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November 12, 2020

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

Re: Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Release No. 34-90096; File No. 4-757

Dear Ms. Countryman:

On behalf of RBC Capital Markets, thank you for the opportunity to comment on the above-referenced proposed National Market System Plan (hereinafter "the proposed Plan").[1]

RBC Capital Markets, LLC, (RBCCM) is the investment banking platform of Royal Bank of Canada.[2] 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.

Background and Overview

RBCCM has supported recent Commission efforts to strengthen the fairness, transparency, and efficiency of U.S. equity markets.[3] This support extends to the Commission's January 8,

[1] Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, (Release No. 34-90096; File No. 4-757), October 6, 2020, **https://www.sec.gov/rules/sro/nms/2020/34-90096.pdf**.

[2] 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 86,000 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 13,000 employees primarily provide corporate and investment banking, wealth management, asset management, and retail banking services to customers and clients in more than 40 states.

[3] See, e.g., letter dated May 27, 2020, from Rich Steiner, Head of Client Advocacy and Market Innovation, RBC Capital Markets, related to Market Data Infrastructure, **https://www.sec.gov/comments/s7-03-20/s70320-**

2020 proposed order directing the Exchanges and the Financial Industry Regulatory Authority (hereinafter "the SROs") to submit a new National Market System Plan (the "proposed Plan") regarding consolidated equity market data (hereinafter "the SEC Proposal").[4] The SEC subsequently issued an order based on the SEC proposal (hereinafter "the SEC Order"),[5] which we also support. The SEC Order is the basis of the proposed Plan.[6]

As we understand it, the SEC Order has three fundamental objectives: (i) to promote meaningful participation by market participants in how SROs discharge their public

7239991-217149.pdf; two letters dated February 4, 2020, from Rich Steiner, RBC Capital Markets, related to two SRO NMS rule proposals for confidentiality and conflicts of interest policies for their NMS Plans, **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**; letter dated December 10, 2019, from Rich Steiner, RBC Capital Markets, 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**; letter dated October 25, 2019, from Rich Steiner, RBC Capital Markets, 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 dated August 15, 2019, from Rich Steiner, RBC Capital Markets, 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, RBC Capital Markets, 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 dated October 16, 2018, from Rich Steiner, RBC Capital Markets, in support of the proposed SEC Transaction Fee Pilot, **https://www.sec.gov/comments/s7-05-18/s70518-4527261-176048.pdf**; letter dated May 24, 2018, from Rich Steiner, RBC Capital Markets, in support of the proposed SEC Transaction Fee Pilot, **https://www.sec.gov/comments/s7-05-18/s70518-3711236-162472.pdf**; letter dated September 23, 2016, from Rich Steiner, RBC Capital Markets, 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 dated May 24, 2016, from Rich Steiner, RBC Capital Markets, regarding EMSAC Framework for Potential Access Fee Pilot, **https://www.sec.gov/comments/265-29/26529-70.pdf**.

[4] See February 28, 2020 letter from Rich Steiner, RBC Capital Markets letter, **https://www.sec.gov/comments/4-757/4757-6891621-210886.pdf**, responding to 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 (Release No. 34-87906; File No. 4-757), January 8, 2020, **https://www.sec.gov/rules/sro/nms/2020/34-87906.pdf**.

[5] Order Directing the Exchanges and the Financial Industry Regulatory Authority to submit a New National Market System Plan Regarding Consolidated Equity Market Data (Release No. 34-88827; File No. 4-757), May 6, 2020, https://www.sec.gov/rules/sro/nms/2020/34-88827.pdf.

[6] We also provided generally supportive comments on the Commission's proposal to improve competition in the delivery of Core Data and to improve the breadth, scope, and transmission of that data, which we view as an important complement to the SEC order and to the proposed Plan insofar as it would improve Core Data in the near term, and in the longer term bring about greater competition in the market for data. *Supra* Note 2 at **https://www.sec.gov/comments/s7-03-20/s70320-7239991-217149.pdf**. RBC supports adoption of that proposal, consistent with recommendations offered in our comment letter.

responsibilities to the market, including in the provision of market data on the securities information processors (SIPs); (ii) to improve the quality and timeliness of that data; and (iii) to eliminate SROs' conflicts of interest in providing that data, given that they also provide proprietary data feeds that compete with the SIPs. In response to the SEC's Order, the proposed Plan would consolidate the three existing market data plans and provide for the inclusion of non-SRO Voting Representatives in the governance of the Plan. However, on the whole the proposed Plan fails to meet the SEC Order's core objectives in several ways:

- It would delay full implementation of the Plan for an indefinite period, possibly years.
- It establishes voting rules that would limit meaningful participation in Plan activities by non-SRO members.
- It would undercut meaningful participation by non-SROs in Operating Committee meetings by allowing SROs to include their own hand-picked "Member Observers" in those meetings and by allowing SROs to divert key discussions and decisions to secret Executive Sessions or to subcommittee meetings.
- It fails to eliminate or even meaningfully mitigate SRO conflicts of interest; on the contrary, it would incentivize such conflicts by explicitly allowing SROs to conduct business with parties that compete with the Plan – including in the provision of market data, by explicitly shielding SROs, but not non-SROs, from liability for misconduct, and by explicitly stating that the SROs owe no fiduciary responsibility to the Plan, including with respect to the market data provided via the SIP to market participants.
- For the immediately aforementioned reasons, it would also create an incentive by the SROs to neglect their public obligations to ensure that SIP data is useful in terms of the content of SIP data and the speed with which it is made available to the market.
- In addition, it would permit the purging of certain market data that should be available for investor use and Commission oversight.

We address these concerns in more detail below.

1. <u>The Proposed Plan Should Implement Reforms Expeditiously</u>

The proposed Plan would permit the National Market System Plan to become effective only after SEC approval and only after the company that would operate the new Plan (hereinafter "the Company") has been formed by a legal filing in Delaware. The Commission has asked whether it should require this filing within a specified period following SEC action on a plan, such as 10 days.[7] While we do not have a view whether 10 days or some other specified period of time is needed, we believe that the SROs should be required to file with Delaware as promptly as the Commission determines is practicable following Commission approval of the Plan. We further believe that the Commission-approved plan should become operative within

[7] *Supra* Note 1 at page 7.

a date certain of the effective date, as determined by the Commission. Given that the changes required of the Plan are likely to be primarily organizational rather than operational in nature, we believe that no more than a year from the effective date to the operative date is reasonable.

We are also concerned that the proposed Plan, if approved by the Commission, would become operative only after (a) Voting Representatives of the Operating Committee have been "determined"; (b) fees "have been established by the Operating Committee" by amendment; (c) the Company has secured contractual agreements with Processors; (d) the Company has secured a contractual agreement with a Plan Administrator; and (e) "all" policies and procedures for the Company have been approved by the Commission.[8] Until each of these steps is complete, the proposed Plan would allow the *status quo ante* – that is, the current multiple plans, which lack voting participation by non-SROs and which lack other requirements established by the SEC Order – to persist for an indefinite period of time. Such an outcome could defeat the purpose of the SEC Order and thereby (along with other features of the proposed Plan) create the illusion, rather than the reality, of reform.

We believe that the new Voting Representatives of the Operating Committee -- including the non-SRO representatives -- should be empowered as soon as they are selected and installed, which should occur without delay, to participate in the governance of the existing NMS plans. These non-SRO representatives should be permitted by the Commission to participate in all of the existing plans (as they currently do, albeit in an advisory capacity), by amendment to those plans that could be submitted as promptly as the Commission determines is practicable. Likewise, augmented voting, limits on Executive Sessions, conflicts policies, and confidentiality provisions should all be adopted as promptly as the Commission determines is practicable following its approval of the Plan. We recognize that adopting these reforms would take some parallel work, such that the existing plans would need to be updated while building the new Plan, but we believe the incremental increase in effort would be minimal compared to the benefits to investors and other market participants of introducing these reforms promptly.

Regarding selection of new non-SRO Voting Representatives, the SROs could pursue a number of options -- including granting voting rights to the non-voting representatives in the current plans, developing a selection process for each plan, or using the selection process envisioned in the proposed Plan -- to have newly-selected representatives participate in governing the existing plans.

Other reforms could be implemented more readily. Once the Commission approves a Plan that it deems consistent with the SEC Order, the augmented voting process, the Executive Session regime, and the conflicts and confidentiality policies described in the proposed Plan could be appended to the existing plans and become effective in short order. Adopting these reforms by a date set by the Commission, rather than delaying their adoption for an indefinite

[8] *Supra* Note 1. "Recitals" of the SRO's proposed Plan.

period, as allowed by the proposed Plan, would accelerate the benefits of the SEC Order for investors and other market participants, including enhanced transparency, reduced conflicts of interest on the part of the SROs, and improved quality and timeliness of equity market data.

