



February 11, 2021

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Joint Industry Plan; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data (Release No. 34-90885; File No. 4-757)

Dear Ms. Countryman:

Charles Schwab & Company, Inc. and TD Ameritrade, Inc.¹ (collectively “Schwab”) appreciate this opportunity to comment on the proceedings to determine whether to approve or disapprove a proposal recently filed by the national securities exchanges and FINRA (collectively, the “SROs”) to establish under Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”) a new single national market system (“NMS”) plan governing the public dissemination of real-time consolidated equity market data for NMS stocks (the “CT Plan” or “Plan”).² The CT Plan responds to the Securities and Exchange Commission’s (“Commission”

¹ Charles Schwab & Co., Inc., (member SIPC) is the broker-dealer affiliate of The Charles Schwab Corporation (CSC), a leading provider of financial services, with 29.6 million active brokerage accounts, 2.1 million corporate retirement plan participants, 1.5 million banking accounts, and approximately \$6.69 trillion in client assets. Through its operating subsidiaries, the company provides a full range of wealth management, securities brokerage, banking, asset management, custody, and financial advisory services to individual investors and independent investment advisors. Its broker-dealer subsidiaries, Charles Schwab & Co., Inc., TD Ameritrade, Inc., and TD Ameritrade Clearing, Inc., and their affiliates offer a complete range of investment services and products including an extensive selection of mutual funds; financial planning and investment advice; retirement plan and equity compensation plan services; referrals to independent, fee-based investment advisors; and custodial, operational and trading support for independent, fee-based investment advisors through Schwab Advisor Services. Its primary banking subsidiary, Charles Schwab Bank, SSB (member FDIC and an Equal Housing Lender), provides banking and lending services and products. TD Ameritrade, Inc. and TD Ameritrade Clearing, Inc. are separate but affiliated companies and subsidiaries of TD Ameritrade Holding Corporation. TD Ameritrade Holding Corporation is a wholly-owned subsidiary of The Charles Schwab Corporation. TD Ameritrade is a trademark jointly owned by TD Ameritrade IP Company, Inc. and The Toronto-Dominion Bank.

² Exchange Act Release No. 90096 (Oct. 6, 2020), 85 Fed. Reg. 64565 (Oct. 13, 2020) (“Proposal”).

or “SEC”) order³ directing the SROs to act jointly in developing and filing with the Commission a proposed new single national market system to replace the three existing national market system plans that govern the public dissemination of real-time, consolidated equity market data for NMS stocks (the “Governance Order” or “Order”). As we wrote in our comment letters on the Order⁴ and the Plan,⁵ Schwab has long sought changes to reduce the ability of the conflicted exchanges to advance their commercial interests at the expense of the investing public. Schwab broadly supports the SEC Governance Order and the CT Plan, as they will result in significant improvements over the status quo in the governance of the public dissemination of equity market data. Schwab, therefore, supports the Commission’s approval of the Plan.

Summary of Previous Support for Order and Plan

As we wrote in our February 28, 2020, letter in support of the Commission’s proposed Order, Schwab has long advocated for structural reform of the market data system, beginning with a petition for rulemaking in 1999,⁶ a response to the Commission concept release on market data,⁷ representation on the Seligman Advisory Committee on Market Information⁸ and multiple submissions of testimony before the Congress and the SEC. Once again, we very much appreciate the Commission’s work in moving this Order forward, as it is long overdue reform.

Our support for the Order in our February 2020 letter centered on two key points. First, its proposal to allow non-SRO representation on NMS Plan operating committees, which we argued “will enhance transparency and fairness of SIP operations and reduce the ability of conflicted exchanges to advance their commercial interests at the expense of the investing public”. Second, Schwab also voiced its support for the Commission’s proposal to merge the three NMS Plans and their related SIPs into one Plan with an *independent* administrator and processor. The differences among the current plans are substantial and create needless compliance complexity for SIP data users, while moving to an independent administrator and processor will mitigate the conflicts of controlling the SIP data products while selling proprietary products.

In Schwab’s November 2020 letter, we reiterated our support for the Order and offered broad support for the CT Plan, while offering several suggestions to improve it, all in the continued pursuit of our long-held principles of “eliminating monopolistic behavior, expanding governance participation, increasing transparency of proceedings, and ultimately assuring equal access to market data and reasonable fees for retail investors and those who serve them”⁹.

³ Exchange Act Release No. 88827 (May 6, 2020), 85 Fed. Reg. 28702 (May 13, 2020) (“Governance Order”)

⁴ <https://www.sec.gov/comments/4-757/4757-6891194-210879.pdf>

⁵ <https://www.sec.gov/comments/4-757/4757-8011768-225417.pdf>

⁶ See Petition for Rulemaking from the Charles Schwab Corporation, June 1999.

⁷ See letter from David S. Pottruck, President and Co-Chief Executive Officer, The Charles Schwab Corporation, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, March 14, 2000.

