



January 17, 2018

Via Electronic Mail (beganys@sec.gov)

Hon. W. Jay Clayton, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Petition to Address Conflicts of Interest, Complexity, and Costs Related to Market Data

Dear Chairman Clayton:

We write to petition the Commission to initiate rulemaking proceedings to reduce conflicts of interest, market complexity, and costs related to the provision of equity market data.

Over the past several decades, US equity market data has come to be provided pursuant to two very separate paths. On one path, there is purely public information, which is provided through the Securities Information Processors (SIPs). This “public” market data provides the bedrock for the regulatory apparatus surrounding the trading markets. On the other path, there is selective, private information, which is provided by market venues (who also happen to be self-regulatory organizations, SROs). The “private” market data is typically used by market participants to inform trading decisions, and may be, in certain circumstances, required for regulatory purposes. This dual structure has created significant risks, conflicts of interest, and costs for market participants.

In our recent Market Data Report,¹ Healthy Markets examined the evolution of US equity market data, exploring how the public and private market data feeds have developed, and how they are used by market participants. We also explored the conflicts of interest and costs that are reshaping the markets and market participants.

We found that the regulatory regime that governs US equity market data, developed in 1975, has not evolved to reflect a number of significant changes in the marketplace since, including the conversion of exchanges to for-profit entities. We found that for-profit exchanges have been able to exploit their essential role in the market infrastructure to add complexity and costs to a broad swath of market participants. And we found that almost no information related to the volumes and impacts of these fees is public.

¹ Healthy Markets Association, *US Equity Market Data: How Conflicts of Interest Overwhelm an Outdated Regulatory Model and Market Participants*, Nov. 16, 2017, available at [\[link\]](#)



For example, we found that:

- the exchanges that oversee the government-mandated public market data process are competing directly with that public data by selling their own data and connectivity offerings;
- market participants rely on both the public and private market data to stay competitive and fulfill their regulatory obligations;
- the non-competitive forces for market data and connectivity create significant upward pressures on prices, wherein both public and private data and connectivity prices have skyrocketed in recent years (e.g., a market participant who wanted the fastest connections with the most relevant trading information for BATS, NYSE, and Nasdaq has seen its costs rise from \$72,150 per month on June 1, 2012 to \$182,775 per month on June 1, 2017);²
- despite admitting that exchanges' tape revenues and private data and connectivity products are material to their businesses, none of the major exchanges clearly discloses the sizes of these revenues; and
- the vast majority of exchanges' data and connectivity changes and fee hikes are implemented with effectively no regulatory scrutiny.

These and other findings are deeply troubling for investors and other market participants. After over forty years of market evolution, it's past time for the SEC to meaningfully exercise its authority to ensure the fair provision of market data.

About Healthy Markets

Healthy Markets is an investor-focused, not-for-profit coalition looking to educate market participants and promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in AUM, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets. Healthy Markets can be found online at healthymarkets.org.

Select Concerns with US Equity Market Data

As technology has evolved, so too has the opportunity for sophisticated firms to profit from the two-tiered market data regime. At no time in history has the conflict of interests for exchanges been so apparent as it is now, when for-profit exchanges get paid to perform a governmental function, and then they get paid to offer products that compete with the governmental product, each other, and other market participants. In other cases, they simply offer products that are essential for market participants, but for which there are no reasonable or practicable competitors.

² Since June 2017, these fees have gone up further, to \$194,275. This includes a 50% fee hike in the Arca Integrated feed.

The root cause of the majority of concerns with market data is that the SEC (under the direction of Congress) has outsourced some of its key governmental functions to for-profit market participants. This framework of for-profit regulators should ultimately be revisited by Congress and the Commission. However, in the more immediate term, the Commission should consider addressing the clearly negative impacts of the current regime, which include:

- Conflicts of interest in the NMS Plan structure;
- Excessive costs and market participant concentration;
- Increased market complexity and venue fragmentation;
- Increased risk and market failures; and
- Burdens on competition for market data provision.

