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Submitted via e-mail to: rule-comments@sec.gov

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

Re: File No. S7-24-89, SR-CTA/CQ-2019-04 - CTA/UTP Confidentiality Policy; S7-24-89, SR-CTA/CQ-2019-01 - CTA/UTP Conflicts of Interest Policy

Ms. Countryman:

Charles Schwab & Co., Inc. (Schwab) appreciates the opportunity to provide comments concerning the confidentiality and conflicts of interest policies proposed by the CTA and UTP Operating Committees.

At Schwab we view the market data conversation as an important opportunity to promote a level playing field for retail investors because market data feeds should be the bedrock of transparency, trust, and value in the market. In the United States, however, the exchanges, with Securities and Exchange Commission ("SEC" or "Commission") approval but in ways the Commission may not have fully anticipated, have developed a two-tiered market data system.

The consolidated data streams mandated by the SEC in the 1970s provide the core, public market data that broker dealers must show retail investors making trading decisions. These data feeds display the best bids and offers from each exchange and are consolidated by the exchange-controlled Securities Information Processors (SIP). The exchanges also provide proprietary data streams that arrive faster

and contain far richer content, with some “products” including multiple levels of bids and offers. Proprietary data feeds have become necessary for professional high speed and institutional traders yet, due to the prohibitive cost of providing this faster, richer data, retail investors are left with the slower SIP core data that lacks even 2 or 3 levels of bids and offers. Although retail investors generally don’t have direct access to the exchange market and rely on a broker-dealer for order routing and execution, they too need the best most current market data to make informed order and trading decisions and to monitor their executions. Institutional investors acknowledge they will not use a broker relying on SIP data to trade, but somehow this two-tiered system is considered fair and reasonable.¹ Schwab believes that retail investors should not be at a disadvantage compared to Wall Street traders.

For many years Schwab has argued the existing national market system plans (Plans) are fraught with fundamental conflicts that are best resolved through comprehensive reformation. As discussed above, Participant Exchanges offer products that compete with the Plans, but they are also in charge of and create rules for the Plans. Without changes to the governance structure to mitigate these conflicts of interest, necessary improvements to the Plans and their delivery of data to retail investors are unlikely to be proposed or accomplished. Schwab appreciates the Commission’s recently proposed order that would direct the exchanges and FINRA to submit a New Consolidated Data Plan, and we will be submitting a separate comment letter on that topic.

Through the normal process of operating the Plans, the Participant Exchanges, Administrators, Processors, and Advisors (Stakeholders) are each given access to various levels and types of information with different levels of sensitivity. This dynamic and the inherent conflicts that permeate the Exchanges, Administrators and Processors call for the creation of formalized confidentiality and conflicts of interest policies. Broadly, Schwab believes such policies may facilitate greater transparency among all Stakeholders, which should lead to more transparent decision making. We also believe these policies should be fair and equitable in the way they treat all Stakeholders.

Confidentiality Policy Comments

Schwab recognizes that certain information before the Plan Operating Committee is sensitive and access to it should be restricted. We believe, however, such restrictions should apply to the Plan Administrators themselves. The Administrators, who are often employees of Participant Exchanges, have access to sensitive information including customers’ financial data, data usage behaviors, and audit information. This data is particularly sensitive when one considers some Participant Exchanges’ proprietary market data products are in direct competition with the Plan products. Inappropriate access to this data could be used to advance the commercial interests of the Participant Exchanges. As we also discuss in the Conflicts of Interests Policy below, the surest way to eliminate the potential for conflicted access to sensitive data is to have an administrator independent of the Participant Exchanges. Schwab will urge the SEC to adopt an independent administrator in the final New Consolidated Data Plan. In the meantime, the SIP rules should make clear that if the Administrator function is staffed by personnel of one of the Participant exchanges, there must be a separation of functions. This means those people should not be employed by the Participant’s proprietary data business line, and they should not share

¹ See SEC Release No. 34-87906 Proposed Order on Consolidated Equity Market Data Plans at A-14, footnote 59.

with the Participant's proprietary data business line confidential SIP information obtained in their role as administrator.

