

Public Statement

Statement on Final Order Directing the Creation of a New Plan for Consolidated Equity Market Data



Commissioner Allison Herren Lee

May 6, 2020

It is fitting that we are today addressing equity market infrastructure on the ten year anniversary of the so-called “flash-crash” that occurred on May 6, 2010. The exact causes of the flash crash remain a topic of debate, and both the crash itself as well as the fact that debate as to its causes continues, highlight the complex interrelationships between market data and trading, and the importance of the public having timely, accurate price and quote information.

So, I want to thank Director Redfearn and the staff in the Division of Trading and Markets, the Division of Economic and Risk Analysis, and the Office of the General Counsel for all of their efforts over the past few years to address equity market structure issues, and in particular for the work on today’s order to address deficiencies in the public market data streams or the SIPs.[1] These deficiencies are born of a system in which for-profit stock exchanges both control—and directly compete with—the critical market infrastructure used to disseminate public market data. The situation is untenable, and the Commission’s action today helps to address that conflict through certain governance reforms.[2]

As an initial matter, notwithstanding the on-going market and societal disruptions caused by COVID-19, I believe the Commission is well-advised to move forward with today’s order. Both the public and interested parties have had substantial opportunity to comment, primarily before the disruptions caused by COVID-19, on this long-standing effort by the Commission.[3] Moreover, the Commission acknowledges the impact of the on-going pandemic in today’s order, and will continue to monitor the effects of any further disruption on the requirements imposed by the order.[4]

When this Order was proposed in January, I expressed my concern that the governance changes, standing alone, may prove insufficient to address aspects of this fundamental conflict because the new voting members would lack the voting power, and may lack the incentives, to affirmatively usher in needed reforms.[5] Reforms related to, for example, the content and speed of the SIPs, conflicts disclosure and management, confidentiality with respect to SIP customer data, and fee transparency. I also expressed concern that a protracted, piece-by-piece approach may never yield the full package of needed reforms.[6]

Because of the persistence of this fundamental conflict, I remain concerned and am committed to careful monitoring of the ultimate timing and efficacy of needed reforms, including those in today’s governance order. With

that said, however, it is clear that the Commission has made significant headway on numerous fronts toward improving the public market data streams.

Today's final order on governance directs the equities exchanges and FINRA to submit a new National Market System Plan ("NMS Plan") to consolidate the three existing NMS Plans into a single plan, allocate one third of the voting power on the operating committee to non-SRO members from a cross-section of market participants, and require the appointment of an independent plan administrator.^[7]

Changes to the governance structure have the potential to help better align the plan's operations with the public interest. The revised voting structure will require that virtually all decisions of the operating committee be approved by an "augmented majority," which requires a two-thirds vote of the operating committee and at least a majority of the SRO members.^[8] And I appreciate the order's approach to ensuring that the retail investor category is defined in a manner designed to promote meaningful representation of the interests of retail investors and meaningful contribution to the operating committee's work.

Moreover, I consider the changes required by today's order within the larger context of the progress made and promised. In addition to the governance order, the Commission today is also issuing orders approving, with certain improvements, amendments to the confidentiality and conflict of interest policies that apply to the current NMS plans.^[9] And finally, these three actions supplement important proposed changes to market data infrastructure related to the content and latency of the SIPs that the Commission published for notice and comment in February,^[10] as well as a proposal from last fall to require greater fee transparency by eliminating the "effective on filing" treatment of SIP fee changes.^[11] I hope we will see both of these proposals finalized in the near future.

That is substantial progress. I commend Director Redfearn and the staff for all of this work to date. While I believe that certain of the reforms within these various initiatives could and should be improved,^[12] I nevertheless appreciate the enhancements they represent, and I support today's governance order which, I would emphasize, is premised on timely and good faith compliance with its directives.

Ultimately, it is the role of Commission to ensure that the public has fair, cost-effective, and timely access to essential trading information, and we must remain vigilant in monitoring the implementation and success of these reforms. In that spirit, I support today's order. Thank you.

[1] The securities information processors, or SIPs, are critical pieces of market infrastructure used to publicly disseminate consolidated equity market data. In 1975, Congress directed the Commission "to facilitate the establishment of a national market system for securities," and gave the Commission authority to order self-regulatory organizations, or SROs—including the exchanges—to act jointly in establishing the SIPs. See Pub. L. 94-29, 89 Stat. 97 (1975).

[2] See Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Rel. No. [FORTHCOMING] (May 6, 2020) ("Governance Order").

