

## Public Statement

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# Statement at Open Commission Meeting to Adopt Market Data Infrastructure Rules under Regulation NMS



**Commissioner Elad L. Roisman**

**Dec. 9, 2020**

In 1975, following years of studies, advisory committees, and deliberate Commission actions, Congress amended the Exchange Act to add Section 11A, which directed the Commission to facilitate the establishment of a national market system.<sup>[1]</sup> In doing so, Congress charged the Commission to develop a regulatory framework that leveraged new data processing and communications technologies for the purpose of achieving markets that were fair, orderly, efficient, transparent, and competitive.<sup>[2]</sup>

In order to be able to reconcile the multiple, and to some degree competing, objectives of Section 11A, Congress afforded the Commission flexibility in facilitating the national market system. While flexibility is incredibly important to us, it can also present challenges. This is particularly the case with equity market structure for which the issues are often complex and can evoke strong responses tied to business models and longstanding beliefs about what is best for investors and the market. In seeking to optimize our regulatory regime, it is a very difficult task to weigh what are often stridently competing interests and make choices designed to achieve a balanced outcome that is consistent with the objectives for the national market system and premised on a desire to improve while doing no harm.

This was certainly the case for me as I considered these amendments and their far-reaching implications. My touchstone always was, and always will be, Section 11A and its objectives for the national market system. Therefore, in explaining my support for these amendments, I think it is important to try to put them into some context.

### Consolidated Market Data and the National Market System

In directing the Commission to facilitate the national market system, Congress identified two paramount objectives: (1) the maintenance of stable and orderly markets, and (2) providing each investor's order with the opportunity to receive the best possible execution, regardless of where the order originates.<sup>[3]</sup> To accomplish these objectives while simultaneously promoting competition among markets, Congress recognized the importance of providing "access to up-to-the second information" regarding quotes and trades and noted that communication systems that provide for the automated dissemination of such information will "form the heart of the national market system."<sup>[4]</sup>

Setting aside how quaint "up-to-the second" dissemination now sounds in an age of micro- and nanoseconds, these statements make clear the significance of consolidated market data to the equity markets and underscore

the importance of the amendments we are considering today. Consolidated market data is critical to further two important goals, vigorous market competition and best execution. By providing market-wide pre-trade price transparency, consolidated market data helps to address market fragmentation and provides a key tool for brokers to be able to achieve the best execution of their customers' orders.

In order to effectuate Congress' vision, Section 11A affirmed the Commission's jurisdiction to oversee the provision of market information.<sup>[5]</sup> Importantly, while Congress recognized that it was likely that a centralized processor of market information would emerge, it did not expressly authorize such centralization. Congress' goal to break down barriers to competition also applied to distributors of market information, just as it did to market centers.<sup>[6]</sup>

### Improving the System

Over the course of the ensuing decades, issues related to market data have continuously been the subject of Commission and industry time and attention. Many of the items we continue to grapple with have been the subject of significant public feedback and deliberation through concept releases, federal advisory committees, Congressional hearings, conferences, academic research, Commission rulemakings, and self-regulatory organization ("SRO") rule filings. By now, the views of the securities industry as well as the exchanges on these issues are well known. As the rapid evolution of sophisticated technology and the ability to digest large amounts of data has transformed markets, issues surrounding the content and speed of the Securities Information Processors ("SIPs"), as well as the role of proprietary data feeds, have only become more acute.

And so, a little over two years ago, the Commission began in earnest the latest chapter of the market data saga with the Division of Trading and Markets' Roundtable on Market Data and Market Access. Over the course of two days, we heard from a wide spectrum of market participants about what types of market data they use, why they do so, and how they believe the system could be improved. I heard two themes emerge from these discussions. First, a broad cross-section of market participants do not believe that the information available on the SIP feeds is sufficiently comprehensive for them to rely on when seeking to obtain best execution. Second, many market participants believe that the current mechanism and systems for collecting, processing, and distributing SIP data, are no longer adequately keeping pace with today's marketplace.

Both of these themes suggest there is more the Commission can do to improve the national market system consistent with the objectives delineated in Section 11A. Given the complexity of these issues and the degree of conflicting interests involved it is clear that any proposed reforms related to market data would be the subject of reasonable disagreement. Healthy debate is the necessary prerequisite to healthy change.

I support the adoption of the amendments we are considering today because I believe they represent a viable option to address market participants' concerns regarding both the content and the delivery of SIP data.

If a key purpose of consolidated market data is that it be a tool to facilitate best execution, then it is incumbent on us to make sure that it includes information that a broad cross-section of market participants believe is useful for that purpose. If best bids and offers are not sufficient, then, in accordance with Section 11A, we should endeavor to provide market participants with additional consolidated market data. The information included in the definition of "core data," coupled with the definition of a "round lot," reflects a balanced approach to provide additional consolidated information to facilitate best execution, in a manageable form. Notably, the amendments provide market participants with the potential opportunity to choose which elements of core data they consume, consistent with their best execution obligations.

