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June 11, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Notice of Proposed Rule Regarding Market Data Infrastructure (Release No. 34- 88216; File No. S7-03-20)

Dear Ms. Countryman:

The Security Traders Association of New York, Inc. (“STANY”)¹ appreciates the opportunity to provide comments on the proposed rule published by the Securities and Exchange Commission (“Commission”) to update the national market system (“NMS”) for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in NMS stocks (the “Infrastructure Proposal” or the “Proposal”).² The Proposal is complex. Given the comprehensive changes to market infrastructure proposed by the Commission and the constraints occasioned by COVID-19, we believe that the Commission has offered market participants inadequate time to evaluate, analyze, and provide comments. Therefore, STANY is providing a response that focuses on only key aspects of the Proposal. We remain concerned that, as we stated in our letter requesting that the comment period be extended³, the pandemic has impaired the ability of many impacted and interested parties to fully and carefully consider the Proposal.

As an industry organization comprised of individuals employed in the securities markets, STANY does not represent a single business or business model, but rather provides a forum for trading professionals

¹ STANY, a membership association representing professionals engaged in the trading of securities since 1937, is committed to be a leading advocate of policies and programs that foster investor trust, professional ethics, and marketplace integrity and that support capital formation, marketplace innovation and education of market participants.

² See Securities Exchange Act Release No. 88216 (February 14, 2020), 85 FR 16726 (March 24, 2020).

³ See Letter to Vanessa Countryman, Secretary, Securities and Exchange Commission from Kimberly Unger, CEO, Security Traders Association of New York dated May 14, 2020 at <https://www.sec.gov/comments/s7-03-20/s70320-7195381-216849.pdf>

representing institutions, hedge funds, broker-dealers, ATs, trading centers and technology companies to share their unique perspectives on issues facing the securities markets. Our members perform essential functions in the capital markets ecosystem; an ecosystem that has performed incredibly well and has rightfully been called the envy of the world. It has been noted countless times that the US capital markets have never been better for retail investors than they are today. Even with the high volumes and economic uncertainty occasioned by the coronavirus outbreaks, US markets have performed incredibly well. We agree. As Commissioner Clayton recently remarked: “Despite these extraordinary volumes and volatility, the ‘pipes and plumbing’ of the securities markets—i.e., the clearing agencies, exchanges, ATs and securities information processors, among other things—functioned largely as designed, and importantly, as market participants would expect. In other words, we can report that during this time of unprecedented stress, we have observed no systemically adverse operational issues with respect to our key infrastructure.”⁴

The smooth functioning of the markets, even in these extraordinary times, is a testament to the hard work, thoughtful planning, and exceptional innovation of thousands of regulators and market participants over the last several decades. Regulatory change and innovation have been the hallmarks of our successful market structure. Although not all change has been welcomed and certainly some changes carried unintended consequences, both predictable and unforeseeable, we agree that well-researched, well-reasoned, and well-vetted enhancements can improve even the best systems. Well-functioning market structure is essential to investor protection and confidence, fair, orderly, and efficient markets, and capital formation. Because of this importance, STANY and its members have consistently advocated for change based not upon conjecture and speculation but upon empirical data. When appropriate we have advocated for pilot programs that consider associated costs and have always considered that change is better when it allows for thoughtful participation and comment from a true cross section of market participants including retail and institutional investors, market makers, exchanges, vendors, and issuers. Therefore, although we commend the Commission on its goals to improve market structure, we caution against unnecessary changes to critical market infrastructure without demonstrating through qualitative and quantitative analysis that there will be proven benefits for investors. There are too many unknowns in the Proposal for us to wholeheartedly support its adoption without additional analysis and guidance.

Expanding the definition of Core Data by Adding Round-Lots Redefined in Five Tiers, Depth of Book and Auction Imbalance Information

The Proposal would redefine core data in Rule 600(b) to include all current components of core data, in addition to new data elements that are not currently provided by the exclusive SIPs:

1. quotation data for smaller-sized orders in higher-priced stocks (pursuant to a new definition of “round-lot”),
2. data on certain quotations below the best bid or above the best offer (pursuant to a new definition of “depth of book data”), and
3. information about orders participating in auctions (pursuant to a new definition of “auction information”).⁵

While many of our members support the Commission’s expansion of the definition of “core data” in principal,

⁴ Remarks of Chairman Jay Clayton to the Financial Stability Oversight Council, (May 14, 2020), available at <https://www.sec.gov/news/speech/clayton-remarks-financial-stability-oversight-council-051420>

⁵ Proposing Release, FR at 16736

we note that there are potential unintended consequences and additional considerations of the Commission's proposed new definition that merit serious review as detailed below.

