

August 8, 2001

MEMORANDUM

TO: Dean Joel Seligman
Members, SEC Advisory Committee on Market Information

FROM: Reuters

RE: Reuters Comments on Draft Report

Reuters is pleased to provide the following comments on the Draft Advisory Committee Report dated July 5, 2001.

Economic considerations :

As the discussion of “Economic Considerations” in Section VII.B.2.c makes clear, the Advisory Committee did not consult with any economists to assess the utility of the recommendations in the Draft Report. The Advisory Committee further did not develop any economic analysis of whether investors would benefit from competition not just in the consolidation of market information but in the production and dissemination of that information as well. The Draft Report fails to take account of the different needs of different segments of the investing public, such as “buy side” versus “sell side,” trader versus analyst or portfolio manager, and professional versus retail. The Advisory Committee did not conduct or receive any empirical analysis of what data users want or how data is used.

In Reuters’ view, failure to develop an economic analysis and to question the self-regulatory organizations’ current exclusive rights to the revenues derived from market information undermines the usefulness of the Advisory Committee’s recommendation regarding competing consolidators. The Draft Report should be modified to acknowledge that the Advisory Committee did not address certain fundamental economic questions, such as who owns the data and how the data revenues are allocated. It must recognize that a recommendation to adopt a system of competing consolidators, while a step in the right direction, will not solve the problems that led to the formation of the Advisory Committee in the first place.

Reuters continues to believe that Section VII.B.2, “Majority View: Recommendations for Establishing a New ‘Competing Consolidators’ Model,” advocates a “halfway” deregulation of the system for consolidating and disseminating market data. While the Draft Report recommends introducing a measure of competition into the consolidation function, it recommends no changes to the monopoly over market information currently enjoyed by the self-regulatory organizations or to the requirements imposed on vendors by the Vendor Display Rule. The Advisory Committee risks endorsing a “halfway” deregulation that gives the “individual markets” the freedom to choose between competing consolidators but gives broker-dealers no choice but to provide their data to SROs and investors no choice but to receive

consolidated data from all SROs. As Carrie Dwyer of Charles Schwab pointed out at a Committee meeting, such a “halfway” deregulation is no likelier to produce benefits for consumers than was the partial deregulation of California’s electricity markets.

Market data administrative issues:

Reuters believes that the Draft Report pays too little attention to the inefficiencies, costs and administrative burdens of the current market data system. The Advisory Committee cannot be considered to have done a service to the Commission and to investors if the Draft Report does not recommend improvements to the functioning of the current system. Our suggestions for such improvements follow.

Reuters believes that the system for disseminating U.S. market data should be at the cutting edge of technology. The provision of data should be easy to administer and flexible, to accommodate new technologies and electronic commerce initiatives. Unfortunately, the current market data dissemination system falls short of that goal. Reuters previously identified shortcomings of the current system in an April 5, 2000 comment to the SEC’s Concept Release on Regulation of Market Information Fees and Revenues. Key hurdles to embracing electronic commerce include prior approval requirements, prohibitions against use of click-on agreements for professional users and antiquated pricing models.

Online subscription to exchange data should be a simple matter of clicking on a catalog of options and inputting key subscriber billing information, followed by immediate permissioning of the data. Under the current system, however, turnaround times on approvals can stretch for weeks and even months. Elimination of prior approval requirements would allow for faster response time to marketplace needs. In addition, prior approval requirements put the exchanges in the privileged position of learning about planned new vendor market data systems and services. As the exchanges become demutualized commercial organizations, prior approval requirements can give the exchanges an unfair competitive advantage. Replacing prior approvals with clear, publicly available contract language would promote both greater efficiency and fair competition.

NYSE, Amex and OPRA currently allow the use of click-on agreements only for “non-professionals” and usage-based users. Combined with the prior approval requirements described above, the exchanges’ failure to implement click-on agreements for “professional” users slows down the process of providing data to users. It impedes the development of electronic commerce, fails to recognize the widespread legal support for click-on agreements, adds unnecessary paperwork and increases the cost of market data. Allowing the use of click-on agreements for all subscribers would enhance vendors’ abilities to innovate and investors’ abilities to enjoy the benefits of that innovation.