In fostering a competitive environment for the collection, processing, and distribution of consolidated market data, the goal is to bring market forces to bear to address concerns related to the latency and usability of the current SIP feeds. Competition among markets has been a strength of the national market system, and it is my belief that competition among market data consolidators can likewise be a source of strength. The Commission has historically prioritized the integrity and reliability of SIP data in considering market data initiatives. From my perspective, that has not changed. A competitive environment can incentivize consolidators to be laser focused on providing reliable and useful products to best meet the needs of a variety of market participants. The continued

need to invest and innovate in sophisticated technology that a competitive environment demands will hopefully inure to the benefit of investors and our equity markets.

### The Task Ahead

However, in supporting these amendments I am neither blind to their significance nor naïve as to the implementation effort they demand. I have previously stated that, as a general proposition, due to the complex and interwoven nature of our equity markets we should strive to identify regulatory solutions that are thoughtful and incremental in order to account for the potential for our actions to create unintended consequences.<sup>[7]</sup> I fully recognize that these amendments cannot fairly be characterized as incremental. Dismantling the existing system and replacing it with an entirely new one could certainly be disruptive to the markets, if not thoughtfully and carefully implemented.

For an initiative of this scale and scope to be successful it is incredibly important that the industry and the Commission work together on implementation. We can all acknowledge that the effort to stand up a new model for disseminating consolidated market data is likely going to require a lot of work. The adopting release sets forth a phased approach to implementation that is designed to offer important guidance and provide reasonable timelines. Active and frank engagement from those responsible for the building and programming of the systems the amendments envision will be vital to keep these efforts on track. In this regard, I believe the Commission should host an annual roundtable discussion to track the progress of implementation and provide updates on the effects of the amendments on the equity markets and investors. As I see it, with any new rule, the only certainty is that there will be unforeseen consequences. An annual roundtable discussion would provide a forum for market participants to raise matters for consideration and discuss potential solutions.

Beyond the technology and systems build efforts, these amendments will undoubtedly raise important implementation questions. As it is now the Commission's province to prescribe such details as the size of a round lot or the numerical format for displaying quotation sizes, the list of matters for which we will need to continually evaluate nuanced interpretive issues will certainly grow. But perhaps more significantly, the Commission will soon be tasked with arbitrating the proposed fees for both the data content underlying core data as well as the connectivity associated with the provision of core data elements to competing consolidators. On this, just like on all the other issues, it is my belief that a cooperative and constructive process is critical.

Cooperation should be innate to the self-regulatory system we rely upon for securities market regulation. While not perfect, the self-regulatory system maintains the potential to be mutually beneficial to both the Commission and the brokerage industry. I share Congress' belief that representative organizations that can bring industry expertise to bear on nuanced, complex matters can result in regulatory solutions that are expeditious and efficient.<sup>[8]</sup> In light of the significant task that lies ahead it is critical for industry leadership and the full potential of self-regulation to be brought to bear. Now is the time to set aside institutional interests and recognize that compromise is a necessary component of a system that is fair to all.

It is my hope that the SROs, the securities industry, and the Commission will be able to work constructively and cooperatively to see these amendments to fruition. But make no mistake, regardless of what the future may hold for these amendments, the Commission today states firmly and directly that including additional information in core data and fostering a competitive environment for the provision of consolidated market data is in fact needed. And that should ring loudly for market participants and investors.

### The Big Picture

I would be remiss if I did not also note that, despite the enormity of these amendments, it is important to remember that when it comes to regulatory actions concerning market data, there are no silver bullets. While I believe these reforms represent a viable option to address several long-standing concerns, I do not believe they are a panacea. They are not the only actions the Commission could have pursued or should consider pursuing in the future in an effort to continue to improve our market structure.

For example, I have said several times that I think the Commission should consider providing a non-prescriptive interpretation of, or guidance on, the regulatory requirement to achieve best execution.<sup>[9]</sup> Doing so would help better differentiate what is required from what firms choose to do for commercial reasons. In response to comments, we provided some guidance in the adopting release that I hope is helpful regarding the application of the duty of best execution. However, we also reiterate that we are not specifying the minimum data elements necessary to achieve best execution. While I recognize that best execution is unique to the circumstances of a particular order, or a particular customer, I believe there is more we could and should do.