Conflicts of Interest in the NMS Plan Structure

At the time the NMS Plan process was created, the SROs were non-profit entities. In the decades since, the exchanges have retained their SRO status, while all becoming for-profit entities. The inevitable tensions between an SRO's regulatory objective and its profit motives may be greatest when addressing the issues surrounding market data. Congress and the Commission were clear: the SROs should act collectively to ensure that the public has a timely, consolidated view of all relevant market information.

The SIP data feeds were created explicitly to do that. And the SIP "tape revenues" were intended to cover the expenses of that new system.

Now, however, the "public" SIP data feeds act as competitors to the private data feeds and connectivity products sold by the exchanges. The greater the latency spread between the exchanges' data products and the SIP, the greater the market value is of their proprietary data feeds. The same is true with the volume and precision of the information provided. And the tape revenues, are now just another revenue source; almost entirely disconnected from the administration of the Plans themselves. Unfortunately, however, exchanges that benefit from these differentials are also those responsible for the governance and operations of the SIP data feeds against which their private data and connectivity offerings are competing.

Excessive Costs and Market Participant Concentration

The privileged regulatory status of exchanges and conflicted oversight of data fees and connectivity have combined to result in skyrocketing prices for both "public" and "private" data in recent years for market participants. Market participants know that they must have the information contained on both the public and private feeds, as well as faster connectivity, to be commercially competitive, and perhaps to comply with their regulatory obligations.



As detailed in our November 2017 Market Data Report, we have found these fees to sometimes skyrocket overnight, with no apparent justification. New data and connectivity offerings, coupled with rate raises, have driven costs ever higher for brokers, private data providers, investment advisers, asset owners, and other market participants. In fact, many have argued that these fees are a leading contributor to consolidation within the industry.

Increased Market Complexity and Venue Fragmentation

Changes to the information required by, and operations of, the SIP are infrequent, with just a couple dozen substantive amendments to the CTA plan since inception. The exchanges' data and connectivity filings are, by contrast, nearly daily. The vast majority of SRO exchanges' market data filings are also categorized as non-controversial and immediately effective upon filing. Most of the filings are complex, tiered in nature, and very few receive any public commentary. Keeping up with them is likely impossible for most market participants. In many cases, the ambiguities in the filings also make it difficult for market participants to understand the impacts.

Given the missing justifications, errors, and controversial material in filings that are approved by the Commission staff, it seems the Commission has struggled to keep up as well. In addition to increasing complexity for market participants, the unique monopolistic powers each exchange has over its data products has created a scenario wherein new, otherwise non-viable exchanges are created and persist exclusively to generate revenues from private data products and tape feed revenues. Without these unique data revenues, it would make little or no sense for there to be so many exchanges with remarkably similar business operations--especially within the same exchange families. Again, this subsidized fragmentation of the markets simply increases risks and costs for other market participants.

Increased Risk and Market Failures

In recent years, the SIP feeds and their processors have come under attack as a result of significant, high profile failures. On August 22, 2013, the Nasdaq UTP Tape stopped operating properly, causing a 3-hour, 11-minute stoppage in trading for about 3200 companies, including Apple, Facebook, Google, and Microsoft. On October 30, 2014, a similar outage of the NYSE affected pricing in NYSE-listed securities. The SIP data feeds aren't the only ones that have experienced problems. On July 9, 2015, NYSE experienced a massive three-hour outage when it experienced "communications problems" with its customers following a software upgrade.

While common sense might suggest that the redundancy of having multiple potential execution venues and feeds for each might stabilize the system, the experiences thus far suggest the opposite: the failure of any singular input may disrupt the entire market. That is because, once data from a particular data feed is viewed as potentially inaccurate or unavailable, many market participants will simply engage in risk mitigation strategies that may include stopping engaging in



the markets. This could lead to broader market disruptions. In this complex system, every new product introduces some new variable, the consequences of which could be significant.