Antiquated pricing models are a further impediment to electronic commerce. The NYSE and Amex “Program C” classification fees are effectively add-on charges based on how data recipients use the data. These add-on charges make it impossible for vendors to advise clients of the cost of the data. It would be more efficient if standard end user fees accounted for all uses of market data. Further, NYSE, Amex and OPRA fee schedules currently impose

indirect access fees on clients who take data feeds from vendors, as opposed to clients who have the data directed to stand-alone terminals. This effectively imposes a tax on data feed vendors and data feed recipients and discourages users from pursuing solutions that are most technologically efficient for them. Technology-neutral market data fees would encourage customers to access market data in the way that makes most sense for them. Finally, the current tiered fee structures of NYSE and OPRA based on the total numbers of users in an organization result in a complete lack of flexibility when it comes to administration of exchange fees. In an electronic commerce environment, the cost of administration could be reduced substantially if more flexible and simplified billing models were available. Simplifying these cumbersome features of the exchanges' fee structures would reduce the costs of administration, and thereby the cost of market data itself. This would allow investors greater access to information.

Another major factor driving up the cost of administration of the U.S. market data system is the lack of common standards and uniform pricing. As described above, U.S. equities exchanges have complicated procedures and restrictive contracts regarding the dissemination of market data. In addition, each U.S. market data plan has unique administrative requirements and fee structures. This complexity and lack of uniformity make it difficult for market data vendors to comply with these administrative requirements. Customers who redistribute data themselves become "vendors" in the eyes of the exchanges and experience even more difficulty complying. Many resort to hiring outside consultants to advise them, a cost for which few customers budget in advance. This complexity drives up the costs of administration with no corresponding benefit to investors.

There are opportunities for standardization of administrative policies and procedures. In the absence of eliminating these burdensome requirements, the next best alternative is to adopt common standards across exchanges for subscriber agreements, including click-on agreements, and Exhibit A's. With regard to subscriber agreements, differences in terms and definitions require customers to review and enter into the agreements separately. This delays the process of receiving market data and adds to administrative costs. Vendors must check multiple times for each client whether permission has been granted and subscribers must conduct legal reviews of multiple agreements. Each market data plan currently also has its own pricing structure, based on how the customer is receiving data and whether the customer is redistributing data to third parties. Customers receiving market data feeds must complete "Exhibit A" forms describing how they intend to use the data. This is necessary for those exchanges having complicated fee schedules to determine which fees apply to which customers. Completion of Exhibit A's also puts customers on notice of their obligations to monitor usage on an on-going basis and to adhere to exchange policies on permissioning, display and reporting of data. Simplification and standardization of fee structures would allow the Exhibit A process to be replaced by simple, clear contract language defining authorized uses. This would allow customers to start receiving market data more quickly and cheaply.

Discussion of options data:

The discussion of the OPRA Plan at pages 13-14 of the Draft Report is not accurate. Rather than describe the provisions of the OPRA Plan, the Draft Report attempts to characterize those provisions and does so inaccurately. The paragraph that begins on page 13

and carries over to page 14, including footnote 35, should be deleted. We suggest substituting the following language:

“Nevertheless, the OPRA Plan requires the exchanges to include in vendor contracts a provision that prohibits vendors from excluding reports on the basis of the market in which a transaction or quotation took place or otherwise discriminating on the basis of the market in which a transaction or quotation took place.”

Similarly, footnote 51 on page 19 should be deleted as it mischaracterizes rather than describes the provisions of the OPRA Plan.

Provision of non-core information:

Section VII.A of the Draft Report, “The Value of Transparency,” describes the concerns of a number of Advisory Committee members that the current level of transparency of market data information may no longer be adequate. Members felt that transparency of trading interest beyond the National Best Bid and Offer is needed, in particular in light of the impact of decimalization on the depth of trading interest available at the NBBO. Section VII.B.2.b of the Draft Report, “Provision of Non-Core Information by Any Market Participant,” at page 52 states, “a substantial majority of the Advisory Committee does not believe, however, that the provision of additional market information should be mandated through SEC regulation. Once the provision of core information is assured by the Display Rule, market forces can be relied upon to provide deeper information.”

