

January 24, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-7010

From: CTA/UTP Advisory Committee

Re: S7-24-89, SR-CTA/CQ-2019-01 - CTA/UTP Conflicts of Interest Policy

Dear Ms. Countryman,

The CTA/UTP Advisory Committee welcomes the opportunity to comment on the conflicts of interest policy proposed by the CTA and UTP Operating Committees. Most of the advisors participated in the formulation of the policy and are pleased to present their views on the policy as ultimately proposed.

Our letter of October 23, 2018¹, prior to the Market Data Roundtable noted that:

Furthermore, any conflicts of interests inherent in governing and administering a plan such as this need to be clearly addressed. A perceived conflict is the lack of separation between CTA/UTP and proprietary data interests. An information barrier between CTA/UTP and exchanges' proprietary offering does not work in practice as the same individuals may represent both CTA/UTP and exchange proprietary data products.

Separately, the Commission noted in its recently released Proposed Order for a New National Market System Plan Regarding Consolidated Equity Market Data² that:

In the Commission's view, changes in the market have heightened an inherent conflict of interest between the Participants' collective responsibilities in overseeing the Equity Data Plans and their individual interests in maximizing the viability of proprietary data products that they sell to market participants.

While we believe disclosure of conflicts is important for Participants, Advisors, Administrators and Processors, the existence of these conflicts has been widely recognized for years and publishing them

¹ <https://www.sec.gov/comments/4-729/4729-4553088-176181.pdf>

² <https://www.sec.gov/rules/sro/nms/2020/34-87906.pdf>

does not adequately address these conflicts. For example, the disclosures do not address situations where Participants sell competing products and may vote in ways that protect the commercial interest of the Participant, rather than furthering the goals of the plan.

As custodians of a public utility, a truly effective conflict of interest policy would encompass several important facets:

- Individuals participating in the activities of the committee should be required to do so in the furtherance of goals of the plan.
- A requirement for individuals to recuse themselves from discussion and/or voting when there is a material conflict between the requirement to further the goals of the plan and the specific interest of the individual or their employer. While we don't have an exhaustive list of items that would reach a materiality threshold that would trigger recusal, an example would be discussion regarding processor bids or voting to choose a processor, when the individual's firm is bidding for the processor role. Given the inherent conflict that all Participants and Advisors on the committee have and the difficulty of defining a specific materiality threshold, we suggest that recusal be required when either (i) the individual, acting in good faith, or (ii) the Operating Committee, by majority vote, determines that such individual has a material conflict.
- The conflicts of interest policy should apply to service providers engaged in audit or other professional service functions.
- Any audit function should be managed by the plan, and should be performed by an entity different from the entity engaged to audit proprietary data use.

The CTA/UTP Advisory Committee appreciates the Commission's ongoing interest in these important topics and we look forward to further participating in improving the governance of the equity market data plans. As an industry group we are committed to working with the SEC and CTA/UTP to build a better environment for all data consumers, investors and the industry.

Respectfully,

CTA/UTP Advisory Committee