Round-lots

With the overall increase in stock prices, and the decrease in the number of declared stock splits, a one hundred share round-lot reflects a much more significant notional value than it did in 2005 when Regulation NMS was implemented. The significant increase in share prices since the introduction of Regulation NMS and the concomitant increase in odd-lot quotations calls for a consideration of how to best reflect trading interest in the NBBO. Although STANY supports round-lot reform, our members are not of one view of the best way to ensure that the national best bid and offer ("NBBO") reflects odd-lot interest that today makes up an increasing proportion of orders entered in the public market.

Some members believe that making significant changes to current market structure is not the most prudent way to address listed companies that are reticent to split their stock. Since retail investors have a difficult time buying full shares in companies who are willfully allowing their stocks to trade at high notional levels partial share executions are on the rise. We believe that the Commission should not further harm retail by creating more confusion and complexity through the five-tier round-lot regime contemplated in the Proposal. A more prudent and nonetheless effective approach to addressing the increased trading in odd-lots, would be to include odd-lot quotations in core data while leaving the definition of round-lot as it currently stands.

However, if the Commission intends to redefine rounds-lots, we support inclusion of round-lots of all sizes in the protected quote subject to the Order Protection Rule ("OPR"). To ensure that round-lots included in the national best bid and offer ("NBBO") are of a significant notional value to warrant being deemed a protected quote, we suggest raising the minimum notional value of a non-100 share round-lot to an amount above \$1,000.

As proposed, the redefinition of round-lots would affect not just high-priced securities, but all stocks priced above \$50. Among those members who support a change in the definition of round-lots, there is a decided preference for consolidation of the proposed five tiers to three which we believe will adequately address the Commission's concern with odd-lot trading in high-priced stocks:

- 100 shares for stocks priced from \$0.00 - \$500.00
- 10 shares for stocks priced from \$500.01 - \$1,000.00
- 1 share for stocks priced from \$1,000.01 or more

In addition to the operational concerns and the anticipated customer confusion that a scale of five round-lot categories would bring to the market, we also expect it would bring new message traffic and execution-quality challenges that could contravene the Commission's intent to increase the speed and efficiency of the SIPs.

Under the Proposal, odd-lot quotes that when aggregated equal a round-lot will be displayed in core data as a round-lot at the least aggressive price of the odd-lots. The ability to aggregate odd-lots across price levels will ensure that core data reflects a round-lot price that incorporates odd-lot quotes to a meaningful extent. STANY supports including this additional information in core data.

We also believe that it is important that the Commission ensure that any change in the definition of round-lot sizes be transparent to investors who are familiar with the current 100-share convention. To minimize anticipated confusion and familiarize investors and market participants with the new round-lot sizes, we

suggest that the Commission conduct a robust investor education campaign.

New round-lots will also impact broker dealers' regulatory obligations under Regulation NMS. It is anticipated that broker dealers will need to implement new systems or system changes to monitor round-lots for stocks each month and suggest that if the Proposal is approved, implementation time be sufficient to permit these systems changes. We request that the Commission define a reasonable implementation schedule with significant industry testing.

STANY is concerned that the Commission has not considered the impact and potential for investor confusion when trading options on securities with round-lots quoted in sizes less than the 100-share option contract convention. We encourage the Commission to conduct a derivative market impact analysis, including consideration of the settlement process with respect, not just to listed options, but also with respect to exchange traded products. The Commission should also quantitatively assess recent changes to the option markets meant to address retail concerns – such as listing and rational for delisting option mini contracts.

The proposed redefinition of round-lots would affect execution quality statistics under Rule 605 and therefore we encourage the Commission to consider expeditiously amendments to Rule 605.

Auction Information

Given the continued growth of volume traded in opening and closing auctions as a percentage of total daily consolidated volume, STANY agrees with the Commission that auction information is critical to investors. Also noting, the increase in ETF volumes, and that of other derivative instruments tied to underlying data that references opening and closing prices for settlement, we highlight the importance of transparency into the open and close. STANY therefore supports the inclusion of auction information in the definition of core data.

Depth-of-Book Information

The proposal would redefine core data to include five levels of depth-of-book. As the Commission notes, many market participants need more than the best bids, best offers, and the NBBO currently disseminated by the SIPs to trade competitively and to optimize execution of customer orders. STANY believes that five levels are appropriate and sufficient for most users and that those users seeking more than five levels should purchase that information through exchange propriety data feeds.

While we agree that five levels of depth-of-book is reasonable, we note that the Proposal contemplates adding “aggregated orders at each price between the best bid and best offer and the protected bid and protected offer (if different).”⁶ Thus, the actual quote traffic and information to be processed as proposed by the Commission calls for many more than five levels. We request that the Commission provide clarification as to how the depth-of-book data will be determined and made available on an individual exchange basis, particularly since the aggregation process appears to work differently for the protected best bid and offer (“PBBO”) and the NBBO, BBO and depth-of-book determinations. We caution that the addition of too much data may be confusing, costly, and add latencies that may not be in the best interests of investors who rely on core data and may subvert the Commission’s goal of improving the timeliness and usefulness of current SIP feeds.