[3] In fact, on March 6, 2020, the Commission formally reopened the original comment period which had ended on February 28, 2020. See Reopening of Comment Period for 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, Exchange Act. Rel. No. 88340 (Mar. 6, 2020).

[4] See Governance Order, *supra* note 2, at 100 ("... the Commission understands the challenges associated with the current global pandemic. As the impact of the pandemic unfolds, the Commission continues to monitor market developments, including as they may relate to this initiative.").

[5] See Commissioner Allison Herren Lee, Statement on Proposed Order for Creation of a New Consolidated Market Data Plan for Equity Market Data (Jan. 8, 2020).

[6] *Id.*

[7] See *generally* Governance Order, *supra* note 2.

[8] The order defines an augmented majority as “a supermajority vote of the New Consolidated Data Plan’s operating committee, along with a majority vote of the SRO members of the operating committee.” Given the allocation of voting power—two thirds allocated to the SROs and one-third allocated to non-SROs—this means that SROs must act either unanimously or, failing that, receive support from enough non-SRO members to achieve two-thirds support for a decision. The augmented majority—which will require non-SRO support in the event of even a single SRO not supporting an action—sets a higher bar for plan actions and introduces a new check on the operating committee’s decisions. I would support further empowering non-SRO members by requiring a minimum amount of non-SRO support for any proposal—even those supported unanimously by the SRO members.

[9] See Order Approving the Forty-Fourth Amendment to 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, as Modified by the Commission, Concerning Conflicts of Interest, Exchange Act Rel. No. [Forthcoming] (May 6, 2020) (“UTP Conflicts Order”); Order Approving the Forty-Seventh Amendment to 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, as Modified by the Commission, Concerning a Confidentiality Policy Exchange Act Rel. No. [Forthcoming] (May 6, 2020) (“UTP Confidentiality Order”); Order Approving the Thirtieth Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Second Substantive Amendment to the Restated CQ Plan, as Modified by the Commission, Concerning Conflicts of Interest, Exchange Act Rel. No. [Forthcoming] (May 6, 2020) (“CTA/CQ Conflicts Order”); Order Approving the Thirty-Third Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Fourth Substantive Amendment to the Restated CQ Plan, as Modified by the Commission, Concerning a Confidentiality Policy Exchange Act Rel. No. [Forthcoming] (May 6, 2020) (“CTA/CQ Confidentiality Order”). For example, the Commission’s improvements to the conflicts of interest policies, among other things, expand the application of the policy to include service providers and subcontractors, establish an objective standard to identify the existence of a conflict of interest, and add mandatory recusal requirements to address certain conflicts. See UTP Conflicts Order at 7-13, 17-18, and 31-38; and CTA/CQ Conflicts Order at 7-13, 17-18, and 31-38. Improvements to the confidentiality policies include, among other things, expanding the scope to cover additional parties—including, among others, outsourced service providers—and requiring that information be classified based on sensitivity and content rather than the setting in which the information is discussed (*i.e.*, in executive session). See UTP Confidentiality Order at 9-14 and 14-16; and CTA/CQ Confidentiality Order at 9-14 and 14-16.

[10] See Proposed Rule: Market Data Infrastructure, Exchange Act Rel. No. 88216 (Feb. 14, 2020) (“Infrastructure Proposal”).

[11] See Proposed Rule: Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments, Exchange Act Rel. No. 87193 (Dec. 10, 2019).

[12] For example, with respect to the Infrastructure Proposal, I am concerned that latency issues between the SIPs and the proprietary data feeds may persist. That proposal allows some market participants—so-called self-aggregators—to receive data directly from the exchanges, while other market participants will receive data from third party “competing consolidators,” potentially resulting in self-aggregators maintaining an advantage over other market participants in terms of latency. I look forward to reviewing the comments on the Infrastructure Proposal to evaluate how the Commission can address that concern. As a further example, today’s order requires the addition of non-SRO members to the operating committee as discussed above and requires the SROs to implement a transparent, public solicitation and nomination process for those non-SRO members. However, the new non-SRO members will still ultimately be voted upon by the existing non-SRO members of the operating committee. Given that these members are intended to represent a range of industry and public interests outside those of the SROs, the Commission will need to carefully consider how well the nomination process is working in terms of promoting the public interest. The Commission may also need to consider providing for additional non-SRO members on the operating committee, including members with no current or recent association with an interested party, or changing

the augmented majority requirement if the new Consolidated Data Plan is not successful in addressing the issues discussed in this order.