



**The American
Stock Exchange**[®]
An NASD Company

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President

February 15, 2001

Dean Joel Seligman, Chairman
SEC Advisory Committee on Market Information
c/o Washington University School of Law
1 Brookings Drive
Campus Box 1120
St. Louis, MO 63130-4899

Dear Dean Seligman:

The American Stock Exchange (“Amex” or “Exchange”) welcomes the opportunity to submit our views on the topics set for discussion at the upcoming meeting of the SEC Advisory Committee on Market Information (the “Advisory Committee”). We have participated in the CTA and CQ Plans¹ since their inception, and know first hand the complexity of their mission to collect, consolidate and disseminate market information from multiple market centers. The CTA and CQ Plans have met this deceptively simple challenge with an exemplary 24 plus-year record of providing reliable, real-time market data, even as the volume of data has grown exponentially. For this reason, it is Amex’s view that there is no need for fundamental structural changes to the current procedures for collecting and disseminating market information under the CTA and CQ Plans.

That said, Amex also recognizes that there is opportunity for improvement. Thus, we encourage the Advisory Committee to focus on ways to enhance the existing systems to ensure that they continue to serve the needs of the securities markets and investors well into the future.

When Congress adopted the Securities Acts Amendments of 1975, it envisioned a national market system (“NMS”) for securities that provides for “centralization of all buying and selling interest so that each investor will have the opportunity for the best possible execution of his order, regardless of where in the system it originates.”² From the outset, the Commission, like Congress, has recognized that providing investors with a single stream of market information from all market centers³ is an essential element of the NMS. Thus, the

¹ Although you have requested views on the UTP Plan as well as the CTA and CQ Plans, we are limiting most of our comments to the CTA and CQ Plans since the Amex is not currently a participant in the UTP Plan and thus has limited exposure to that plan’s operations.

² S. Rep. No. 94-75, 94th Cong., 1st Sess. 7 (1975).

³ We use the term “market centers” to refer to national securities exchanges and the NASD/Nasdaq.

Commission has required market centers to work together to develop operating plans and communication systems for combining their respective last sale and quotation information and making that consolidated stream of information widely available through vendors and broker-dealers.

The SEC's framework for regulating market information is set out principally in three rules. The first two, Rules 11Aa3-1 and 11Ac1-1, require the exchanges and NASD to collect and disseminate current last sale and quotation information in their markets for covered securities. Rule 11Aa3-1 requires the exchanges and NASD to consolidate last sale information pursuant to an SEC-approved plan. Although Rule 11Ac1-1 does not require the formation of a plan for the collection, consolidation and dissemination of quotation information, the exchanges and NASD have created such a plan.

The third rule, Rule 11Ac1-1 (known as the "Display Rule"), covers the equally critical function of making consolidated data available to users in a fair and unbiased manner. It requires vendors and broker-dealers that choose to provide their clients with trade or quotation data from any one market center to also provide them with, at a minimum, the consolidated last sale and quotation information from all reporting market centers. It also requires that the consolidated data be made available to users as the default information display, rather than the information from any one market.

The systems in place under the CTA and CQ Plans are the result of many years of financial commitment, time and effort by the exchanges and NASD. The systems have operated efficiently, and without significant outages or slowdowns, even as the amount of market data to collect and disseminate has grown and is likely to explode with the advent of round-the-clock trading of securities. As the Commission noted in its concept release on market information, under the regulatory framework it has provided:

[T]he SROs have developed and funded the systems that have been so successful in disseminating a highly-reliable, real-time stream of consolidated market information throughout the United States and the world.⁴

The Exchange urges the Advisory Committee to proceed cautiously before recommending any wholesale abandonment of systems and procedures that have contributed greatly towards making the NMS a reality. Amex is especially concerned about proposals to allow market centers to offer their data independent of one another, free from obligations to participate in data consolidation plans, or to allow information vendors and broker-dealers to provide their customers with market data from selected markets only. Proposals such as these are the antithesis of centralization at the heart of the NMS, in that they may lead to market fragmentation by promoting unbundled market data over consolidated market data from all the reporting market centers.

⁴ Release No. 34-42208 at 4 (the "Concept Release").