Further, we believe that new non-SRO Voting Representatives should be identified and empowered prior to undertaking the additional reforms specified in the SEC's Order, so that they are able to participate in important decisions about selecting Processors and a Plan Administrator, setting fees, and developing policies and procedures.

The SROs should also have deadlines applicable to each step (e.g., the selection of non-SRO Voting Representatives) as promptly as the Commission determines is practicable, and the Commission should specify the date by which the Plan must become fully operative, such as one year.

2. The Voting and Meeting Processes Should Ensure A Full and Fair Role for Non-SRO Operating Committee Members

A. Non-SRO Voting Representatives Should Have a Full and Fair Role in Plan Administration

We are pleased that the proposed Plan would add new voting members to the Operating Committee in the categories identified by the Commission, and would establish rotating memberships, as we recommended in our comment letter on the SEC Proposal.[9] At the same time, we recognize that the Commission "requests comment generally on the distinctions drawn in the proposed CT Plan between actions that are governed by the Operating Committee, which includes Non-SRO Voting Representatives as required by the Order, and other specified actions that are governed solely by the SROs as the 'Members' of the LLC."[10] In response, we have concerns with several aspects of the proposed Plan relating to voting and the conduct of meetings. For example, while Voting Representatives, which include both SRO and non-SRO representatives, sit on the Operating Committee and may "propos[e]" amendments to the Plan's operating Agreement or other policies and procedures (except the four discussed below), because the proposed Plan does not identify who would approve such proposals, it is not clear if non-SROs would also have authority to approve such amendments (subject to any required Commission approval) or if the proposed Plan contemplates Member

[9] See February 28, 2020 letter, *supra* Note 4, at page 3 ("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. . . it could include: a requirement for an open call for new members; eligibility criteria that reflects the need for rotation; term limits that encourage rotations; and an opportunity for the Commission to object to the Slate.").

[10] *Supra* Note 1 at page 8.

approval.[11] At a minimum, we believe that the SEC should require that the authority of non-SROs should extend to approving as well as proposing amendments to the Plan's operating agreement.

Similarly, Section 13.5 (Amendments) appears to permit the Operating Committee to modify the Agreement in all respects, except for Articles IX (Allocations); X (Records and Accounting; Reports); XI (Dissolution and Termination); and XII (Exculpation and Indemnification). The Commission has asked whether these Articles should be subject to approval of only the SROs, or whether non-SRO Voting Representatives should also having voting rights with respect to the approval of amendments to these Articles.[12] We believe all Voting Representatives, including non-SRO Voting Representatives, should have such rights. Should the SEC determine that there are areas where non-SROs should not have such rights, the Plan should explicitly provide for such an exclusion[13]

The proposed Plan also uses confusing language to describe the power of the Operating Committee to "develop[] and maintain[] fair and reasonable Fees and consistent terms for the distribution, transmission, and aggregation of core data…."[14] If the intent of this language is to empower the Operating Committee to set fees, after public notice and comment, and subject to Commission approval,[15] it should clearly say as much.

We appreciate that some Operating Committee decisions -- such as those regarding the selection of non-SRO Voting Representatives, whether to enter Executive Sessions, Company operations, modifications to the Agreement, or selection of certain Company officers -- would not require the support of a majority of the SROs.[16] However, we are concerned that the augmented voting regime appears to be required for activities such as "interpreting the Agreement and its provisions; and . . . carrying out such other specific responsibilities as provided under this Agreement."[17] We believe that the augmented voting requirement should apply to the SROs only to the extent needed to carry out their explicit regulatory obligations under the law, rather than to meeting general responsibilities under the Plan, and, as such, we believe that the two activities referenced above – that is, interpreting the Agreement and its provisions, and carrying out other responsibilities provided under the Agreement -- should also be subject to a simple majority vote by all Voting Representatives because they are not tied to

[11] *Supra* Note 1. See Section 4.1(a)(i) of the SRO's proposed Plan.

