

Public Statement

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



Chairman Jay Clayton

Jan. 8, 2020

Good morning. This is an open meeting of the U.S. Securities and Exchange Commission on January 8, 2020, under the Government in the Sunshine Act. The Commission today will consider a staff recommendation to issue for public comment a Proposed Order that would require self-regulatory organizations to propose a new national market system plan to govern the public dissemination of real-time, consolidated market data for NMS stocks.

In July of 2017, in my first public remarks as SEC Chairman, I identified market structure as an area where the Commission and its staff should focus our analytical resources.^[1] The U.S. equity markets have changed substantially in the last decade, and as technology, market structure, business and trading practices and other aspects of our trading ecosystem evolve, we must analyze and update our regulatory framework as may be necessary or appropriate to meet our statutory mission, including promoting fair and efficient markets. Over the last few years, the Commission and the Division of Trading and Markets have undertaken a number of initiatives designed to modernize and improve the structure of our equity markets.^[2] These actions reflect a holistic approach to market structure reform,^[3] and our work in this area will continue in the coming months.

The area of focus today is market data access. As I discussed in a speech last March, we currently have what can be generally described as a tiered system of market data access in the U.S. equity markets.^[4] We have consolidated public data feeds that are distributed pursuant to the three current Equity Data Plans.^[5] These plans were approved by the Commission at various times from the 70s to the 90s. Today, the plans are jointly operated by the exchanges and FINRA. Over the past twenty or so years, a wide array of proprietary data products that are sold directly to certain market participants have been introduced. Due to various developments, the investment in, and demand for, more sophisticated data products have increased significantly. Turning back to my comment on the tiered nature of the market, 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. The exchanges and other market participants have developed and continue to develop products to meet this demand. Many of these products are priced higher than the prices for the consolidated market data streams.

As a result, a significant and increasingly wide gap has developed between (1) the content and operational sophistication of the consolidated market data streams distributed pursuant to the Equity Data Plans, and (2) the content and operational sophistication of many proprietary data products.

Institutional investors and the brokers who serve our Main Street investors, among others, have raised concerns about the gap between the consolidated market data distributed through the Equity Data Plans and proprietary data products. One such concern is whether the gap adversely affects those who do not access proprietary data products or who may not have the processing capacity to trade competitively.

Turning to some historic background that informs today's proposed order, a fundamental component of the national market system that Congress directed the SEC to establish in 1975 is the public dissemination of consolidated information about quotes and trades in equity securities. Currently, "core data"—the best quoted prices and most recent trades in NMS stocks—is collected, processed, and disseminated to the public by three separate Equity Data Plans. Under the current governance structure of the Equity Data Plans, the SRO participants, which include all national securities exchanges for equity securities and FINRA, have governance authority and related control over the Equity Data Plans. They do have advisory committees through which individuals who are not affiliated with the national exchanges or FINRA can attend Equity Data Plan meetings and offer opinions. However, these individuals do not have a vote. When the Commission established the advisory committees in its 2005 adopting release for Regulation NMS, it stated that the advisory committees were "a useful first step toward improving the responsiveness of Plan participants and the efficiency of Plan operations."^[6] At that time, the Commission also stated that it would "continue to monitor and evaluate Plan developments to determine whether any further action is warranted."^[7]

It has become clear that developments in technology have profoundly shifted the operational landscape of our equities markets since Regulation NMS was adopted in 2005, when the Commission observed that future action may be warranted. In addition, other structural changes have occurred. For example, most exchanges have converted from entities mutually owned by their members to demutualized entities that are ultimately owned by shareholders. Contemporaneously with these ownership and governance changes, data gathering, processing and dissemination, including developing and selling proprietary market data products that enhance the effectiveness of modern trading strategies, has become a key component of the business operations of many exchanges. Again contemporaneously, and largely as a result of mergers and acquisitions, "exchange groups"—multiple exchanges operating under common ownership—have emerged. This consolidation in ownership has resulted in substantially greater consolidation of the voting power and control of the Equity Data Plans than existed in 2005.

Some market participants have voiced concerns that these developments have amplified conflicts of interest between the exchanges' commercial objectives, on the one hand, and their regulatory obligations under the Exchange Act and the Equity Data Plans to produce and provide core data, on the other hand.^[8]

Collectively, these developments and related concerns squarely raise the question of whether the current governance structure of the Equity Data Plans (1) appropriately serves the needs of investors and other market participants, (2) is consistent with Congressional direction I previously noted, and (3) more generally, furthers the statutory obligations and mission of the Commission. It also is worth evaluating the extent to which the structure of the Equity Data Plans—three separate NMS plans even though they now effectively share the same operating committee, the same advisory committee members, and overlapping administrative and regulatory functions—is in need of modernization. The current structure has redundancies, inefficiencies, and inconsistencies that it may be possible to eliminate for the benefit of all market participants without any meaningful adverse effects.