⁶ See Proposal at 16751

Regulation NMS's OPR and Restrictions on Locked and Crossed Markets Should Apply to the all Round-Lots Regardless of Size

STANY believes the contemplated change to the OPR is too important and controversial to be dealt with without additional discussion. We do not believe that the Commission should use the Proposal as a chance to test the reduction or elimination of the OPR and Locked and Crossed Markets requirements. Should the commission believe that these protections are no longer necessary, we suggest that the Commission propose changes to the OPR and Locked and Crossed Markets requirements in a separate release subject to notice and comment.

However, if the Commission intends to address the OPR through the instant rulemaking, we strongly support amending the definitions of “protected bid” or “protected offer,” so that all round-lot quotations would continue to benefit from the OPR.⁷ In addition to the extension of the OPR to all round-lots under 100 shares, we support the consistent use of the amended round-lot in the same ways that round-lots of 100 shares are treated today throughout Regulation NMS, for Rule 605, for Regulation SHO, for requirements on Locked and Crossed markets, etc.

The anticipated confusion and complexity of a NBBO that deviates from the PBBO outweighs concerns about protecting quotes that otherwise may not be “meaningful.” As contemplated in the Proposal, the display of a PBBO that is distinct from the NBBO would create additional confusion for, and potential harm to, investors. In addition to confusion for investors, broker dealers will need to determine whether to display to customers the PBBO or NBBO and potentially make difficult determinations as to whether to route orders to access a potentially better-priced NBBO versus the PBBO.

Competing Consolidators and Self Aggregators

STANY has long advocated for markets driven by competition and innovation rather than regulation aimed at picking winner and losers amongst market participants. As such, we would like to believe that market forces attendant to the Commission’s proposed competing consolidator model with competitive alternatives would reduce market data costs, improve resiliency, and encourage the quickest and fairest possible dissemination of market data. However, the Commission has not provided sufficient information by which to judge whether the Proposal to replace SIPs with competing consolidators would achieve these goals and whether the plan is appropriate under the Securities Exchange Act of 1934.

Without additional details we cannot properly evaluate whether the competing consolidator model will in fact provide benefits that outweigh anticipated costs and potential risks attendant to such significant structural changes. It is not enough to merely speculate on the possible benefits of a competing consolidator model. We are concerned that the Commission has not adequately addressed the impact of costs, latencies, vulnerabilities, and information asymmetries. Although competition on a high level is always hard to argue against, there is no proof in the filing that competing consolidators and self-aggregators will lower market data costs or improved latency. The Commission provides inadequate guidance or meaningful analysis on how fees for market data will be determined, how “reasonableness” will be defined, and how costs to market participants will be controlled under the proposed model. Likewise, the vagueness of the “transition period”

⁷ We say this despite the fact that many members have expressed concerns about protecting quotes with a de minimis notional value and therefor prefer that round-lots are redefined for securities priced above \$1000 a share only.

prevents us from properly evaluating implementation of the model. Moreover, the Proposal does not adequately address significant unknowns around data quality, availability, and reliability.

The success of a competing consolidator model and the assumption that the model will improve the quality of market data delivery depends on a sufficient number of firms willing to assume the responsibilities and costs of functioning as a consolidator. Unfortunately, there is no guarantee that competing consolidators will appear in numbers that justify the proposed changes to SIPs. Importantly, the Commission itself acknowledges that a robust market and demand for competing consolidators may not materialize. Competition among consolidators may, if successful, have an impact on the costs associated with aggregation and dissemination of market data, but not on underlying market data fees.

Additionally, the existence of competing consolidators will not eliminate geographic latency which accounts for vast majority of the latency experienced by the SIPs. The Commission acknowledges that “[s]elf-aggregators may have a minor latency advantage over market participants that decide to utilize a competing consolidator”⁸ So, although the Commission seeks to eliminate a two-tiered structure that exists between SIPs and proprietary data fees, the Proposal would substitute, at minimum, a different two-tiered structure between self-aggregators and competing consolidators. If the Commission’s primary goal is to reduce latencies between SIPs and proprietary data feeds, we believe that the Commission should give additional consideration to the potential advantages of distributed SIPs.

Under the competing consolidator and self-aggregator model, each consolidator and self-aggregator would be separately responsible for calculating the NBBO. At any given time, there may be as many NBBO’s as there are consolidators and aggregators. We are concerned that this will cause confusion for investors who are accustomed to one NBBO, hinder market surveillance and enforcement efforts, and impact best execution analysis. For example, market centers preparing Rule 605 reports would no longer be providing uniform comparisons because the NBBO that each market center will use will be different.

