

Public Statement

Statement on Order to Modernize the Governance Structure of National Market System Plans for Equity Market Data



Chairman Jay Clayton

May 6, 2020

Good afternoon. This is an open meeting of the U.S. Securities and Exchange Commission on May 6, 2020, under the Government in the Sunshine Act. The Commission today will consider a staff recommendation to issue an Order that would direct the registered equities exchanges and the Financial Industry Regulatory Authority (“FINRA”) to propose a new, single national market system (“NMS”) plan to govern the public dissemination of real-time, consolidated market data for NMS stocks.

Throughout my tenure as Chairman, I have discussed the need for the Commission to focus additional analytical resources on our ever evolving market structure.^[1] U.S. equity markets have changed substantially in the last decade as technology, business and trading practices, and investor preferences have evolved, dynamically. As the primary regulator responsible for the fair and efficient operation of these markets, we, too, must continue to analyze and update our regulatory framework to ensure we are delivering on our responsibilities to market participants. I note that today marks the tenth anniversary of the Flash Crash, and as others have noted, the measures that the Commission implemented following the Flash Crash have helped address periods of high volatility in this age of electronic markets, as we most recently witnessed in March.

Over the past several years, one area of focus for the Commission in our ongoing analysis of equity market structure has been access to equity market data. A critical element of market function is the quality of and access to price information. More particularly, in the matter at hand today, the price information provided by the mandatory, broad dissemination of consolidated equity market data—the best quoted prices and most recent trades in NMS stocks. Taking a step back, I believe it is fair to say we currently have what can be generally described as a tiered system of market data access in the U.S. equity markets. We have consolidated public data feeds that are distributed pursuant to the three current Equity Data Plans that were approved by the Commission at various times from the 70s to the 90s.^[2] Today, these NMS plans are jointly operated by the equities exchanges and FINRA. Over the past decade, we also have seen the introduction and widespread use of an array of proprietary data products. Many of these data products are sold directly to certain market participants by most of the same self-regulatory organizations that govern the NMS plans. Demonstrating their significance, the investment in these proprietary products has increased significantly in recent years as many market participants demand market data products that include (1) lower latency—e.g., faster access—and (2) more content than is currently provided pursuant to the Equity Data Plans. This tiered system of data products, which includes both (1) data products mandated by regulation that are intended to facilitate fair and efficient information access and (2)

data products that are provided on a proprietary basis, compiled and priced in many cases by the same market participants, raises conflicts of interests concerns. I believe these issues—the significant conflicts and potential conflicts between the exchanges’ business interests in proprietary data offerings and their obligations as self-regulatory organizations to ensure prompt, accurate, reliable, and fair dissemination of consolidated market data through the jointly administered Equity Data Plans—need to be addressed, including through an appropriate governance structure for the NMS plans.

Today’s recommendation would do just that by requiring the modernization of the governance structure for NMS plans that provide consolidated equity market data to market participants. The recommendation would also enhance the effectiveness of this governance change and drive significant efficiencies by replacing the three existing Equity Data Plans with a new, single NMS plan for all consolidated equity market data. Today, the Commission also separately approved amendments to the existing NMS plans designed to address conflicts of interest and the protection of confidential information.

The Commission received substantial input on the issues we address today from a broad range of market participants—for example, through the 2018 Roundtable on Market Data and Market Access held by the Division of Trading and Markets^[3] as well as through the Equity Market Structure Advisory Committee.^[4] The Commission published a proposed version of this order on January 8, 2020, to solicit public comment on proposed governance provisions for a new market data plan. In response to January’s Proposed Order, we received over 30 comment letters. I am delighted that so many investors and market participants—including a number who are represented on the operating committees or advisory committees of the Equity Data Plans—contributed substantively, yet again, to this important discussion. Today’s recommendation reflects a careful consideration of these issues and appropriate policy responses. I also note that the new NMS plan submitted pursuant to today’s Order will be published for notice and comment prior to Commission action.

