

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:** File No. S7-24-89, SR-CTA/CQ-2019-04 - CTA/UTP Confidentiality Policy

Dear Ms. Countryman,

The CTA/UTP Advisory Committee welcomes the opportunity to comment on the confidentiality 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.

The Commission noted in its recently released Proposed Order for a New National Market System Plan Regarding Consolidated Equity Market Data<sup>1</sup> that:

Moreover, the Equity Data Plans are currently administered by two of the exchanges, which gives employees of those exchanges access to confidential data subscriber information of potentially significant commercial value, including subscriber audit information. The Commission notes that concerns have been raised about the exchange administrators' use of market data and associated customer information obtained through their role as Equity Market Data Plan administrators for their proprietary data feed businesses.

We believe the proposed policy is an improvement over the status quo, specifically that codifying a confidentiality policy will clarify the obligations of Participants, Administrators, Processors and Advisors and we are heartened that 'The Participants believe that the proposed confidentiality policy will provide enhanced disclosure to the Advisory Committee regarding matters that the Participants consider confidential information'. However, we have concerns with the policy as submitted, specifically relating to the situations in which Highly Confidential and Confidential information may be shared by Participant representatives and Advisors.

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<sup>1</sup> <https://www.sec.gov/rules/sro/nms/2020/34-87906.pdf>

Under the proposed policy, Highly Confidential and Confidential information may each be shared by a representative of a Participant ‘to other employees or agents of the Participant or its affiliates only as needed for such Covered Person to perform his or her function on behalf of the Participant, as reasonably determined by the Covered Person’. We believe that this standard is insufficient. The rationale that information may be shared ‘to perform his or her function on behalf of the Participant’ assumes that the representative’s role on the committee is to further the interest of the Participant rather than the plan – this strikes at the heart of the conflict of interest inherent in the governance of the plan. Such information should only be shared to further the interests of the plan, and such sharing should be at least disclosed to and potentially authorized by the Operating Committee. In situations where the Participant representative is subject to a conflict due to their own responsibility regarding the sale of proprietary exchange data, the policy should limit access to such confidential information by the Participant representative.

We note that Advisors may only share Confidential Information to solicit industry feedback and then only if specifically authorized by the Operating Committee. There is no reason for Participant representatives and Advisors to have different standards for sharing information – in each case it should only be to further the interests of the plan, and the standard for determining that threshold should be equivalent.

We believe that the confidentiality policy should extend to any information obtained by outsourced service providers in order to ensure that information learned by such service providers is only shared with those individuals of the Operating Committee required to receive such information and in furtherance of the service provider’s engagement and the plan.

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