Capital Markets

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February 28, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release No. 34-87906; File No. 4-757

Dear Ms. Countryman:

On behalf of RBC Capital Markets, we appreciate the opportunity to comment on the above-referenced proposal (hereinafter "the Proposal").

RBC Capital Markets, LLC, (RBCCM) is the investment banking platform of Royal Bank of Canada.[1] RBCCM is a U.S.-registered broker-dealer that, among other activities, provides equities trading and execution services to retail and institutional investors. These investors include large investment managers with trillions of dollars in assets under management. Those assets reside in employee pension funds, mutual funds, and other vehicles that hold the savings of individual investors.

RBCCM has supported recent Commission efforts to strengthen the fairness, transparency, and efficiency of U.S. equity markets, and we believe that the Proposal advances those efforts.[2] NMS plans and self-regulatory organizations (SROs) play a critical role in compiling

[1] Royal Bank of Canada (RBC), headquartered in Toronto, Ontario, is a global provider of financial services, including personal and commercial banking, wealth management services, corporate and investment banking, and life insurance and transaction process services. RBC's approximately 85,000 employees serve more than 16 million personal, business, public sector, and institutional clients worldwide through offices in Canada, the United States, and 36 other countries. In the United States, RBC's approximately 12,300 employees primarily provide corporate and investment banking, wealth management, asset management, and retail banking services to customers and clients in more than 40 states.

[2] See, e.g., letter dated February 4, 2020, from Rich Steiner, RBC Head of Client Advocacy, related to two SRO NMS rule proposals, https://www.sec.gov/comments/sr-ctacq-2019-04/srctacq201904-6768288-208067.pdf; https://www.sec.gov/comments/sr-ctacq-2019-01/srctacq201901-6768289-208068.pdf. December 10, 2019, letter from Rich Steiner to SEC in support of the SEC Proposal to Rescind the Effective-Upon-Filing Procedure for NMS Plan Fee Amendments, https://www.sec.gov/comments/s7-15-19/s71519-6526196-200406.pdf. October 25, 2019,from Rich Steiner, RBC Head of Client Advocacy, to SEC providing analysis related to market data and access, **https://www.sec.gov/comments/4-729/4729-6353203-195588.pdf**; Brief of Amicus Curiae RBC Capital Markets, LLC, In Support of Respondent and Denial of the Petitions for Review, New York Stock Exchange LLC, Et Al. v Securities and Exchange Commission, D.C. Cir. Docket No. 19-1042, filed August 1, 2019; letter from Rich Steiner dated August 15, 2019, to

and disseminating important market information via registered securities information processors (SIPs) and the consolidated audit trail (CAT). However, partly driven by the inherent conflict between the interests of the SROs' shareholders and market investors, and given the diminishing utility of core market data relative to the more informative proprietary feeds, reforms are in order to protect the investing public. It is for this reason that the SEC has proposed these substantial governance changes to the Operating Committees that oversee the NMS Plans that govern the SIPs and, by separate rulemaking, has proposed substantive reforms to the scope and speed with which core data is made available to investors (Release No. 34-8826). Although we would prefer faster progress on these governance reforms, we nevertheless applaud the SEC's continued efforts to focus on this important issue, and we support this Proposal and expect to provide supportive comments to Release No. 34-8826.

The SEC has proposed that NMS governance plans be updated within 90 days of the final order. While we appreciate that seemingly aggressive schedule, we are concerned that, given the subsequent Commission notice and comment period for the plans, finalization, and implementation, it could be years before any reforms are implemented. As such, we would urge that the SEC adopt a final rule that either imposes immediate reforms on the SROs or, alternatively, requires that the plan that the SROs submit has a rolling implementation schedule specifying that some reforms take effect immediately. For example, while it may take some time to adopt a single NMS plan governing all SIP administrators, to hire a new processor, and to make the new plan operational, it should be possible to immediately implement broader participant membership, voting, confidentiality, and conflicts policies for the existing plans.

We wholeheartedly support giving the current Advisory Committee members, in the categories set out in the Proposal, voting rights in any new NMS plan. One of the troubling developments in market data since the exchanges shifted from the member-owned utility model to become public companies is the inherent conflict between the exchanges' duty to maximize shareholder value, including by selling data, and their responsibility to provide core market data for investors. This conflict can be mitigated by granting voting rights to other market participants, rather than exclusively to the exchanges, and by limiting exchange groups to two votes, so that any single exchange group cannot dominate voting on various NMS core data decisions. In addition, the proposal to eliminate the unanimous voting requirement will mitigate against the ability of those with the greatest conflicts – the SROs – to essentially block rule changes that could work against their conflicted interests. We remain concerned, however,