It is not clear how the Draft Report reached this conclusion. A review of the transcript of the March 1, 2001 Advisory Committee meeting suggests that a majority of members support additional SEC regulations that would require exchanges to make greater depth of book information available to vendors, while perhaps allowing vendors and investors to decide whether and how much of that information should be displayed. During the morning session of the March 1, 2001 meeting, Dean Seligman raised three options with regard to transparency:

“(A) would be simply we retain the current display rule requirements; (B) would be that we would retain them and amplify them, increasing the mandatory information; (C) would be in effect we eliminate the display rule altogether.”

Harold Bradley, Andrew Brooks, Matthew DeSalvo, William Harts, George Jennison, Simon Johnson, Mark Minister, Ken Pasternak, and Gerald Putnam were among those expressing a preference for extending regulatory requirements to a greater depth of information than the NBBO. After the ensuing discussion, Dean Seligman with input from Bob Colby framed the question more narrowly, to inquire as to support for mandating display by vendors of additional depth of book information versus support for mandating availability to vendors by exchanges of additional depth of book information. Eric Roiter, Joel Greenberg, Michael Atkin, Andrew Brooks, Bernard Madoff, and William Harts were among those expressing support for mandating that greater depth of information be made available but not be required to be displayed.

The text of the Draft Report should be changed. While some members do not believe that the availability of additional market information should be mandated through SEC regulation, other members advocate regulation that would require the SROs to make that information available to vendors. Furthermore, while some members advocate that SEC regulation should then require vendors to display all such additional information, other members believe that vendors should be free to determine what additional information, if any, they should display.

Specific suggestions:

“Substantial majority” versus “majority”:

At some points, the Draft Report refers to a “substantial majority” supporting a particular position while in other circumstances, it refers to a “majority” supporting a particular position. At no point does the Draft Report articulate the criteria for a “substantial majority” versus a simple “majority.” The references to “substantial majority” should be changed to “majority” throughout.

“Provision of non-core information...”:

At page 51, the Draft Report says, “Once the provision of core information is assured by the display Rule, market forces can be relied upon to provide deeper information.” The following sentence should be added at that point: “A minority of Advisory Committee members believe that market forces could also assure provision of core information.”

Also at page 51, the Draft Report says, “However, recipients of non-core data should first be required to demonstrate that they otherwise are receiving consolidated core data in compliance with the Display Rule.” A majority of Advisory Committee members did not express support for this proposition. Indeed, at the final Advisory Committee meeting, focusing on options data, a number of members specifically disagreed with such a proposition. For these reasons, this sentence should be deleted.

Also at page 51, the Draft Report says, “In essence, the Advisory Committee reached two significant conclusions with respect to the merits of consolidated information.” This sentence does not clearly convey the divergence in views among Advisory Committee members with regard to mandated provision of consolidated information under the Display Rule. This sentence should be rewritten to say “a majority of Advisory Committee members reached two conclusions with regard to consolidated information.” At the end of that paragraph, the Draft Report says, “at present, the costs and risks of eliminating the Display Rule outweigh the potential benefits.” As there was no economic analysis presented in the Advisory Committee as to the costs and risks of eliminating the Display Rule, the sentence should be modified to read, “at present, a majority of Advisory Committee members favor retention of the Display Rule.”

Models for Achieving Consolidation of Market Data:

At page 58, under “Economic Costs and Risks,” the Draft Report cites a “risk that a competing consolidators model could reduce the flow of market data revenues to the regional exchanges, and perhaps even impair their ability to compete effectively against the primary markets.” The next sentence and footnote 181 then cite the SEC’s statutory obligation “to promote fair competition.” The public policy articulated in the Exchange Act of promoting competition does not extend to subsidizing the commercial viability of the regional exchanges through market data revenues. The sentence and footnote 181 are misleading and should be deleted.