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August 18, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Market Data Infrastructure Proposal
(Release No. 34-88216; File No. S7-03-20)**

Dear Ms. Countryman:

The Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“MIAX PEARL”), and MIAX Emerald, LLC (“MIAX Emerald,” and collectively with MIAX and MIAX PEARL, the “MIAX Exchange Group”), appreciates the opportunity to submit this comment letter to the Securities and Exchange Commission (“Commission”) regarding its February 14, 2020 proposed rulemaking to update the national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system (“NMS”) stocks (the “Proposal”).¹ The MIAX Exchange Group supports the Commission’s efforts to revise today’s market data infrastructure for NMS stocks by expanding the scope of consolidated data and providing the opportunity for competition by decentralizing the dissemination of consolidated data.

The MIAX Exchange Group is interested in becoming a Competing Consolidator, provided that new entrants can fairly compete against incumbent securities information processors (“SIPs”) that elect to also become Competing Consolidators. We believe that the Commission can facilitate a level playing field through certain modifications to the Proposal. Absent such modifications, for the reasons explained below, the MIAX Exchange Group is generally concerned that new entrants that seek to become a Competing Consolidator will be at a significant competitive disadvantage should the incumbent securities information processors also choose to transition to become Competing Consolidators. The MIAX Exchange Group submits this letter to highlight areas of the Proposal that could benefit from further clarification or enhancement to enable it and other

¹ See Securities Exchange Act Release No. 88216 (February 14, 2020), 85 FR 16726 (March 24, 2020) (File No. S7-03-20).

potential new entrants to determine whether to register as a Competing Consolidator should the Proposal be approved and become effective.

Competing Consolidators and Possible Conflation

The MIAX Exchange Group believes the Commission should set forth uniform, baseline standards that all Competing Consolidators must continuously meet to avoid possible “conflation”. Today, conflation may occur when an exchange or other market participant provides only their most-recent quote or trade to the SIPs and skips or removes prior quotes due to system capacity constraints or by purposefully shaping bandwidth to remain below certain capacity thresholds. The absence of uniform standards for Competing Consolidators could cause the inverse to occur whereby a Competing Consolidator could offer a market data product that is often conflated and incomplete at a lower cost. Such products could attract purchasers seeking lower cost inferior products to meet their regulatory obligations while concealing potential abuses.

To reduce the potential for conflation, the Commission should require Competing Consolidators to satisfy a set of minimum standards that include, but are not limited to, the following:

- set forth reasonable minimum bandwidth requirements for Competing Consolidators to ensure that conflation does not occur due to capacity constraints, including during times of increased market volatility;
- set forth minimum performance requirements for Competing Consolidators that allow for a reasonable amount of conflation;
- require all Competing Consolidators to utilize the same transport protocols (i.e., Multicast) when transmitting data to market participants;
- likewise require that each national securities exchange utilize these same transfer protocols when transmitting core data to a Competing Consolidator; and
- require each national securities exchange to sequence the message fields in the same manner when transmitting their core data to a Competing Consolidator or via their proprietary data products, with any supplemental information (i.e., data regarding exchange specific programs) sequenced behind core data.

Competing Consolidators that do not continuously meet the above standards should be at risk of losing their Competing Consolidator status. The MIAX Exchange group believes that the above minimum standards may serve to reduce the occurrence of conflation and ensure each Competing Consolidator provides market participants a continuous, accurate record of quotes and trades while also reducing the potential for regulatory abuse.

Incumbent Securities Information Processors that Transition to Competing Consolidators will have a Significant Competitive Advantage over New Entrants

The incumbent SIPs, the Securities Industry Automation Corporation (“SIAC”) and Nasdaq UTP, will have a significant competitive advantage over new entrants should they chose

to transition to Competing Consolidators. For example, the incumbent SIPs will benefit from utilizing the existing infrastructure, which was funded by industry participants, to transform to a Competing Consolidator. The Participants of the respective CTA/CQ and Nasdaq UTP Plans funded the creation and maintenance of this infrastructure, in part, through their respective entry fees.² The CTA/CQ Plan Participants should be able to recoup this cost and not allow incumbents to use industry-funded infrastructure as a means to outlast competition from new entrants through lower fees at the onset. The existing infrastructure would allow SIAC and Nasdaq UTP to charge lower fees than new entrants because they would not incur the upfront capital expenditures to build a Competing Consolidator model. Therefore, the Commission should consider ways to require the incumbents to reimburse each Plans' Participants their proportionate share of their costs paid and used to build and support each SIP's systems as a means of purchasing their existing infrastructure to use to act as a Competing Consolidator.