Amex also disagrees with proposals to permit ECNs to join the CTA and CQ Plans. In our view, it is unfair to offer the benefits of plan participation – namely, the right to vote on plan decisions and to share in plan revenues – to markets that do not have the same self-regulatory obligations as the current plan participants to provide fair and orderly markets, listing standards and specialist/market maker obligations.

The disparity is even more striking between ECNs and the primary listing markets (*i.e.*, Amex, NYSE and Nasdaq). At Amex, we carefully screen each security we list for trading under carefully prescribed, SEC-approved standards before deciding whether to approve it for listing. Once we accept a security for listing, we have a responsibility to the security's issuer and its shareholders to provide a market for the security at all times, absent the issuer's breach of the listing standards. In sharp contrast, ECNs do not incur the expense of screening the securities they offer on their trading platforms. Instead, they obtain, without any expense of their own, the benefits of the efforts of the listing markets by drawing the securities they offer from the pre-approved pool of listed securities. Moreover, ECNs may add or remove securities at their will. Amex does not have the same flexibility to cherry-pick the listed securities we will support at any given time on our market facilities. Amex believes that the listing market centers should receive some benefits over ECN markets for these affirmative market obligations; it is their listing and regulatory efforts that create the value of the market data that comprises the tapes.

I. Vendor/Broker-Dealer Display Rule

Amex is in favor of retaining the Display Rule, with modifications. The Display Rule is essential to the NMS goal of centralization of trading interest in that it requires vendors and broker-dealers to provide consolidated last sale and quotation information from all reporting market centers, if they choose to provide any market data. Moreover, it requires them to provide consolidated market data in a more readily accessible manner than data from any specific market centers, to ensure that consolidated data is widely available to the investing public.

Eliminating the Display Rule could lead to market fragmentation. Without it, vendors and broker-dealers may well decide to offer their clients information from some markets over others, whether due to cost considerations, perceived differences in the value of the information provided by each market center or some other factor. Even if consolidated market data is available from other sources, investors who desire or are accustomed to “one-stop-shopping” – *i.e.*, who want their information and brokerage needs handled by a single service provider – may be disinclined to seek supplemental sources of market data. Furthermore, if unbundled or selectively bundled streams of market data predominate the market information products available to investors, investors may be deterred by the time, expense and administrative hassle involved to sift through the numerous competing services to find the rare proverbial needle in the haystack offering consolidated market data.

In terms of possible modifications to the Display Rule, Amex believes that the Committee should examine whether it is feasible to expand the minimum level of information that should be included in the consolidated displays required by the rule. Investors would benefit by having ready access to richer displays of consolidated market information showing depth of trading interest represented by limit orders. On the other hand, the exchanges, NASD/Nasdaq, data consolidators and/or vendors may have to make substantial investments in new technology or technology upgrades to handle the increased information load, to ensure adequate system capacity and protect against system disruptions or degradation of overall service. The Advisory Committee should carefully weigh the benefits of expanding the level of information against the associated costs.

Those benefits should also be evaluated in the context of other critical technology projects that may compete for a share of the same limited pool of development funds. In particular, the Advisory Committee should consider whether the U.S. markets should, as a higher priority, work towards collecting market data after normal trading hours, consolidating and displaying that data, and building after-hour bridges among the markets, as proactive measures to maintain their global prominence.

II. How Market Information Should Be Consolidated

Amex sees no advantage in having multiple, competing consolidators of market data. The consolidation function should be performed by an exclusive consolidator under each of the plans. We are concerned that increasing the number of consolidators would simply introduce complexity and inefficiencies, such as the need for multiple disaster recovery sites and plans, without producing any real, offsetting benefits. Moreover, we believe that the competing consolidator model would create the possibility of differing data streams and thus is fundamentally at odds with the NMS.⁵

Amex believes that SIAC has done an admirable job as the exclusive information processor under the CTA and CQ Plans. The efficiency of its operations is demonstrated by its long record of providing reliable, real-time market data to the industry without significant disruptions. This record is all the more impressive if one takes into account the exponential growth in recent years in the amount of data that SIAC has had to collect, consolidate and make available for re-dissemination.

