

# COMMITTEE ON CAPITAL MARKETS REGULATION

April 23, 2020

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Re: File Number S7-03-20: Market Data Infrastructure (“**Competition Proposal**”)

Dear Madam:

The Committee on Capital Markets Regulation (the “**Committee**”) appreciates the opportunity to comment on the Competition Proposal by the Securities and Exchange Commission (the “**SEC**”),<sup>1</sup> which will introduce competition among providers of consolidated equity market data for national market system stocks (“**NMS stocks**”). The Committee supports the Competition Proposal, because we believe it will improve the quality and decrease the cost of consolidated equity market data, ultimately enhancing market efficiency for investors.

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-five leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean, Columbia Business School) and John L. Thornton (Chairman, The Brookings Institution) and led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

This letter proceeds in two parts. **Part I** briefly describes the existing landscape with respect to the dissemination of U.S. equity market data. At present, market participants can purchase: (i) consolidated equity market data from securities information processors (“**SIPs**”) jointly controlled by exchanges; and (ii) unconsolidated equity market data directly from exchanges via proprietary data feeds.

**Part II** summarizes the Competition Proposal, which would authorize competing consolidators that would perform the collection, consolidation, and dissemination functions currently performed by exclusive SIPs. Under the Proposal, competing consolidators would pay fees to each exchange for access to each individual exchange’s market data, which they would

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<sup>1</sup> U.S. SEC. & EXCH. COMM’N, *Market Data Infrastructure*, 85 FED. REG. 16,726 (March 24, 2020), <https://www.federalregister.gov/documents/2020/03/24/2020-03760/market-data-infrastructure> [the “**Competition Proposal**”].

then consolidate and sell. The exchange fees would be subject to SEC approval. The Committee supports the Competition Proposal, however, we recommend that the SEC go further and require exchanges to disclose the underlying cost of the equity market data that the exchanges sell to competing consolidators, so the SEC and the public can appropriately scrutinize the market data fees that the exchanges charge competing consolidators.

## Part I: Equity Market Data and Reg NMS

“**Equity market data**” refers to: (i) timely information about offers to buy and sell securities across all trading venues; and (ii) real-time reports of trades as they are executed.<sup>2</sup> The Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), aims to “assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of [equity market data].”<sup>3</sup> The Exchange Act further requires that equity market data is available on terms that are “fair and reasonable” and “not unreasonably discriminatory.”<sup>4</sup>

Regulation NMS (“**Reg NMS**”) governs the dissemination of equity market data for stocks.<sup>5</sup> Reg NMS requires exchanges and FINRA to “act jointly... to disseminate consolidated [equity market data], including a national best bid and national best offer, on quotations for and transactions in NMS stocks.”<sup>6</sup> Through these Reg NMS plans, the exchanges and FINRA must jointly designate an *exclusive* SIP for each NMS stock, and this exclusive SIP is responsible for disseminating consolidated equity market data for that stock.<sup>7</sup>

As a practical matter, designated SIPs provide the only *consolidated* equity market data available for purchase in the U.S. equity markets.<sup>8</sup> However, Reg NMS also allows individual exchanges to sell access to their own “**proprietary data feeds**,” which provide high-quality, unconsolidated market data.<sup>9</sup> Market participants can purchase access to proprietary data feeds from each exchange and consolidate it for their own use (but not for resale).<sup>10</sup> These proprietary data feeds often offer market participants greater content, higher quality, and faster speeds than SIP data.<sup>11</sup>

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<sup>2</sup> COMMITTEE ON CAPITAL MARKETS REGULATION, *The U.S. Equity Markets: A Plan for Regulatory Reform*, 105 (July 2016), [https://www.capmktreg.org/wp-content/uploads/2018/12/07\\_27\\_FINAL\\_DRAFT\\_EMS\\_REPORT.pdf](https://www.capmktreg.org/wp-content/uploads/2018/12/07_27_FINAL_DRAFT_EMS_REPORT.pdf).

<sup>3</sup> 15 U.S.C. 78k-1(c)(1)(B).

<sup>4</sup> 15 U.S.C. 78k-1(c)(1)(C)-(D); *Competition Proposal*, *supra* note 1, at 16,732.

<sup>5</sup> U.S. SEC. & EXCH. COMM’N, *Regulation NMS*, 69 FED. REG. 11125 (Mar. 9, 2004), <https://www.federalregister.gov/documents/2004/03/09/04-4712/regulation-nms> [“**Reg NMS**”].

<sup>6</sup> 17 C.F.R. § 242.603(b).

