

**Separate Statement of Charles Schwab & Co., Inc. Regarding the May 7, 2001  
Memorandum from the Chair of the Subcommittee on Alternative Models for  
Market Data Distribution  
(May 10, 2001)**

We write separately to express concern over a number of procedural issues that have arisen relating to the subcommittee's work and to express our views on the discussions during the two subcommittee meetings held on March 26 and April 16. We also urge the SEC staff with responsibilities under the Federal Advisory Committee Act and the committee's chairman to recommend procedures to the full committee that we will follow to produce a final report from the committee including, if necessary, alternative views. The procedures should enable the committee to consider and compare the relative costs and benefits of the status quo, "tinkering" with the status quo, and alternative model(s) for structural reform. We believe that this is the only way our committee will be able to fulfill its mandate and create a useful fact-based record and recommendations for the Commission and Congress to consider.

**I. The Subcommittee Did Not Produce a Subcommittee Report, and the Resulting Agenda for the May 14 Meeting Does Not Reflect the Alternative Models Submitted to the Committee.**

The purpose of the subcommittee was to create a separate but equal track to evaluate alternative market data models that would do more than amend the current system. (See Minutes of December 14 meeting.) The joint work product of the subcommittee was to be the creation of a decision structure for the full committee to evaluate the alternative models. (See Minutes of March 1 meeting.) Instead, the subcommittee chair has submitted his own memo containing his reflections on the meetings.

In our view, the subcommittee was unable to produce a report containing a decision structure for alternative models for two reasons. First, its composition included members who are proponents of the status quo. As a result, much of subcommittee time was spent questioning (and defending) the need to consider an alternative instead of fleshing-out the alternatives to find common ground. Second, the subcommittee followed no procedures to assess the alternative models. The March 1 meeting minutes indicated that we would receive a statement of procedures to guide the subcommittee, but we are not aware of any such document. Instead, the subcommittee continued to focus on the same four or five issues to reach the general conclusion that there was a "lack of consensus." Given that the subcommittee consisted of those most in favor of an alternative model, and those least in favor, this should come as no surprise.

The agenda for the May 14 full advisory committee meeting now features speakers who, based on their comments at previous meetings or their affiliations, generally are not in favor of an alternative model. Most of the subcommittee members who in fact are in favor of an alternative model to spur reform were not asked to help set the agenda.

## II. **Supplementation of the Advisory Committee Record from Subcommittee Proceedings.**

### A. Documents accompanying the May 7 memorandum, and the proper record.

Among the items distributed with the May 7 subcommittee chair memo were a memorandum from the FISD providing results of a survey and a memorandum from Professor Johnson on “economic issues.” Neither of these documents was available for prior comment by the other subcommittee members. In contrast, two documents that were available for prior review and comment by the other subcommittee members were not distributed: Schwab’s and Datek’s short summaries of alternative models, prepared based on the subcommittee chair’s recommendation. We request that the Schwab summary (attached) be made part of the record, as well as the Datek summary (provided that Datek consents).<sup>1</sup>

With respect to the FISD survey, the subcommittee meeting minutes reflect that the survey’s purpose was to confirm the subcommittee’s assessment that there are no strictly technological hurdles to other entrants’ consolidation for both NBBO and enhanced products. It was supposed to be a fact-finding mission. Instead, the FISD memo makes clear that it contains the FISD’s own subjective “assessment of the question and is not necessarily the position of [the vendors it interviewed].” It is unclear what questions the FISD staff asked the vendors, or which alternative model they discussed. Accordingly, Schwab requested that this survey not be distributed as part of the subcommittee’s report. With respect to Professor Johnson’s memo, the theoretical questions he asks and answers are unrelated to the subcommittee’s proceedings or consideration of alternative models. Professor Johnson, unfortunately, was unable to attend either of our meetings.

B. Clarification of key points in the May 7 memorandum. The May 7 memo characterizes the alternative model as follows: “With multiple consolidators, each market center would provide best bid, best offer and last sale price, time and volume through a direct data feed to any number of securities information processors or vendors” (see May 7 memo at 2). That is not accurate, at least with respect to some of the alternative models that have been presented. Under these other models, **any entity that can meet certain minimal standards can receive the same data feeds from the markets that SIAC and Nasdaq as plan processors now receive, at the same price and on the same terms.** Another point of clarification is that the subcommittee did not identify any “risks” (see *id.*) in terms of negative consequences that would flow from different consolidation technologies. The subcommittee, however, did discuss possible standards to promote minimal uniformity, such as hardware standardization, capacity, and sequencing. But these are not “risks,” just possible requirements.

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<sup>1</sup> We assume that when a committee member submits something to the committee that it will be added to the official record and be made available on the SEC’s Web site. We note that the Schwab memorandum to the committee dated March 20 and titled “March 1 Meeting Follow-up: Unanswered Questions Relating to Market Data Pricing” is not yet available on the Web site. We request that it be added, along with this statement and the accompanying “Schwab Summary of Competing Consolidators Model” dated April 6.

Because the May 7 memo is not clear on other critical points, we also note our observation that there appears to be substantial support among the subcommittee members who actually favor an alternative model that (i) the SROs should not control consolidator standard-setting, (ii) the existing Plans should be abolished, (iii) market power to control market data pricing can and must be addressed beyond the current SEC enforcement of existing standards, and (iv) a competitive model will require less, not more, regulation. Finally, the May 7 memo's discussion of "costs and risks" in "abandoning the Display Rule" (*id.* at 5) does not accurately reflect the views expressed by subcommittee members who are in favor of an alternative model. The memo's discussion is based on unsupported theories and assumptions that were expressed at different times by other subcommittee members.

### **III. Understanding the Role and Purpose of Today's Consolidated Data and Its Relationship to an Alternative Model for Distributing Market Data.**

In both committee and subcommittee meetings, many members continue to circle-back to the same issue: should Congress or the Commission repeal the mandatory display rule? We would like to see a factual report documenting the original purpose, evolution, and efficacy of the NBBO, whether its original purpose is still being served or can be served by alternative means, and how the NBBO relates to monopoly control and pricing of market data. With respect to the repeated focus on the NBBO and best execution, we note that broker-dealers' best execution obligations are not based on the NBBO quote provided to a customer. The obligation is to obtain the best execution reasonably available under the circumstances, including price, speed, quality, and other relevant factors. Moreover, the Commission has stated that simply obtaining the NBBO may not be sufficient, and that the measure of best execution is not order-by-order. Instead, broker-dealers are obligated to conduct a periodic review of market centers. Finally, broker-dealers are not obligated to provide a customer with the NBBO prior to a customer placing an order through a traditional channel, such as in-person or over the phone.

Analysis of this and other significant issues that the committee must address in its final report and any recommendations must be based on factual and more in-depth information. A final report based solely on the chairman's summary of committee members' informal oral comments will not advance the reform debate past where the SEC's concept release process left off.