[12] *Supra* Note 1 at 29.
[13] *Id.* See Section13.5 of the SRO's proposed Plan.
[14] *Supra Note 1.* Section 4.1(a)(iii) of the SRO's Proposed Plan.
[15] See Final Rule Rescinding Effective-Upon-Filing Procedure for NMS Plan Fee Amendments and Modified Procedures for Proposed NMS Plans and Plan Amendments, (Release No. 34-89618; File No. S7-15-19, August 19, 2020, **https://www.sec.gov/rules/final/2020/34-89618.pdf**.
[16] *Supra Note* 1. Section 4.3(c) of the SRO's proposed Plan.
[17] *Supra* Note 1. Section 4.1(a)(vii) and (viii) of the SRO's proposed Plan.

regulatory responsibilities. We believe that the proposed Plan should specify the limited matters requiring augmented voting, and state that all other matters – including procedural votes thereon – are to be decided by majority vote of the Operating Committee. This simple majority standard should also extend to any votes requiring a quorum. Otherwise, the SROs would have the ability to thwart decisions of the Operating Committee by denying the Operating Committee a quorum.

We also have concerns about the proposed Plan's provision limiting the tenure of non-SRO Voting Representatives to two terms of two years each, while placing no such limits SROs' participation. In our letter supporting the Commission's proposed Order, we endorsed some limitations on the terms of Operating Committee members, in order to ensure fresh perspectives and avoid having *de facto* permanent members of the Operating Committee. However, the term limits contained in the proposed Plan could adversely affect the operations of the Operating Committee by barring members with more experience from serving on it, and by making it more difficult to attract qualified Voting Representatives for all of the categories of representatives required under the SEC Order. Further, by applying term limits to non-SRO members only, the proposed Plan could advantage SROs relative to non-SROs with respect to relevant information and experience. For these reasons, we believe that the term limits should be longer and should apply to both SROs and non-SROs.

B. <u>The Proposed Plan's Procedural Mechanisms Should Not Dilute the Input of Non-SRO Voting Representatives</u>

The proposed Plan allows SROs, at their "sole discretion," to include "Member Observers" in Operating Committee meetings, ostensibly to help SROs meet their regulatory obligations, while non-SRO Voting Representatives are not permitted to bring comparable persons to such meetings.[18] The Commission has asked whether an SRO would reasonably find it necessary to bring in Member Observers to meet their obligations under Rule 608(c) of Regulation NMS, whether certain people (such as those in charge of marketing for an SRO) should not be permitted to attend meetings, whether there should be a limit per SRO as to the number of Member Observers participating in meetings, and whether Member Observers should be permitted to attend Executive Sessions and subcommittee meetings.[19] We are concerned that granting SROs the ability to include Member Observers in Operating Committee meetings could create or exacerbate conflicts of interest, and could place non-SROs at a disadvantage in such meetings because they would not have the ability to include outside persons who may have special knowledge relevant to a matter under discussion.

To mitigate these negative outcomes, the proposed Plan should (i) grant all Voting Representatives, including non-SROs, equal authority to bring outside observers to Operating

[18] *Supra* Note 1. Section 1.1(oo) of the SRO's proposed Plan.
[19] *Supra* Note 1 at page 9.

Committee meetings; (ii) require any Voting Representative seeking to admit an outside observer to a meeting to specify the purpose for which they seek admission; (iii) require that the purpose of admission be relevant to a matter under discussion; (iv) subject any outside observer to the conflicts, confidentiality, and other relevant policies and procedures of the Company and proposed Plan; and (v) require the full Operating Committee to approve admission of any outside observer.

In addition, the proposed Plan calls for the ability to create subcommittees. The Commission has asked whether it is appropriate that only SROs or Member Observers can Chair these subcommittees, whether they should have balance between SRO and non-SRO Voting Representatives, and whether "other persons as deemed appropriate by the SRO Voting Representatives may meet in a subcommittee to discuss an item subject to attorney-client privilege."[20] While subcommittees may help to advance the work of the Operating Committee, the proposed Plan requires no transparency regarding the activities of these subcommittees, and by design they are imbalanced.[21] As such, these subcommittees could conceivably make decisions without input from or regard for the Operating Committee as a whole, including non-SRO Voting Representatives. To mitigate this potential lack of transparency and accountability, subcommittees should have a clearly identified purpose, balanced participation among all Voting Representatives, Chairs drawn from all Operating Committee members, be required to keep minutes and distribute those minutes to the Operating Committee, and be time- and project-limited.