In order for information to be shared beyond the Administrators in Executive Sessions, we believe the direction provided in the Proposed Order is a step in the right direction. The proposed policy states: "...the New Consolidated Data Plan should include an executive session policy that permits the SROs to hold executive sessions only in circumstances when it is appropriate to exclude non-SRO members of the operating committee..."² We have concerns, however, with the use of "appropriate" as the test of information sharing with non-SRO members. Schwab believes that at a minimum the policy should set forth specific areas where information must be shared and excluded from executive sessions. The SIP Operating Committee recently approved a proposal from IEX, a Participant Exchange, to disclose Plan-related financial information – including audited financial information and data on use of funds by the Plans.³ Schwab believes the spirit of this policy should be adopted going forward. The SEC should require that specific financial information, particularly revenue and cost information, is routinely shared with the Advisory Committee.

The proposal would require removal of an Advisory Committee member found in violation of the Confidentiality Policy. We believe Participant representatives should likewise be removed from the Operating Committee if found in violation of the Confidentiality Policy.

Similarly, the ability to share information should be treated equally. The proposal provides that a Covered Person who represents a Participant may disclose confidential information to other employees or agents of the Participant or its affiliates only as needed to perform his or her function on behalf of the Participant – as reasonably determined by the Covered Person. The standard should be the same for Advisors. The Advisors should be able to disclose information to other employees or agents of the employer of the Advisory Committee member, and industry peers as reasonably determined to perform his or her function in a manner consistent with the views of the sector they represent.

Conflicts of Interest Policy Comments

As mentioned above, the structure of the Plans and their governance model is inherently conflicted and only fundamental reform along the lines of the proposed New Consolidated Data Plan can effectively address these conflicts. In the meantime, implementation of a Conflicts of Interest policy would be a welcome albeit modest step.

The proposed disclosure-based regime, however, would not eliminate conflicts – particularly those arising from Operating Committee members sometimes dual roles as plan overseer and commercial competitor. This is a concern for Schwab and we are not alone in this view. Advisory Committee members have written, "The disclosures do not address situations where Participants sell competing products and may vote in ways that protect the commercial interests of the Participant rather than furthering the goals of the Plan."⁴ The proposed policy represents an acknowledgement by the

² See SEC Release No. 34-87906 Proposed Order on Consolidated Equity Market Data Plans at A-65.

³https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/11-21-2019_General_Session_Summary.pdf

⁴ <https://www.sec.gov/comments/sr-ctacq-2019-01/srctacq201901-6694051-205990.pdf>

Operating Committee that conflicts exists and they can no longer be ignored. While we applaud Plan Participants for recognizing the obvious, further steps need to be taken.

Schwab believes only a complete separation of functions – true independence – of the Participants from the Administrators and Processors can mitigate the conflict. At least in part, the Advisory Committee agrees saying, “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.”⁵ The Advisory Committee clearly sees a conflict in the case where auditing services are performed by an entity or individual associated with Participant Exchanges. Auditing is a detailed and sensitive process that provides access to proprietary systems information and client related non-public information. This aligns with our view on independence. Schwab urges the Commission to expand this policy of distinct, independent entities beyond the audit function to include distinct and separate administrators and processors for the Plans. Only through a complete separation of functions can the Participants’ proprietary bias be eliminated.

In addition to disclosing conflicts of interest, there should be a mechanism or process whereby recusal is required from discussion and voting in case of a material conflict of interest. Defining a material conflict is not easily done, but there are narrowly focused conflicts that could arise which merit recusal. For example, a Participant exchange, or Advisory Committee member’s employer could be competing to be a service provider to the Plans such as processor, or auditor. These conflicts would be disclosed under the policy and should require recusal from voting on the issue. Also, if an Operating Committee or Advisory Committee member is a spouse, child, parent, or sibling of an individual employed by a firm seeking engagement to be a service provider to the Plans, recusal should be required.

In closing, Schwab would like to thank the Commission for the opportunity to provide feedback and comments on the proposed Confidentiality and Conflicts of Interest Policies. While the proposals do recognize the inherent conflict within the Plan structure, they do not represent the sweeping changes Schwab believes are necessary. Schwab believes the measures we highlight above – specific revenue and cost information shared with the Advisory Committee and separate and independent administrators and processors – will go far in eliminating the conflicts that exist today in the market data system. We look forward to working with the Commission staff to advance the New Consolidated Data Plan for the benefit of the all investors. In the meantime, we hope these comments will be helpful in guiding the Commission to finalize and formally adopt effective confidentiality and conflict policies.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey T. Brown", written in a cursive style.

Jeff Brown

Senior Vice President – Legislative and Regulatory Affairs

⁵ <https://www.sec.gov/comments/sr-ctacq-2019-01/srctacq201901-6694051-205990.pdf>