<sup>7</sup> 17 CFR § 242.603(b); *Competition Proposal*, *supra* note 1, at 16,729.

<sup>8</sup> COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter to SEC re Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data*, 4 (Feb. 28, 2020), <https://www.capmktreg.org/2020/02/28/committee-submits-comment-letter-on-secs-proposed-order-directing-self-regulatory-organizations-to-submit-a-new-national-market-system-plan-for-equity-market-data/> [“**CCMR Governance Comment Letter**”].

<sup>9</sup> *CCMR Governance Comment Letter*, *supra* note 8, at 4.

<sup>10</sup> *CCMR Governance Comment Letter*, *supra* note 8, at 4.

<sup>11</sup> *CCMR Governance Comment Letter*, *supra* note 8, at 4; *Competition Proposal*, *supra* note 1, at 16,731.

## Part II: The Competition Proposal

The Competition Proposal asserts that “the content and operating model under which [equity market data] is collected, consolidated, and disseminated have not kept pace with technological and market developments and are no longer satisfying the needs of many investors.”<sup>12</sup> To remedy this, the Competition Proposal would introduce a “decentralized consolidation model” whereby multiple competing consolidators perform the collection, consolidation, and dissemination functions currently performed by exclusive SIPs.<sup>13</sup> Specifically, “by introducing competitive forces into the collection, consolidation, and dissemination of proposed consolidated market data, the [SEC] preliminarily believes such data could be delivered to market participants with improved efficiencies and latencies comparable to proprietary market data products.”<sup>14</sup>

In order to introduce competition among providers of consolidated equity market data, the Competition Proposal would eliminate the existing requirement that Reg NMS plans designate an exclusive SIP for each NMS stock.<sup>15</sup> Instead, the Competition Proposal would: (i) permit “competing consolidators” to disseminate consolidated equity market data; (ii) require competing consolidators to register with the SEC; and (iii) require the exchanges and FINRA to make data available to competing consolidators in the same manner that SROs make such data available to any other person.<sup>16</sup> Competing consolidators must also regularly publish certain performance statistics on capacity, system availability, and latency to demonstrate their operational capability and develop written policies to “assure the prompt, accurate, and reliable delivery” of consolidated equity market data.<sup>17</sup>

The Committee has long supported a competing consolidator model, because we believe competition will improve the quality and decrease the cost of consolidated equity market data.<sup>18</sup> In addition, because the Competition Proposal would replace exclusive SIPs with multiple competing consolidators, there will no longer be a single point of failure capable of inducing stock market-wide paralysis, strengthening market resiliency.<sup>19</sup> However, the Committee recommends that the SEC should require exchanges to offer detailed periodic disclosures on the underlying cost of the equity market data that they sell to competing consolidators, so the SEC and public can ensure that the fees SROs charge competing consolidators are fair and reasonable.<sup>20</sup>

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<sup>12</sup> *Competition Proposal*, *supra* note 1, at 16,729.

<sup>13</sup> *Competition Proposal*, *supra* note 1, at 16,729-16,730.

<sup>14</sup> *Competition Proposal*, *supra* note 1, at 16,768.

<sup>15</sup> *Competition Proposal*, *supra* note 1, at 16,771.

<sup>16</sup> *Competition Proposal*, *supra* note 1, at 16,769.

<sup>17</sup> *Competition Proposal*, *supra* note 1, at 16,774.

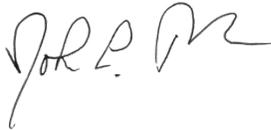
<sup>18</sup> *CCMR Governance Comment Letter*, *supra* note 8, at 6-7; COMMITTEE ON CAPITAL MARKETS REGULATION, *The U.S. Equity Markets: A Plan for Regulatory Reform*, 111-112 (July 2016), [https://www.capmktreg.org/wp-content/uploads/2018/12/07\\_27\\_FINAL\\_DRAFT\\_EMS\\_REPORT.pdf](https://www.capmktreg.org/wp-content/uploads/2018/12/07_27_FINAL_DRAFT_EMS_REPORT.pdf) [“**CCMR Report**”].

<sup>19</sup> *CCMR Governance Comment Letter*, *supra* note 8, at 6-7; *CCMR Report*, *supra* note 18, at 111-112.

<sup>20</sup> *See, e.g., CCMR Governance Comment Letter*, *supra* note 8, at 6.

Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Prof. Hal S. Scott ([hscott@law.harvard.edu](mailto:hscott@law.harvard.edu)), or Executive Director, John Gulliver ([jgulliver@capmksreg.org](mailto:jgulliver@capmksreg.org)), at your convenience.

Respectfully submitted,



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