We also believe that the proposed Plan should be modified with respect to the use of Executive Sessions. As written, the proposed Plan identifies three reasons allowing for such sessions: to discuss Highly Confidential Information; to consider vendor or subscriber audit findings; and to discuss litigation matters. Moreover, the proposed Plan states that this list of reasons for Executive Session matters "is not dispositive."[22] As the Commission noted in issuing the SEC Order, it adopted Regulation NMS in 2005 in part "to improve the transparency and effective operation of the Plans . . . [but s]ince that time, developments in technology and changes in equities markets have heightened an inherent conflict of interest between [SROs'] collective responsibilities in overseeing the Equity Data Plans and their individual interests in maximizing the viability of proprietary data products that they sell to market participants."[23] We do not believe that this broad and open-ended use of Executive Sessions allowed by the proposed Plan is consistent with the SEC's goals of transparency, effective operations of the Plan, and eliminating exchanges' conflicts of interest. Further, sanctioning the ability of competitors to meet in secret to discuss confidential business raises antitrust concerns. There

[20] *Supra* Note 1 at page 19.
[21] *Supra* Note 1. Section 4.1(b) of the SRO's proposed Plan.
[22] *Supra* Note 1. Section 4.4(e) of the SRO's proposed Plan.
[23] *Supra* Note 1 at page 3.

should be a presumption against Executive Sessions except upon a showing of need and a showing of why non-SRO Voting Representatives should be excluded.

Any concerns about preserving the confidentiality of sensitive information can be addressed by applying the proposed Plan's relevant policies and procedures to all Voting Representatives. Such policies and procedures should mitigate or eliminate the need for Executive Sessions.

3. SRO Members Should Be Precluded from Self-Dealing, Receive No Special Liability Protections, and Assume Fiduciary Obligations

Article III, Section 3.7 of the proposed Plan describes the obligations and liabilities of the SROs as Members of the LLC, including among other things, a provision that SROs shall have no liability for the debt, liabilities, commitments, or any other obligations of the proposed Plan or for any losses of the Plan. This section also says that, "[t]o the fullest extent permitted by law, no Member shall, in its capacity as a Member, owe any duty (fiduciary or otherwise) to the Company or to any other Member other than the duties expressly set forth in this Agreement." In addition, Article IV, Section 4.5 of the proposed Plan says that the Plan would not be prohibited from employing or dealing with persons in which an SRO or any of its affiliates has a connection or a direct or indirect interest; Article IV, Section 4.6 permits the SROs to engage in business activities outside of the business activities of the Plan, including through investments or business relationships with other persons engaged in market data services or through strategic relationships with businesses that are or may be competitive with the Plan; and Article IV, Section 4.6(b) provides that none of the SROs shall be obligated to recommend or take any action that prefers the interest of the Plan or any other Member over its own interests, and it also provides that none of the SROs will be obligated to inform or present to the Plan any opportunity, relationship, or investment.[24]

In relation to these provisions, the Commission has asked a series of questions, including whether the provisions are consistent with the role and public purpose of the Plan as part of the national market system; whether they would create a conflict of interest with SROs' obligations with respect to the Plan under federal securities laws, rules, and regulations; and how any conflicts should be eliminated or mitigated.

These provisions would significantly increase the likelihood that Plan activities would be contrary to the role and public purpose of the Plan as part of the national market system; and would create a conflict of interest with SROs' obligations with respect to the Plan under federal securities laws, rules, and regulations. They would in effect allow the SROs to ignore their responsibilities to provide critical market data to investors in favor of serving their own proprietary interests – interests that would be informed by access to Operating Committee discussions and possibly discussions within Executive Sessions.

[24] *Supra* Note 1 at pages 16-17.

SROs should not be permitted to place their own interests above those required by Regulation NMS. They should be prohibited from self-dealing. They should be subjected to the same fiduciary responsibilities that any corporate director owes to her company. And they should not be shielded from the liability to which they would otherwise be subject, but for the creation of this Company. Moreover, just as the proposed Plan addresses liability and indemnification with respect to SROs, it should make explicitly clear that the same provisions apply to the liability and indemnification of Non-SRO Voting Representatives acting in their role on the Operating Committee.