Second, in the course of this rulemaking, as in the course of all other discussions on market data, most commenters stated their belief that fees for data are too high. As I mentioned earlier, as part of standing up this new model, the Commission will need to address proposals for various fees related to the provision of data content underlying core data. In addition, SROs will continue to file proposals related to all sorts of data, connectivity, transaction, and regulatory fees in the ordinary course of operating their markets. While the reduction of fixed trading costs for certain scale players may have benefits, the Commission has previously recognized that SRO fees should be considered in the broader context of an SRO's role as both front-line regulator and market operator.<sup>[10]</sup> In this vein, I have previously asked whether it is time to revisit the Commission's 2004 SRO concept release.<sup>[11]</sup> Doing so would provide us the opportunity to put a framework around the application of the statutory standards for SRO fees that considers the context for both the full-suite of functions performed by SROs as well as the full-suite of costs incurred by the brokerage industry.

And third, the release discusses in several places the importance of market information to investors, including retail investors. I completely agree. As the Commission has previously stated, one of the most important things we can do for retail investors is provide them access to the information they need to protect and further their own interests.<sup>[12]</sup> However, I believe that any serious discussion of the potential benefits for retail investors from access to additional market information must also consider the current prevailing modes of intermediation in the equity markets. The Commission should undertake an assessment of the state of intermediation in the equity markets that includes a consideration of the prevailing means by which retail investor orders are executed. Such an assessment seems critical to any thoughtful determination of whether there are further efforts we could take to enhance the ability of retail investors to control, to a greater degree, the quality of their executions, such as through enhanced Rule 605 disclosures or other measures relating to trading activity on different types of market centers.

Work on these three potential initiatives—just like implementation of the amendments we are considering as well as the day-to-day matters related to the operation and oversight of our markets—requires cooperation among the Commission, the SROs, and the broader industry. Our markets and investors are best served by balanced outcomes that promote fairness for all over too often intransigent institutional interests. If we can all keep this in mind then I believe the Commission will be best positioned to reconcile the multiple objectives of Section 11A and avoid the potential for paralysis that can stem from the flexibility it affords.

### Conclusion

Finally, and most importantly, to the staff in the Division of Trading and Markets, the Division of Economic and Risk Analysis, the Office of the General Counsel, and the Office of Compliance Inspections and Examination: thank you. Thank you for your diligence; thank you for your hard work; and thank you for the time spent discussing the many nuances of these rules with me personally. Upon being tasked with carrying out such an ambitious project, I have no doubt that the last thing any of you sought was to do so in the midst of a pandemic that has upended our traditional modes of communication and collaboration. Your efforts over the last nine months serve as further evidence of the lesson we have learned all too well this year that the capacity of this agency's staff to meet a challenge may indeed know no bounds. You should be incredibly proud of your work.

While the Chairman has named you all individually I wish to particularly highlight the tireless work and dedication of Brett Redfearn to this endeavor. Brett, we have all benefitted from your insights, your acknowledgment of both the complexities of these issues and the unintended consequences of previous regulatory decisions, and your steadfast belief that we cannot just throw up our hands because things are complicated. Your passion, unwavering

and consistent desire to do what is best for investors and markets has been apparent to all of us here and so, I thank you.

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[1] 15 U.S.C. 78k-1(a)(2).

[2] 15 U.S.C. 78k-1(a)(1).

[3] See S. Rep. No. 94-75, at 7 (1975) (“Senate Report”).

[4] See *id.* at 9.

[5] 15 U.S.C. 78k-1(b), (c)(1)(B) (directing the Commission to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotes and trades and the fairness and usefulness of the form and content of such information).

[6] See Senate Report at 7-8, 11-12.

[7] See, e.g., Elad L. Roisman, Remarks at the SIFMA Equity Market Structure Conference: The Dynamics of our Markets and the Changing Structure on which they are Built (Sept. 19, 2019), available at <https://www.sec.gov/news/speech/roisman-remarks-sifma-equity-market-structure-conference-091919>.

[8] See generally S. Rep. No. 73-1455 (1934); H.R. Doc. No. 73-1383 (1934). See also Release No. 34-50700 (Nov. 18, 2004), 69 FR 71256-57 (Dec. 8, 2004).

[9] See, e.g., Elad L. Roisman, Remarks at the SIFMA Equity Market Structure Conference: The Dynamics of our Markets and the Changing Structure on which they are Built (Sept. 19, 2019), available at <https://www.sec.gov/news/speech/roisman-remarks-sifma-equity-market-structure-conference-091919>.

[10] See, e.g., Release No. 34-42208 (Dec. 9, 1999), 64 FR 70613, 70615, 70624-27 (Dec. 17, 1999).

[11] See Elad L. Roisman, Statement at the Roundtable on Market Data and Market Access (Oct. 25, 2018), available at <https://www.sec.gov/news/public-statement/statement-roisman-102518>.

[12] See Release No. 34-42208 (Dec. 9, 1999), 64 FR 70613, 70614 (Dec. 17, 1999).