⁸ See <https://www.sec.gov/divisions/marketreg/marketinfo/finalreport.htm>.

⁹ Schwab November 12, 2020, comment letter, Page 2

Responses to the points for which the Commission is providing notice of the grounds for disapproval under consideration in this Order

Below, please find our responses to the particular points the Commission will be analyzing as to whether or not to approve the proposed CT Plan:

- Whether the proposed CT Plan is consistent with the Governance Order

Schwab believes the CT Plan is consistent with the Governance Order. There are certain aspects of the Plan whose inclusion are especially important. They are referenced below:

Operating Committee Structure – Key points include: Inclusion of Non-SRO Members representing the six categories required by the Order; Initial Non-SRO Members to be selected by the current advisory committee members (excluding those selected by a Participant to be its representative), and subsequent Non-SRO Members to be selected solely by the then-serving Non-SRO Members; and the aggregate number of votes of Non-SRO Members is to be one half of the number of aggregate SRO Members’ votes.

New Consolidated Plan Administrator – Importantly, it is to be independent, not owned or controlled by a corporate entity that offers for sale its own proprietary market data products for NMS stocks.

Conflicts of Interest and Confidentiality Policies: The Plan includes provisions designed to protect confidential and proprietary information from misuse, and address conflicts of interest, as well as provisions for adopting these policies, as previously approved by the Commission.

- Whether, consistent with Rule 608 of Regulation NMS, the proposed CT Plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act¹⁰;
- Whether the proposed CT Plan is consistent with Congress’s finding, in Section 11A(1)(C)(iii) of the Act, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure “the availability of brokers, dealers, and investors or information with respect to quotations for and transactions in securities”¹¹;
- Whether, consistent with the purposes of Section 11A(c)(1)(B) of the Act,¹² the proposed CT Plan is appropriately structured, and whether its provisions are appropriately drafted, to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS securities, and the fairness and usefulness of the form and content of such information

¹⁰ See 17 CFR 242.608(b)(2).

¹¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹² See 15 U.S.C. 78k-1(c)(1)(B).

The proposed CT Plan is certainly appropriate in addressing issues relating to the public interest, protection of investors, maintenance of fair and orderly markets, and the other topics contained in the points being considered by the Commission above. The current governance structure of the SIPs contains inherent conflicts of interest, and unnecessary complexity in the administration of its policies. The proposed CT Plan will effect changes to the Operating Committee necessary to resolve the conflict of interest that impedes the public interest from being served. Specifically, the exchanges are currently conflicted from significantly improving the SIP data because it may cannibalize the sale of their proprietary data streams. Additionally, by merging the current three plans into one, current divergent requirements and policies of the three plans will be ameliorated, thus reducing the administrative burden and unnecessary complexity of the system.

In particular, we believe the Plan is consistent with Congress’s finding in Section 11A of the Exchange Act that it be in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. As the Securities Industry and Financial Markets Association (“SIFMA”) wrote in its February 28, 2020, letter¹³ in support of the Order, “Section 11A of the Act authorizes the Commission, by rule or order, to authorize or require the SROs to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a facility of the national market system.¹⁴ This gives the SEC broad authority to instruct the SROs to revise the current SIP Plans and consolidate them into a single plan. SIFMA also agrees with the SEC's assertion the proposed reallocation of voting rights among the SROs – combined with the provision of formal voting power to non-SROs, the provision of a two-thirds majority of votes allocated to the SROs, and the provision of an augmented majority vote rather than unanimous vote for amendments to the New Consolidated Data Plan – would further the objectives of Section 11A of the Act. Together, these provisions would promote the prompt, accurate, reliable, and fair dissemination of core data by providing for meaningful input from a broad range of stakeholders while also ensuring that the SROs retain 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. SIFMA agrees that broader representation on the New Consolidated Data Plan operating committee would help to ensure that decisions relating to New Consolidated Data Plan operations support the prompt, accurate, reliable, and fair dissemination of core data. As such, SIFMA believes that the SEC has the broad authority to instruct the SROs to take action to consolidate the existing Plans into a single new Plan and to incorporate its non-SRO representation and voting structure.”¹⁵

In our own February 28, 2020, letter we covered similar ground, stating “By proposing a two-to-one voting majority for SROs, the Commission believes it permits the SROs to honor the obligation of Section 11A of the Exchange Act¹⁶ to act jointly on behalf of the plan. The NYSE argues that the SEC lacks authority under Section 11A to force SROs to act ‘jointly’ with non-SROs in the operation of NMS Plans.”¹⁷ The NYSE’s argument, however, is wrong. Nothing in

¹³ <https://www.sec.gov/comments/4-757/4757-6891502-210885.pdf>

¹⁴ See 15 U.S.C. 78k-1(a)(3)(B).

¹⁵ SIFMA February 28, 2020, comment letter, Page 5

¹⁶ 15 U.S.C. 78k-1.