Today, we are considering a staff recommendation regarding the governance structure of the NMS plans for equity market data. The Division of Trading and Markets recommends that, to begin the process of addressing (1) the inefficiency of having three NMS plans for equity market data that is used collectively and (2) the concerns raised about the Equity Data Plans' governance structure, the Commission publish

for comment a Proposed Order that would direct the SROs to propose a single new NMS plan, with an enhanced governance structure, to administer the collection and dissemination of equity market data. The Proposed Order calls this the “New Consolidated Data Plan.”

Based upon input received from a broad range of market participants including the SROs,^[9] recommendations from the Commission’s Equity Market Structure Advisory Committee, and the Commission’s own regulatory oversight of the Equity Data Plans, the Proposed Order sets forth (1) issues regarding the current Equity Data Plans’ provision of equity market data, (2) issues arising from the current governance structure of the Equity Data Plans, and (3) the specific governance provisions that the Commission preliminarily believes would enable the New Consolidated Data Plan to address these issues, as well as serve the interests of investors and market participants in accordance with Section 11A of the Exchange Act, more efficiently and effectively than the current Plans.^[10]

Brett Redfearn, Director of the Division of Trading and Markets, will describe the specific proposed governance provisions in more detail. But, in general, the New Consolidated Data Plan would result in a substantial change to the regulation of the dissemination of equity market data. That is why I agree with the staff recommendation that the Commission should publish a Proposed Order that (1) includes proposed terms for the New Consolidated Data Plan and (2) invites public comment on the proposed governance provisions, as well as the other important issues at stake, before the Commission determines to take any final action.^[11]

As I have previously remarked, to do our job properly and effectively as regulators, we must have substantive engagement and communication with the various stakeholders in the markets that we oversee.^[12] The Proposed Order deals with issues of importance to many market participants, from exchanges to broker-dealers to institutional investors to Main Street investors. If commenters have additional insights into the issues discussed in the Proposed Order—or if they wish to identify and suggest additional or alternative measures to those that the Commission has preliminarily set forth in the Proposed Order—I welcome this input. But, I ask that any such alternatives include a comprehensive explanation as to why the alternative would be effective in addressing the significant issues identified in the Proposed Order regarding the current governance and operation of the Equity Data Plans.

Before I turn this over to Brett, I also want to thank the staff who have worked tirelessly to prepare this recommendation and who have carefully weighed the important issues we consider today. Specifically, I would like to thank:

From the Office of General Counsel: Robert Stebbins, Michael Conley, Jeff Finnell, Tracey Hardin, Dominick Freda, 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; and

From the Division of Trading and Markets: Brett Redfearn, Christian Sabella, David Shillman, John Roeser, Emily Westerberg Russell, John Fahey, Michael Coe, Jennifer Colihan, Deborah Flynn, Eugene Hsia, and Arisa Kettig.

* * *

[1] 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>.

[2] See Press Release 2018-298, SEC Adopts Transaction Fee Pilot for NMS Stocks (Dec. 19, 2018), *available at* <https://www.sec.gov/news/press-release/2018-298>; Press Release 2018-136, SEC Adopts Rules to Enhance Transparency and Oversight of Alternative Trading Systems (Jul. 18, 2018), *available at* <https://www.sec.gov/news/press-release/2018-136>; Press Release 2018-65, SEC Staff to Host Roundtable on Market Structure for Thinly-Traded Securities (Apr. 13, 2018), *available*

at <https://www.sec.gov/news/press-release/2018-65>; Press Release 2019-217, SEC Issues Statement on Market Structure Innovation for Thinly Traded Securities (Oct. 17, 2019), *available at* <https://www.sec.gov/news/press-release/2019-217>; Press Release 2018-210, SEC Staff to Host Roundtable on Market Data and Market Access (Sep. 24, 2018), *available at* <https://www.sec.gov/news/press-release/2018-210>; Press Release 2019-204, SEC Proposes to Require Proposed NMS Plan Fee Amendments to Follow Public Notice, Comment, and Approval Procedure (Oct. 1, 2019), *available at* <https://www.sec.gov/news/press-release/2019-204>; Press Release 2019-189, SEC Proposes Amendments to Enhance Retail Investor Protections – Actions Increase Availability of Issuer Information and Modernize the Rule Governing Quotations for Over-the-Counter Securities (Sep. 26, 2019), *available at* <https://www.sec.gov/news/press-release/2019-189>.