Burdens on Competition for Market Data Provision

Exchanges are not the only source of market data used by market participants. Exchanges compete with other data vendors in the broader market for financial data. However, exchanges have a privileged position relative to non-registrant data vendors because they have exclusive access to a variety of trade data as a consequence of their central role in the national market system.

Exchanges have increasingly asserted exclusive property over certain data, including data as fundamental as corporate actions data that is provided to them pursuant to their oversight functions. The exchanges often require licenses and impose fees not just from a data vendor but also a data vendor's customer if the vendor's data product uses the exchange's data ("derived data"). These aggressive licensing requirements are typically implemented and enforced outside of the public rulemaking process. Thus, exchanges have taken the position that some certain data feeds – again, which are private distribution of information obtained through their governmental function – are not subject to the Commission's rule filing requirements, nor must they be fair, reasonable, and non-discriminatory.

Put another way, the exchanges are able to both discriminate and effectively out-compete other data providers based largely upon their preferential status as regulators. Without transparency and scrutiny in how exchanges deal with their data vendor competitors, exchanges are well-positioned to impose aggressive and potentially anti-competitive terms.

Recommended Actions

Ultimately, we recommend that Congress and the Commission work together to eliminate the regulatory responsibilities and privileges enjoyed by the exchanges, including by eliminating NMS Plans and immunity. However, in the more immediate term, we hereby petition the Commission to revise its rules, guidance, and enforcement efforts to:

- require justification of data, connectivity, and fee changes for both public and private feeds, and thoroughly review all such changes for fairness, reasonableness, potential discriminatory impacts, and potential undue burdens on market participants;
- clarify that rule filing requirements apply to all data derived from an exchange's role in the national market system and marketed to anyone (including a data vendor, whether by the exchange or an affiliate), and that standards for market data filings apply;
- expressly acknowledge the governmental function of the SIP data feeds, and so prohibit the exchanges from generating any profits from the operation and maintenance of the SIP data system;



- simplify pricing models within the SIP to eliminate the need to count end users, accounts or terminals, display versus non-display uses, and eliminate the distinctions between professionals and non-professionals;
- establish clear parameters for market data audits by exchanges or their representatives;
- increase the transparency of public market data revenue collection and costs so that the public is aware of both on a quarterly basis;
- improve the relative value of the SIP feeds by expanding the information to include order depth of book information;
- minimize the time discrepancies between when market participants may receive information from the private data feeds and the SIP feeds;
- require all exchanges to provide detailed financial information regarding their public data fees, their revenues and expenses related to public and private data, as well as connectivity or other related products and services;
- increase the transparency and disclosure of enhancements to SIP resiliency;
- mandate monthly public reporting of latency across SIP plans and how that compares to the private market data products offered by the exchanges;
- Either eliminate the use of NMS plans, or to the extent this may not be possible, revise NMS Plan governance to:
 - include voting representation from investment advisers and broker-dealers;
 - eliminate “one vote per exchange registration” and replace with “one vote per exchange group” on NMS Plans; and
- if competing SIPs are permitted, establish protections to mitigate conflicts of interest and abuses that may be created by differences between the SIPs.

Conclusion

The regulatory framework for equity market data is wildly outdated, and needs to be modernized to reduce conflicts of interest, market complexity, and costs for market participants. The Commission is now well-positioned to finally take action to better protect market participants.

Please do it.



Thank you for your consideration and we look forward to working with you to continue making our capital markets the best in the world. If you have any questions or follow up regarding this petition, please contact me at (202) 909-6138.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Gellasch". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tyler Gellasch
Executive Director

Cc: Hon. Kara M. Stein, Commissioner
Hon. Michael S. Piwowar, Commissioner
Hon. Hester Peirce, Commissioner
Hon. Robert J. Jackson, Jr., Commissioner
Brett Redfearn, Director, Division of Trading and Markets
Brent Fields, Secretary