Furthermore, firms should be prevented from using non-regulated affiliates to benefit their Competing Consolidator business. For example, the MIAX Exchange Group is concerned that a Competing Consolidator may leverage the systems of a non-regulated affiliate that provides access and connectivity services and offer incentives to firms that utilize that non-regulated affiliate to purchase their consolidated data. These non-regulated affiliates that provide access and connectivity may not be considered a "facility" as defined under the Securities Exchange Act of 1934 (the "Exchange Act")³ and, therefore, not required to file rule changes with the Commission.⁴

² The MIAX Exchange Group understands that the SIAC entry fee is based, in part, on SIAC's cost in maintaining the SIP over the preceding five years. This included SIAC transitioning to the NYSE's Pillar platform. The Nasdaq UTP Plan's entry fee is "the proportionate share of the aggregate development previously paid by Plan Participants to the Processor, which aggregate development costs totalled \$439,530, with the result that each Participant's share of all development costs is the same." See Section XIII.A. of the Nasdaq UTP Plan, available at <http://www.utpplan.com/DOC/Nasdaq-UTPPlan Composite as of June 24 2020.pdf>.

³ Section 3(a)(2) of the Exchange Act defines a "facility" as: when used with respect to an exchange, its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange, and any right of the exchange to the use of any property or service.

⁴ There is ample precedent to support a finding that SFTI is a facility of the NYSE Exchanges. For example, the Cboe EDGX Exchange, Inc. ("EDGX") and its affiliate exchanges offer a product that provides similar connectivity options as SFTI called Cboe Connect. Unlike the NYSE, EDGX and its affiliates filed Cboe Connect and its associated fees with the Commission. See, e.g., Securities Exchange Act Release No. 73780 (December 8, 2014), 79 FR 73942 (December 12, 2014). See also Securities Exchange Act Release No. 54846 (November 30, 2006), 71 FR 71003 (December 7, 2006) (SR-CHX-

These non-regulated affiliates have historically utilized this loophole to increase fees that impact the cost of downstream connectivity and market data products offered by other market participants. The MIAX Exchange Group is concerned that a Competing Consolidator will utilize the networks of these non-regulated affiliates to offer pricing discounts or other incentives to encourage market participants to purchase their consolidated data without proper Commission oversight. In our view which we believe is amply supported by precedent,⁵ these non-regulated affiliates of exchanges that provide access and connectivity to exchange systems are facilities of the exchange because they are a “system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange.”⁶

These competitive hurdles could serve to discourage new firms from becoming Competing Consolidators resulting in a continuation of the status quo. SIAC and Nasdaq UTP will continue to be the primary providers of consolidated market data with the only difference being that they will each be able to service all Tape A, B, and C securities. This will do little to encourage innovation or price competition as intended by the Proposal. Therefore, the MIAX Exchange Group encourages the Commission to even the playing field for all firms that seek to become Competing Consolidators and not provide the incumbents a significant head start.

Form CC Should Require a Statutory Justification and be Subject to Commission Approval

The Proposal should apply the same regulatory standards to SRO and non-SROs that become competing consolidators. Non-SROs, including the existing SIPs, that seek to become competing consolidators would benefit from a “relatively streamlined registration process”⁷ by completing the proposed Form CC. The Commission would review the initial Form CC and such filing would become effective within 90 calendar days, unless affirmatively declared ineffective by the Commission by order. Non-SROs would then be required to amend their effective Form CC prior to the implementation of a material change to pricing, connectivity or products offered. While, SROs that wish to act as competing consolidator would not be required to register or complete a Form CC,⁸ “SRO competing consolidators would be required to file with the Commission all proposed rule changes pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder to begin operations as a competing consolidator, including rule changes related to the SRO competing consolidator’s operations, disclosures regarding consolidated market data products, and all fees related to consolidated market data products.”⁹

2006-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Implementation of a Communication and Routing Service).

⁵ *Id.*

⁶ *See supra* note 3.

⁷ *See* the Proposal, *supra* note 1 at pages 204-205.

⁸ *See* the Proposal, *supra* note 1 at footnote 29.

⁹ *See* the Proposal, *supra* note 1 at footnote 537.

The Commission solicited comments on whether “competing consolidator registration be subject to Commission approval and/or additional or different regulation?”¹⁰ The MIAX Exchange Group believes the Commission should subject both SROs and non-SROs that seek to become Competing Consolidators to the same regulatory standards by subjecting the Form CC, and any amendment thereto, to Commission review and approval. The Form CC and any subsequent amendments must also be adequately supported under the Exchange Act.

In reality, an SRO may form a separate legal entity to register as a Competing Consolidator by completing a Form CC, thereby avoiding the rule filing requirements under Rule 19b-4 of the Exchange Act. However, should an SRO choose not to create a separate legal entity and operate as a Competing Consolidator, it would be subject to heightened regulatory scrutiny by being required to submit its proposed rules to the Commission for review and possible approval.