[3] See Chairman Jay Clayton, Remarks at the Equity Market Structure Symposium Sponsored by the University of Chicago and the STA Foundation (Apr. 10, 2018) (“Remarks by Chairman Jay Clayton”), *available at* <https://www.sec.gov/news/speech/speech-clayton-2018-04-10> (discussing holistic approach to market structure issues).

[4] 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>.

[5] 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).

[6] Regulation NMS, Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37561 (June 29, 2005).

[7] *Id.*

[8] See, e.g., Transcript of Day Two, Roundtable on Market Data and Market Access at 117:14-22 (Oct. 26, 2018) (statement of Richard Ketchum, Former CEO of FINRA); at 121:3-17 (statement of Michael Mason, Citigroup), 138:1-4 (statement of Kevin Cronin, Invesco), *available at* <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, at 3–4 (Sept. 18, 2019) (stating that the current SIP governance structure “impedes the SIP from competing with the exchanges’ proprietary data feeds.”), *available at* <https://www.sec.gov/comments/4-729/4729-6148210-192292.pdf>; Letter from CTA/UTP Advisory Committee at 2 (Oct. 23, 2018) (“A perceived conflict is the lack of separation between CTA/UTP and proprietary data interests. An information barrier between CTA/UTP and exchanges’ proprietary offering does not work in practice as the same individuals may represent both CTA/UTP and exchange proprietary data products.”), *available at* <https://www.sec.gov/comments/4-729/4729-4553088-176181.pdf>; Letter from Tyler Gellasch, Executive Director, Healthy Markets Association at 11 (Oct. 23, 2018) (“One of the most direct conflicts of interest is that the exchanges effectively control the public market data stream while also competing with it.”), *available at* <https://www.sec.gov/comments/4-729/4729-4554022-176182.pdf>; Petition to Address Conflicts of Interests, Complexity, and Costs Related to Market Data at 6 (Jan. 17, 2018) (SEC 4-717) (petition from Healthy Markets, stating that the greater the latency between the SIPs and the proprietary data feeds, the greater the market value of the

exchange's proprietary feeds), *available at* <https://www.sec.gov/rules/petitions/2018/petn4-717.pdf>; Letter from John Ramsay, Chief Market Policy Officer, IEX, at 3 (Sept. 24, 2019), *available at* <https://www.sec.gov/comments/4-729/4729-6190352-192448.pdf>; Petition for Rulemaking Concerning Market Data Fees at 1 (Dec. 6, 2017) (SEC 5-716) (petition undersigned by twenty-four firms, including Bloomberg, Citadel, Fidelity Investments, Morgan Stanley, Charles Schwab, Vanguard, and Virtu, stating that "Exchanges exercise complete control over key aspects of NMS plan governance, including setting fees, and this governance structure exacerbates conflicts of interest and allows exchanges to promulgate rules unilaterally to the detriment of broker-dealers and buy-side representatives."), *available at* <https://www.sec.gov/rules/petitions/2017/petn4-716.pdf>; Petition for Rulemaking Regarding Market Data Fees and Request for Guidance on Market Data Licensing Practices at 13; Investor Access to Market Data (Aug. 22, 2018) (SEC 4-728) (petition from the Managed Funds Association, stating that "SIP governance model under Regulation NMS does not effectively mitigate conflicts of interest."), *available at* <https://www.sec.gov/rules/petitions/2018/petn4-728.pdf>.

[9] Exchanges have not only participated in and submitted comments in response to the Commission's Roundtable on Market Data and Market Access on October 25–26, 2018, *See* Equity Market Structure Roundtables, <https://www.sec.gov/comments/4-729/4-729.htm>, but they have also independently published their views regarding changes to the provision of core equity market data. *See, e.g.*, Nasdaq Total Markets: A Blueprint for a Better Tomorrow (Apr. 2019), *available at* https://www.nasdaq.com/docs/Nasdaq_TotalMarkets_2019_2.pdf; NYSE Sharing Data-Driven Insights – Stock Quotes and Trade Data: One Size Doesn't Fit All (Aug. 22, 2019), *available at* <https://www.nyse.com/equities-insights#20190822>.

[10] 15 U.S.C. 78k-1; Rules 601–603 of Regulation NMS, 17 CFR 242.601–603.

[11] Section 11A of the Exchange Act provides the Commission with the authority to directly order the SROs to develop a new NMS plan. *See* 15 U.S.C. 78k-1(a)(3)(B).

[12] *See, e.g.*, Remarks by Chairman Jay Clayton, *supra* note 3.