To the extent that a competing consolidator model is adopted, our members disagree on whether consolidators should be required to register as Regulation SCI entities. Registration would subject consolidators to standards with respect to their timeliness, accuracy, and reliability; which many believe are necessary. Some of our members; however, believe that the Commission should hold competing consolidators to the same stringent requirements for “critical SCI systems” as current processors. Among their fears is that a systems failure of a consolidator, especially one that services a large customer base, could result in market wide halts.

On the other hand, there is concern that registration as an SCI entity will be burdensome and costly and may be too high an impediment to entry. As a competing consolidator there is no assurance of revenue or profitability. The inclusion of an undefined transition period alone, makes it difficult for firms to assess when they would start to collect fees as consolidators. Many market data vendors who would be natural fits as consolidators would be committing to regulatory oversight which they may see as a disadvantage. Some may shy away from the role because consolidators will be required to “disclose publicly certain information about their organization, operations, and products, as well as regularly publish certain performance statistics on, for example, capacity, system availability, and latency to demonstrate their operational capability and to provide

⁸ See Proposal at 16791.

transparency into the performance of their systems.”⁹ Consolidators will also have to work with other consolidators to agree on standards. There is not a good track record of that happening. Finally, we believe that the Commission’s estimates for expenses of the costs associated with Reg SCI - initial expense of \$68,710 and \$21,810 annual cost¹⁰ - seriously underestimate the financial burdens.

Given these legitimate but opposing concerns, we believe that it would be imprudent and potentially harmful to investors and market infrastructure to make the contemplated changes to SIPs without further consideration, including an in-depth cost benefit analysis and additional input from the industry.

Again, if the Commission moves forward with the Proposal without further analysis, we support self-aggregators and believe that self-aggregators should include broker-dealer affiliated organizations, to avoid significant changes to how firms currently consume and manage data. We would be remiss in failing to point out concerns that the existence of self-aggregators may significantly reduce the potential pool of customers for competing consolidators. Larger broker dealers, who would likely be the best customers for consolidators, may elect to become self-aggregators obviating their need to subscribe to consolidated market data from a competing consolidator. Given that the Commission is speculating on the desire and economic feasibility of a significant number of entrants to the consolidator space, self-aggregators may diminish what could potentially be a thin field.¹¹

Derivative Instruments

STANY believes that it is important that the Commission also measure the impact on derivative markets instruments that derive pricing from SIP market data. One example is the cost to listed options market, where participants are required to process both SIP and Options Price Reporting Authority (OPRA) data feeds to meet specific regulatory requirements; such as Regulation SHO, trade halts, limit up limit down notifications messages, and historical data for market manipulation surveillance reviews. Another consideration is that both listed and OTC Derivative markets’ settlement, risk and margin calculation processes also may rely on SIP data or inputs, as they are derivatively tied to the equities market. We believe that the impact on derivatives option, futures, and ETF markets should also be assessed holistically prior to any changes to SIPs.

Summary

STANY commends the Commission’s desire to improve market data infrastructure and thanks the Commission for the opportunity to provide comments on the Proposal. The expansion of information in core data would narrow the gap between what is available through SIPs and that provided by proprietary feeds. With the suggestions made above, we believe that the changes proposed by the Commission would be sufficient for most retail investors and many smaller firms to trade competitively. We caution however that too much complexity may ultimately harm investors and diminish investor confidence. We suggest that the Commission provide guidance on how the Proposal will impact best execution obligations under Regulation NMS, address the Proposal’s impact on derivative instruments, include an investor education program, include guidance on implementation, and universal testing requirements including derivative markets.

⁹ See Proposal at 16774

¹⁰ See Proposal at 16863.

¹¹ See Proposal at 16838 (recognizing a risk that “few competing consolidators” would enter the market).

STANY generally supports the introduction of competition into the marketplace. However, we are concerned about the speculation and lack of sufficient detail in the Commission's plan to replace SIPs with competing consolidators and self-aggregators. Reform to such an integral part of the financial market infrastructure should not be done in haste without reasoned analysis or clear guidance given to the parties necessary to the success of the proposed reforms. As expressed above, we are concerned that the costs and complexities of the competing consolidator model may outweigh the potential benefits to investors.

We believe that the introduction of competing consolidators, as well as proposed changes impacting the OPR would both benefit from further consideration by the Commission and market participants prior to being finalized. We suggest that both be the subject of separate rulemaking.

We appreciate the opportunity to provide comments on the Proposal. Please feel free to call the undersigned with any questions at [REDACTED]

Respectfully submitted,

A handwritten signature in black ink that reads "Kimberly Unger". The script is cursive and fluid.

Kimberly Unger
CEO & Executive Director