the Cmte on Banking, Housing and Urban Affairs and the Permanent Subcmte on Investigations of the Cmte on Homeland Sec. and Governmental Affairs,, 111th Cong. (2010), available at <https://www.govinfo.gov/content/pkg/CHRG-111shrg65272/pdf/CHRG-111shrg65272.pdf> (Testimony of Mary Schapiro, Sec. and Exch. Comm'n) (stating that the Commission should be “looking again at the quality of exchange data feeds and whether the public data feed is sufficiently robust in comparison to the one they sell for a lot more money in their proprietary context”).

¹² Any data feed that provides “core” data and meets the temporal and other requirements of the Commission should be deemed adequate for purposes of compliance with Regulation NMS provisions related to reliance on the SIPs.

concerns of the outsized impact of the three dominant exchange families could be somewhat diluted by reducing their voting powers to one vote per family.

However, those incremental suggestions were made in the absence of any Commission action to revisit the SIPs and NMS Plans more broadly. Unfortunately, these band-aid fixes create their own secondary problems. While the addition of divergent interests and decrease of exchange voting power may reduce the likelihood of out-of-control fee increases, there is no evidence to suggest that it would improve the likelihood of the NMS Plans providing useful, high-quality, timely, and comprehensive data. To the contrary, the addition of more diverse participants would most likely mean that the Plans would often be deadlocked, and inaction may rule the day. In that status quo, we would expect the long-term outcome to be a further deterioration of the public market data stream relative to private market data streams. The goal for reforms isn't simply about reducing costs of data, but about improving timely access to essential market data. Further, to the extent that market participants are worried about NMS Plan fees, the Commission has recently proposed changing its process for reviewing and approving fee changes. If the Commission were to adopt those reforms, the primary concerns of market participants (i.e., that exchanges keep making NMS Plan fees more complex and costly) would be significantly mitigated. The Commission should not create a foreseeable governance gridlock just to rein in market data costs.

5. **Consider the Form of Commission Action.** The Commission has indicated that it is going to consider a proposed order that would itself presumably give rise to a proposal by the exchanges and FINRA. That proposal, in turn, would then have to be approved by the Commission before implementation.

We are highly skeptical that the resulting reform “proposal” from the NMS Plan Participants is likely to (1) adequately achieve its stated objectives and (2) be implemented in a timely fashion. When the Commission has taken this approach in the recent past, most notably in the creation of the Consolidated Audit Trail, it has not worked well. The CAT, for example, has been mired in years of delays and will be facially inadequate to fulfill its initial objectives when it is “finished.”

Further, the Commission would be voluntarily adding an unusual and unnecessary step by first “proposing” its own order. The record on these issues is remarkably robust, as there have been Concept Releases, Roundtables, and comments from a broad swath of market participants spanning decades. If the Commission wants the NMS Plan Participants to do something, it already has the authority and the record upon which to justify that decision. Simply proposing that the Commission later ask the NMS Plan Participants for another proposal is not likely to effectuate change, but instead delay it further. In addition to adding procedural steps, this unusual strategy would also add significant legal risks.



Of course, markets evolve faster than rules, and definitions that are put into rules (e.g., the time horizons used in Rule 605) are often woefully out-of-date shortly after adoption. As such, the Commission should be cognizant to preserve the ability of future Commissions to readily update definitions. The process used by the Commission to implement these changes will matter a great deal to those efforts. To that end, we generally urge the Commission to consider implementing, to the extent possible, any actions through Commission order.

We urge the Commission to embrace this opportunity to remedy some deeply rooted problems in our existing market structure. We urge you to avoid the temptation of easy optical wins that would create new problems and potentially lock in already existing problems for years or decades to come.

Conclusion

Thank you for your consideration. Should you have any questions or would like to discuss these matters further, please contact me at [REDACTED].

Sincerely,

Tyler Gellasch
Executive Director

Cc:

The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison H. Lee, Commissioner
Brett Redfearn, Director, Division of Trading and Markets