4. The Proposed Conflicts and Confidentiality Policies Need Improvement

In our comment letter regarding the SEC Proposal, and in two other comment letters on separate Commission proposals, we generally supported Commission proposals to adopt conflicts and confidentiality policies for NMS plans and made several recommendations to improve the proposals.[25] We appreciate that several of the concerns giving rise to these recommendations appear to have been addressed in the proposed Plan. For example, the proposed Plan would require, consistent with our recommendation, that a conflicts policy disclose material economic interests, which, if applied appropriately would include revenues that providers generate from the sale of proprietary data products; that disclosures be updated not just annually, but also following any material change; and that recusal policies be established.[26] The Commission has asked whether the conflicts policy's disclosure requirements "elicit sufficient relevant information to mitigate conflicts of interest that may result from such business activities" discussed above.[27] Particularly in light of the language discussed above wherein the SROs seek to develop products that could compete with Plan data, we think that SROs should be required to disclose the percentage of their total revenues that they derive from the sale of proprietary or competing data, rather than disclose only what they believe to be material economic interests. They should not be left to make that materiality judgment.

We also appreciate that the proposed confidentiality policy, consistent with the SEC proposal and with our recommendations, requires that all covered persons establish, maintain, and enforce procedures designed to safeguard the information. The Commission has asked whether Member Observers and others given access to confidential information should be

[25] See letters dated February 4, 2020, from Rich Steiner, RBC Capital Markets, related to two SRO NMS rule proposals to add confidentiality and conflicts of interest policies to existing NMS Plans, 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**;
[26] *Supra* Note 1. Exhibit B of the SROs' proposed Plan.
[27] *Id.* at page 21.

required to demonstrate the need for such access. We believe that they should be so required.[28]

As we noted in our letter related to the SROs' original proposed confidentiality policy,[29] we agree with the concept that not all confidential information shares the same level of, and so we continue to support the approach in the proposed Plan of having tailored procedures for Restricted, Highly Confidential, and Confidential Information.[30]

However, these procedures should allow all Voting Representatives, not just SROs, to have access to Restricted and Highly Confidential Information so that they are able to make informed decisions. There is no basis for withholding such information from Voting Representatives if they are subject to this policy. Insider trading and trade secrets laws would also provide protection for the sharing of information necessary to Operating Committee discussions. Participants could even be required to sign non-disclosure agreements. By amending this policy in this manner, the Commission would improve decision-making and obviate the need for Executive Sessions, fostering the goals of transparency and efficiency. A strong confidentiality policy, together with enforcement mechanisms, will improve the flow of information to decision-makers, including all Voting Representatives, which will, in turn, improve those decisions.

Finally, the Commission has asked, with respect to both the conflicts and confidentiality policies, whether they should remain in force should this Plan or the current CQ, CTA or UTP Plans are stayed or overturned.[31] We believe that these provisions should survive until replaced so that information remains protected and so that conflicts remain disclosed.

5. Operational Reforms Should Enhance the Quality of Market Data

Finally, the proposed Plan would authorize several operational changes to the Securities Information Processors, including one that could result in limiting information to market participants. It states that for various reasons such as when "unusual market conditions" prevent a Member from collecting and transmitting Transaction Report or Quotation Information, the Processors "shall take appropriate actions, including . . . purging the system of affected quotations."[32] As written, this provision could cause significant, actionable information to be lost to investors. This loss could create a consolidated feed that is diminished in terms of the content of the information it provides, making it effectively a subpar product relative to proprietary market data feeds, at both the National Best Bid and Offer and at the levels of depth included in the proposed Plan. The Commission should consider these potential

[28] *Id*.
[29] *Supra* Note 7 at **https://www.sec.gov/comments/sr-ctacq-2019-04/srctacq201904-6768288-208067.pdf.**
[30] *Supra* Note 1. Exhibit B of the SROs' proposed Plan.
[31] *Id.* at 21-22.
[32] *Id.* Section 5.5(c) of the SRO's proposed Plan.

negative outcomes and require a solution that allows greater transparency and safeguards against abuse.

Conclusion

RBCCM again appreciates the opportunity to comment on the proposed Plan. We also appreciate the areas, referenced above, where the proposed Plan would implement changes consistent with the SEC order and with our comment letter on the SEC proposal. However, as also referenced above, we believe that revisions to the proposed Plan are required in order to ensure that the SEC Order will be implemented in a timely manner, and will advance the SEC's objectives of greater transparency, reduced conflicts of interest on the part of the SROs, greater efficiencies, and improved quality of market data for investors and other market participants. 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,

Rich Steiner
Head of Client Advocacy and Market Innovation