Finally, there is one broader point I would like to address. Some commenters asked about the relationship between this effort to improve the governance structure for consolidated data and the Commission’s proposed rulemaking on Market Data Infrastructure.^[5] I want to be clear that the two efforts address distinct aspects related to the provision of consolidated equity market data. Today’s Order speaks to the governance structure for consolidated market data and is designed to ensure that conflicts of interest in NMS plan governance are appropriately managed, including by providing for broader representation on the new NMS plan’s operating committee. The Market Data Infrastructure proposal, by contrast, addresses the operational structure of the securities information processors (“SIPs”)—including the content of SIP data products and the method by which NMS stock information is collected, consolidated, and disseminated.

I am pleased to support the staff’s recommendation to require the equities exchanges and FINRA to propose a new, single NMS plan regarding consolidated equity market data. I encourage the equities exchanges and FINRA to take up this task with purpose and commitment—the issues that need to be addressed and the path forward are well understood. The time for investor and market-focused action has arrived. Finally, and with respect, I also want to thank the staff who have carefully considered the comments received and worked tirelessly to prepare the Order. Particularly during this Public Service Recognition Week, I want to commend the staff for its hard work, dedication, and thoughtfulness on this matter and every other, today and every day.

Before I turn it over to Brett Redfearn, Director, and Michael Coe, Assistant Director of the Division of Trading and Markets, to describe the specific proposed governance provisions in more detail, I would like to thank:

From the Division of Trading and Markets: In addition to Director Redfearn and Assistant Director Coe, Christian Sabella, David Shillman, John Roeser, Andrea Orr, Richard Holley, Emily Westerberg Russell, John Fahey, Jennifer Colihan, Deborah Flynn, Eugene Hsia, Arisa Kettig, Peggy Sullivan, Mia Zur, Nick Shwayri, Meg Olsen, and Jerry Citera. Michael Coe in particular has done a tremendous job in leading the effort on this Order.

From the Office of General Counsel: Robert Stebbins, Michael Conley, Jeff Finnell, Tracey Hardin, Dominick Freda, Martin Totaro, Benjamin Schiffrin, Meridith Mitchell, Lori Price, Robert Teply, Janice Mitnick, and Cynthia Ginsberg;

From the Division of Economic and Risk Analysis: S.P. Kothari, Amy Edwards, and Paul Barton;

From the Division of Investment Management: Dalia Blass and Paul Cellupica; and

From the Office of Compliance Inspections and Examinations: Michael Hershaft.

[1] See, e.g., Chairman Jay Clayton, Remarks at the Economic Club of New York (July 12, 2017), available at <https://www.sec.gov/news/speech/remarks-economic-club-new-york>. See Jay Clayton, Chairman, and Brett Redfearn, Director, Division of Trading and Markets, Securities and Exchange Commission, Equity Market Structure 2019: Looking Back & Moving Forward, Remarks at Gabelli School of Business, Fordham University (Mar. 8, 2019) , available at <https://www.sec.gov/news/speech/clayton-redfearn-equity-market-structure-2019>

[2] The three Equity Data Plans are (1) the Consolidated Tape Association Plan (“CTA Plan”), Consolidated Tape Association Plan (“CTA Plan”), (2) the Consolidated Quotation Plan (“CQ Plan”), and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan”). The CTA Plan was first approved in 1974, the CQ Plan was first approved in 1978, and the UTP Plan was first approved in 1990. See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan); 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978) (order temporarily approving CQ Plan); 16518 (Jan. 22, 1980), 45 FR 6521 (Jan. 28, 1980) (order permanently approving CQ Plan); and 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order approving UTP Plan).

[3] See <https://www.sec.gov/spotlight/equity-market-structure-roundtables>.

[4] See <https://www.sec.gov/spotlight/equity-market-structure-advisory-committee.shtml>.

[5] See Securities Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726 (Mar. 24, 2020).