Nonetheless, Amex is willing to explore opening the exclusive processing function to competitive bidding. Amex appreciates the Commission's views, expressed in its order approving the NASD SuperMontage proposal, that having a single plan participant operate as

⁵ Data streams may vary for many reasons, including differing standards for rejecting apparently inaccurate data, differing transmission times among markets or differing timestamps for incoming market data among consolidators. If data streams are different, both last sale and quotation information could differ among vendors.

the plan's exclusive consolidator raises potential conflict of interest concerns.⁶ Competitive bidding is one possible way to address those concerns. Cost should not, however, be the sole determinative factor. Performance standards (e.g., system up time, scalability to handle future capacity demands) are also important, both for purposes of evaluating bid submissions and for monitoring ongoing operations for quality control. Information processing experience is also relevant.

III Governance

The governance structures under the CTA and CQ Plans should be retained, but with some modifications, including more open channels of communication between the plans and outside interests.

The CTA and CQ Plans are governed by Operating Committees on which each plan participant has a representative and an equal vote. Routine decisions require majority approval of the Operating Committee members, but fee increases require two-thirds approval and certain significant matters require unanimous approval.

Amex strongly believes that participation on the Operating Committee should stay limited to exchange and NASD representatives. Not only have the market centers shouldered the responsibility for developing and funding the plans and plan operations, they have affirmative market obligations and attendant regulatory costs that other segments of the industry do not, due to their status as self-regulatory organizations. Most notably perhaps, the primary listing markets (Amex, NYSE and Nasdaq) owe a duty to the issuers whose securities they accept for listing to support markets in those securities, so long as the issuers comply with the relevant listing standards.

The exchanges and NASD also have extensive self-regulatory obligations. These include adopting rules ranging from proscriptions against manipulation and fraud, trading practices, financial standards and business conduct; enforcing those rules through extensive surveillance and disciplinary programs (which often require inter-market coordination and information sharing); and coordinating trading halts with other market centers when the markets experience rapid and sharp price declines below circuit breaker levels. Moreover, their specialists and market makers are required to offer firm two-sided market quotes when trading is open (except in the case of unusual market conditions).

Certain ECNs have been persistent in demanding seats on the Operating Committees. It should be kept in mind, however, that ECNs may achieve that objective under the existing plans by registering as national securities exchanges, which would enable them to join the relevant plans and appoint representatives to the Operating Committees. Amex finds no compelling reason to open plan governance to markets that could not exist without the fair and orderly public

⁶ SEC Release 34-43863 at 69-70 (Jan. 19, 2001). The SEC's comments relate to Nasdaq's exclusive processor role under the UTP Plan.

securities markets that the exchanges and NASD/Nasdaq provide, but that do not have the same affirmative obligations to provide markets in any particular securities and are unwilling to take on the heightened obligations of the regulated market centers.

Although Amex believes that the composition of the Operating Committees should remain unchanged, Amex also strongly believes that the one seat/one vote procedures for Operating Committee decision-making is in need of change. Amex favors an approach under which each market center's vote is at least partially weighted on the basis of initial listing and share trading volume in its markets or some other measures that reflect the respective contributions of the market centers to trading liquidity and price discovery.

Amex also recommends that the Advisory Committee consider ways to improve communications between the plans and the broader market constituencies. Amex does not believe, however, that major structural changes are required. Outside interested parties have much more influence on internal plan decision-making than critics would have one believe. First, each person on the Operating Committee is answerable to the board of directors for the market center he represents, providing an opportunity for effective input from the broader interests represented on those boards under Exchange Act diversity requirements.⁷ In Amex's case, for example, proposed changes to the CTA or CQ Plan are presented to the Amex board of directors first so that the board may provide direction to Amex's representative on the Operating Committee on how to vote. Other market centers also routinely bring plan changes to their respective boards for prior consideration and direction.