¹⁷ See note 7 above at 14.

the Exchange Act or its legislative history prevents broader participation in the governance of a Joint Plan intended to promote the public interest and all market participants.

We go on to state in our February 2020, letter, “Congress granted the SEC plenary authority in Section 11A(c)(1) to prescribe rules and regulations as necessary or appropriate in the public interest to ‘assure the prompt, accurate, reliable and fair collection, processing, distribution and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.’”¹⁸ We continue to believe, as we stated in our previous letter, that following years of soliciting public comment, the SEC rightly determined that reform is necessary or appropriate in the public interest to improve the fairness and reliability of the operating committees through non-SRO participation.

- Whether modifications to the CT Plan, or conditions to its approval, would be required to make the proposed plan necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise furtherance of the purposes of the Act¹⁹

While Schwab is generally very supportive of the CT Plan, as we highlighted in our November 12, 2020, comment letter, there are some changes we feel that are important for the Commission to consider that we feel would make a material improvement to the Plan. The most important of our suggestions are highlighted below:

Timeline for Implementation

While the Plan does list a number of milestones to be completed in order for the Plan to become effective, there is no prescribed timeframe within which they must be completed. This lack of a hard deadline introduces the risk of the milestones being delayed for an unknown amount of time, and thereby delaying the effective date of the Plan. Schwab recommends the Commission modify the Plan to require the completion of the milestones within one year of the Plan’s approval, with the possibility of an extension granted on reasonable grounds.

Subcommittee Chair Eligibility

Non-SRO voting members should be eligible to serve as chair of any Operating Committee Subcommittee. The proposed CT Plan limits subcommittee chair positions to only SRO Voting Representatives or Member Observers.

Executive Sessions Need Tighter Controls

The proposed Plan looks to largely maintain current policy as to what can be discussed in executive session. “Highly Confidential Information,” along with any other issues which by “their nature require(s) discussion in an executive session” is too broad. The Plan understandably

¹⁸ 15 U.S.C. 78k-1(c)(1), Schwab February 28, 2020, comment letter, Pages 4-5

¹⁹ See 17 CFR 242.608(b)(2).

needs to be flexible with the passage of time, in that new items may come up that are appropriate for executive session and which are not capable of being foreseen and enumerated in a list. The language in the proposed Plan, however, is overbroad and should be tightened to ensure executive sessions are not abused as they have been in the past to shut out non-SRO representatives from important discussion, decisions and information.

- Whether the proposed CT Plan effectively addresses the inherent conflict of interest between the Participants' collective responsibilities in overseeing the existing equity data plans and their individual interests in maximizing the viability of proprietary data products that they sell to market participants, as well as the concentration of voting power in the existing equity data plans among a few large exchange groups

The CT Plan addresses the inherent conflicts mentioned above in multiple ways, as required by the Order. First, the establishment of an independent single plan administrator will minimize any real or perceived conflicts that exist today with the non-independent administrators. "Independent," however, must mean independent. The independent administrator should have no formal or informal role with any of the exchanges or their affiliates or subsidiaries, and no immediately past, present, or planned future business relationship with any of the exchanges or their affiliates or subsidiaries.

Furthermore, the establishment of a new Operating Committee containing both SRO and Non-SRO Voting Members, with Non-SRO members having one half as many aggregate votes as the SRO Members, will break the current SRO voting monopoly. In addition, the requirement that each SRO Voting Representative shall be authorized to cast one vote (with a maximum of two votes if certain market share levels are reached) on behalf of the SRO Group instead of the current ability to cast one vote on behalf of each individual participant exchange will help to allocate the SRO votes more equitably and appropriately.

- Whether the provisions of the Proposed CT Plan that were not mandated by the Governance Order are consistent with the Act and the rules and regulations issued thereunder that are applicable to NMS plans²⁰

Based upon our reading, there does not appear to be anything included in the CT Plan that was not mandated by the Governance Order that is inconsistent with the Act.

²⁰ See Rule 700(b)(3)(ii) of the Commission's Rules of Practice. 17 CFR 200.700(b)(3)(ii).

Conclusion

Schwab has long supported efforts to improve the governance and transparency of the rules for disseminating equity market data and to address conflicts inherent in the current system. We applaud the Commission for its efforts in this area and for issuing the Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data. We urge its quick approval. Our customers – main street investors throughout this country – will benefit immensely from these long-sought and overdue reforms.

We appreciate the opportunity to comment and thank the Commission for its consideration of the views we express above. If you have any questions regarding this letter, please contact Jeffrey T. Brown at [REDACTED].

Sincerely,



Jeffrey T. Brown
Senior Vice President
Legislative and Regulatory Affairs
Charles Schwab & Co., Inc.

cc: The Honorable Allison Herren Lee
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Caroline A. Crenshaw

Christian Sabella, Acting Director, Division of Trading and Markets