SEC, regarding Proposed Rule Change to Introduce a Liquidity Provider Protection, **https://www.sec.gov/comments/sr-cboeedga-2019-012/srcboeedga2019012-5977239-190213.pdf**; comments of RBC participant Rich Steiner, SEC Roundtable on Market Data and Market Access, October 25-26, 2018, **https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf**; letter from Rich Steiner dated October 16, 2018, to SEC, in support of the proposed SEC Transaction Fee Pilot, **https://www.sec.gov/comments/s7-05-18/s70518-4527261-176048.pdf**; letter from Rich Steiner dated May 24, 2018, to SEC, in support of the proposed SEC Transaction Fee Pilot, **https://www.sec.gov/comments/s7-05-18/s70518-3711236-162472.pdf**; letter from Rich Steiner dated September 23, 2016, to SEC, in support of Equity Market Structure Advisory Committee (EMSAC) Recommendation for an Access Fee Pilot, **https://www.sec.gov/comments/265-29/26529-86.pdf**; letter from Rich Steiner dated May 24, 2016, to SEC, regarding EMSAC Framework for Potential Access Fee Pilot, **https://www.sec.gov/comments/265-29/26529-70.pdf**.

that the Proposal would provide that a majority of SROs must support any proposal before it can be adopted. The Commission has proposed this construct to "ensure that the SROs have sufficient voting power to act jointly on behalf of the plan pursuant to the requirements of Section 11A of the Act and Rule 608 of Regulation NMS."[3] One of the SROs has already provided comments arguing that this voting construct violates Section 11A because it would afford voting rights to entities not expressly identified in the law. We do not believe they are correct in this argument, and that the law is not so limiting. However, even if the law must be read to require that a majority of SROs support a decision, the Commission has proposed the "augmented majority voting" system designed to confront the arguments made by the SRO; nevertheless, we think that only those decisions tied to statutory SRO responsibilities should be subjected to this "augmented majority vote."

We agree with the Proposal that the initial set of Advisory Members should appoint the inaugural set of new voting members. However, we are concerned that inertia will cause the firms from which these members hail to become *de facto* permanent participants in the Operating Committees, and so we recommend that the NMS plan propose a participant rotation process, and that the SEC monitor that process. While we are flexible in our view of what that process would look like, it could include: a requirement for an open call for new members; eligibility criteria for selection that reflects the need for rotation; term limits that encourage rotation; and an opportunity for the Commission to object to the slate.

The Commission has proposed that the use of executive sessions, which would bar from discussions and votes non-SRO participants, be curtailed and used only in extremely limited circumstances. We support this aspect of the Proposal but believe that use of the executive sessions should occur in "necessary" circumstances, not merely "appropriate" circumstances, and believe that, together with confidentiality rules that facilitate better information sharing, the need for use of executive sessions should be minimal. The SROs would still be able to hold executive sessions when "necessary," such as "regarding matters that exclusively affect the SROs with respect to the Commission's oversight of the [plan]."[4] We support this and urge the SEC to continue oversight of the use of executive sessions to avoid abuse and pretextual closings of meetings.

We commend the SROs' recent proposal mandating that conflicts of interest be publicly disclosed, and have provided comments in support of that proposal.[5] We believe that these are vital steps that will bring a welcome measure of transparency. In addition to the disclosure questions that Operating Committee participants would be required to answer under the SROs' proposal, the policy should call for further information. First, in addition to disclosing whether a participant's firm charges a fee for the provision of data, the participant should reveal the percentage of revenues derived from the sale of proprietary data and, separately, core SIP

[3] Proposal at A-51.
[4] Proposal at A-65.
[5] Letter dated February 4, 2020, from Rich Steiner, RBC Head of Client Advocacy, related to two SRO NMS rule proposals, https://www.sec.gov/comments/sr-ctacq-2019-04/srctacq201904-6768288-208067.pdf; https://www.sec.gov/comments/sr-ctacq-2019-01/srctacq201901-6768289-208068.pdf.

data, as a percentage of total revenue. This would not, in our view, cause the revelation of proprietary trade secret information and would aid in clarifying the extent of any potential conflict. Second, in addition to updating responses to questions annually and upon any material change, updates should also be provided if, with respect to a specific vote of the Operating Committee, information becomes material. For example, if the Operating Committee is considering selection of a service provider for a SIP, and the participant's firm has a relationship with a bidder, that relationship would need to be disclosed. Likewise, if a particular fee increase would have a material impact on the relevant revenue stream, the material impact should be disclosed.

We also believe that there should be a mechanism for recusal if, regarding a particular decision of the Operating Committee, a conflict becomes material. In the above examples, a recusal may be appropriate. In addition, the rule should provide a mechanism for responding to a participant's failure to comply with the disclosure requirement including, if appropriate, dismissal from the Operating Committee. This Proposal also requires that the plan ensure any SIP administrator is independent and not owned or controlled by a corporate entity that sells market data. This is a critical provision that will help to limit further conflicts of interest.

We also believe that a confidentiality policy should be adopted that allows for the sharing of information with all participants. We have written separately in support of the SROs' recent proposal to update the NMS confidentiality policies.[6] We believe that plan participants and other covered persons should be required to establish, maintain, and enforce policies and procedures designed to safeguard confidential and proprietary information. Such a requirement will help ensure that information is appropriately protected and used by decision-makers and advisors, and it will, in turn, facilitate the willing provision of information necessary to make informed decisions.

RBCCM again appreciates the opportunity to comment on the Proposal. Should the Commission find it useful, we would be pleased to provide additional information to the Commission regarding the matters raised in this letter.

Sincerely,

R. Steiner

Rich Steiner
Head of Client Advocacy and Market Innovation

[6] *Id.*