As stated above, the Proposal would require that any rules or fees proposed by an SRO Competing Consolidator be subject to the rule filing process under Rule 19b-4 and must be consistent with Section 6(b) of the Exchange Act. Meanwhile, a non-SRO Competing Consolidator would simply be required to disclose their products and fees in their initial Form CC and any material change to those fees would simply require an amendment to their Form CC. The Proposal does not require that a non-SRO Competing Consolidator provide a statutory justification as part of their Form CC. Nor does the Proposal discuss whether the Commission would deem their Form CC insufficient because it found it inconsistent with the Exchange Act, including that their fees were not fair and reasonable. The Proposal appears to simply rely on competitive forces to, among other things, constrain fees, and ensure Competing Consolidators offer products and charge fees based solely on market forces. This same competition based rationale is not afforded to SROs.

Any proposal by an SRO Competing Consolidator to adopt or amend a fee would be subject to Commission review and be required to meet the standards under Section 6(b)(4) of the Exchange Act. This would require that the SRO Competing Consolidator provide a justification that the proposed fee is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities. An identical fee charged by a non-SRO Competing Consolidator should be subject to same Commission scrutiny and transparency standards.

Proposed Definition of Round Lot and Impact on Protected Quotations

The MIAX Exchange Group commends the Commission for addressing the issue of round lot sizes and believes the Proposal is a step in the right direction. As the Proposal notes, the average price of individual securities have continued to increase and resulted in the average order size to be less than 100 shares. The MIAX Exchange Group believes that the increase in the average price of securities necessitates that the definition of round lot be revised to reflect current market dynamics. The Proposal seeks to adopt a tiered approach whereby a security’s round lot size would

¹⁰ See the Proposal, *supra* note 1 at page 206, question 80.

be determined by that security's average trading price during the preceding trading month. The MIAX Exchange Group supports the Commission's proposed tiered approach. However, we believe the Commission should commit to a scheduled periodic review of the proposed definition of a "round lot" to ensure the tiered structure continues to correspond to a security's price and its round lot size. The MIAX Exchange Group believes a periodic review is necessary to address anticipated increase in the average price of securities to ensure the tiered structure does not become outdated resulting in the same concerns in the future that the Proposal seeks to address today.

Further, the MIAX Exchange Group believes the amended definition of "round lot" be aligned with the definition of a "Protected Quotation" under Regulation NMS. The absence of such alignment could result in potential confusion about whether a disseminated quote is, in fact, a Protected Quotation. As currently defined in the Proposal, the NBBO is to be based on the newly defined Round Lot size while a Protected Quotation will continue in increments of 100 shares. The newly defined NBBO once disseminated by the SIPs, is meant to capture odd lot sizes as they have an economically material impact to trading. Hence, exclusion of these prices from receiving trade-through protection undermines the Order Protection Rule. Further, differences between the definition of the NBBO and the Protected Quote could create complexities regarding the appropriate standards that should be used by broker-dealers to measure execution quality. Lastly, issues with average quote sizes of less than 100 shares that also qualify for a smaller round lot size may experience an increased number of trade-throughs than issues that qualify for a round lot size of 100 shares.¹¹ The current definition of a Protected Quote should, therefore, be harmonized with the proposed definition of "round lot". This may serve to avoid anticipated confusion and disparate treatment of issuers that qualify for a lower round lot size but risk their best priced quotes not be deemed protected.

Competing Consolidator's Market Data Products Should be Limited to Core Data

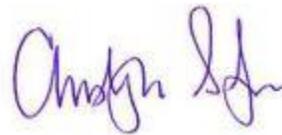
The Commission proposes to require exchanges to provide their core data to Competing Consolidators. To meet this requirement, some exchanges may choose to send existing data products to the Competing Consolidators that may include additional data elements that are outside the definition of core data. The MIAX Exchange Group supports this approach and does not believe exchanges should be required to build separate data products limited to core data solely for consumption by Competing Consolidators. However, the MIAX Exchange Group believes that the Commission should provide a method by which exchanges may limit the types of data beyond core data that Competing Consolidators may utilize and disseminate as part of their consolidated market data product. This would help ensure that exchanges not incur the additional cost and burden of maintaining separate market data products limited to core data as to prevent Competing Consolidators from using non-core data to enhance their own products offerings at the exchange's expense.

¹¹ Securities that today have a round lot size of less than 100 shares would also risk losing their protected quotation status under the Proposal.

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The MIAX Exchange Group appreciates the opportunity to comment on the Commission's Proposal and welcomes regulatory action that improves the infrastructure by which consolidated market data is disseminated to market participants. The MIAX Exchange Group remains committed to assisting the Commission and its Staff in evaluating the issues presented by the Proposal. Should the Commission or the Staff have any questions, please feel free to contact me at 609-897-8494.

Sincerely,



Christopher Solgan
VP, Senior Counsel

cc: The Honorable Jay Clayton, Chair
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
Brett Redfearn, Director, Division of Trading and Markets
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