The public comment process provides another channel for outside input into plan decision-making. Changes to the terms of the CTA, CQ and UTP Plans, including fee changes, are submitted to the Commission for review and approval. The Commission, in turn, publishes the proposals in the Federal Register to provide interested parties an opportunity to express their views. Stakeholders also often provide their input informally, before the Operating Committees approve proposals for submission to the SEC. These informal communications are perhaps even more effective than the public comment dialogue, because they allow the plans to take divergent views into account during the formative stages, before the terms of a proposal are more firmly fixed. In general, this process has served the industry and the Commission well. It has forced the plan participants to come to terms on their own, without direct SEC involvement in most circumstances and, in those instances when they could not agree, has defined the areas of disagreement.

⁷ The Exchange Act requires the exchanges and NASD to include non-industry directors and a fair representation of their members on their respective governing bodies. Providing ECNs with representation on the Operating Committee may actually dilute the influence of the broader market constituencies at this "one off" level, since the same diversity standards do not apply to the composition of their boards.

That said, Amex believes that the plan participants should be more proactive in soliciting the views of outside parties on matters regarding plan administration and operations. As one idea, the plans could hold annual or biannual meetings to provide an open forum at which stakeholders could discuss their issues and concerns.

IV How User Fees are Determined and Revenues Allocated Among Plan Participants

Amex does not believe that it is necessary or wise to change the process for setting user fees under the CTA and CQ Plans; sufficient checks and balances already exist. Fee increases must be approved by a two-thirds vote of the Operating Committee. (Fee reductions are subject to unanimous approval.) Before the Operating Committee even votes, the proposals are normally presented to the boards of the market centers represented on the Operating Committee for careful consideration by the broader range of interests serving on those boards.⁸ Moreover, once fee changes are approved by the Operating Committee, they are submitted to the SEC for public comment and approval, providing a further opportunity for broader industry input.

On the other hand, the method for allocating plan revenues must be changed. Revenues under the CTA and CQ Plans are allocated among market centers on the basis of the respective number of trades they each report, without regard to trading volume or the quality of those markets. This approach disadvantages the market centers that provide greater liquidity by treating a single trade for 100 shares of stock the same as a single trade for 100,000 shares of the same stock in a different market. By the same token, the quality of quotation information is completely ignored in the allocation formula. Finally, we believe that market centers that initially list securities provide a value to the market that should be recognized in the allocation formula. Amex believes that the inherent unfairness of the revenue allocation formula is a primary motivation behind the NYSE decision to seek approval to withdraw from the CTA and CQ Plans.

Amex shares the NYSE's frustrations, but disagrees with its proposed solution. Instead, Amex believes that a more productive solution is to replace the current allocation method with a method that allocates revenues on the basis of more meaningful measures of the contribution of a market, such as initial listing, share volume or frequency or length of time that a market center's bids and offers constitute the NBBO.

V. Ancillary Matters

Amex believes it would be worthwhile for the Advisory Committee to consider ways to streamline administration of the plans as they affect vendors, broker-dealers and subscribers.

⁸ At the Amex, the Board carefully considers market data fees within the overall context of the Exchange budget, because reductions in revenues in one area may well require fee increases in another area to ensure that the Exchange has adequate resources to open our markets and fulfill our self-regulatory responsibilities.

Several ideas to consider, which SIA raised in its comment letter on the Concept Release,⁹ include:

- Standardizing the terms, conditions and policies of the exchanges' market data policies;
Maintaining a comprehensive database of market data prices and policies, including "Plain English" statements of the market data policies; and
- Simplifying the procedures for auditing usage of market data.

Conclusion

The CTA and CQ Plans, under the SEC's current framework for regulating market data, have served the industry well. For close to 25 years, the CTA and CQ Plans have contributed greatly towards the NMS by consistently providing investors with ready access to reliable streams of consolidated quotation and last sale information from all market centers. Proposals to unbundle this consolidated market data represent a significant step backwards, away from the NMS's fundamental goal of centralizing trading interest. The Advisory Committee should approach such proposals with extreme caution.

The issues you have asked the proponents of alternative models to address provide an excellent platform for the Advisory Committee's careful analysis of those proposals. Amex believes that careful consideration of the difficult issues you have raised will support our conclusions that the current models, with some modifications, should be retained.

Respectfully submitted,



Peter Quick

See SIA's April 11, 2000 comment letter, at p. 2.