



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

May 26, 2020

Re: Market Data Infrastructure (File No. S7-03-20)

Dear Ms. Countryman:

ACTIV Financial Systems, Inc.¹, appreciates the opportunity to provide comments to the Securities and Exchange Commission (the "Commission") on the proposal to update the National Market System ("NMS") with respect to Market Data Infrastructure (the "Proposal"²).

We observe that up to this date, we are the only global, real-time market data vendor that has commented on this critically important and lengthy proposal. We believe the paucity of comment does not reflect disinterest in the proposal from the vendor community, rather, it is indicative of the relatively small amount of time the Commission has allowed for examination and critical response, which has unfortunately fallen in the middle of the national COVID-19 crisis. We urge the Commission to extend the comment period to reflect the fact that firms' attention has been diverted during this unprecedented time.

Because of the lack of time required to submit, we will be limiting our comments to a small number of specific areas that we feel can be helpful to the Commission as it develops a Final Rule. We hope to amend and extend our comments in the future if given the time.

Competing Consolidator Proposal

In our view, introducing competition (along with a revamped plan governance structure) to the Securities Information Processor ("SIP") function could provide investors with a lower cost, higher reliability framework for determining accurate pricing of NMS securities. In nearly all past instances of the Commission allowing true competition in market structure, the result has generally been positive for investors. We commend the Commission for adopting this approach in the investor information access and price discovery process.

We believe ACTIV is uniquely positioned to establish a Competing Consolidator in the context of the Proposal, our technology is used by many of leading market participants to calculate enhanced NBBO and other low latency calculations today. We have not yet formed an opinion on whether doing so

¹ ACTIV is a global provider of real-time, multi-asset financial market data and solutions. ACTIV offers neutral, managed services for buy and sell-side firms and technology providers seeking a complete market data solution that encompasses both global content management and data delivery across the enterprise. With coverage spanning more than 150 equity and derivatives exchanges around the world, ACTIV offers one of the only truly end-to-end, independent market data platforms in the industry. Founded in 2002 by market data specialists, the firm is privately owned and has offices in Chicago, New York, Tokyo, Singapore, and London. For more information, see <http://www.activfinancial.com>

² 85 Fed. Reg. 16726 (Mar. 24, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-03-24/pdf/2020-03760.pdf>

would be attractive to our customers, nor whether it would be economically viable for our investors. To put it more succinctly, just because one can enter a business does not mean it's worth entering. Alternatively, it is likely ACTIV will be asked to provide our technology and infrastructure services on a third-party basis to firms who wish to become Competing Consolidators and we recognize that the burdens they will encounter could largely fall upon us³.

We are concerned with two aspects of the Proposal: whether Competing Consolidators will be able to compete with the existing SRO SIP operators who are likely to become Competing Consolidators themselves, and the costs of doing so. We see these as linked concerns.

Reg SCI Compliance

We believe our existing infrastructure satisfies all requirements of Regulation SCI, including those mentioned in Rule 1001(a). We have already built our platform around standards "that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data." We monitor our bandwidth usage and system capacity on an ongoing basis and make adjustments as needed to ensure a favorable customer experience. Our system infrastructure includes many redundant instances of our hardware and software running in geographically dispersed data centers and note that we have not experienced a system-wide outage in 16 years of operation, unlike the present SIP operators. In short, if our systems were to ever lack Reg SCI-like resilience our customers would surely leave us for another vendor, and so maintaining our reliability is always among our highest priorities.

However, demonstrating compliance with Reg SCI would be overly burdensome and costly without providing additional benefit for our customers. We note the Proposal's estimate of an initial expense of \$68,710 and another \$21,810 annual cost of compliance⁴, sums that will not improve our systems reliability, but rather will be spent on demonstrating the obvious.

Therefore, we support Alternative E.4., "Do Not Extend Regulation SCI to Include Competing Consolidators⁵" where the Competing Consolidator operates an existing business of providing market data to numerous customers.

Additional Cost Burden

As the Commission has pointed out, the legal costs associated with becoming a regulated entity for purposes of Form CC preparation are steep and would present a barrier for firms to enter this space. The Proposal⁶ outlines about \$100,000 in legal costs just to initially register as a Competing Consolidator, and that doesn't include legal costs that would be incurred in the course of regular operation.

We believe that any new entrant should be primarily judged by the quality of their engineering and operations, rather than the quantity of their legal resources. In ACTIV's case, we are not a broker/dealer, nor an exchange. We do not handle investor orders, provide research or banking services. Therefore, as a pure data aggregator and real-time technology provider we are concerned the plan anticipates a new

³ See, for example, the discussion beginning on Page 473 of the Proposal.

⁴ The Proposal, Pages 540 and 541

⁵ The Proposal, beginning on Page 538

⁶ The Proposal, Footnote 664 on Page 291.

SIP entrant would necessarily become a regulated entity. To bear significant additional overhead costs of the associated legal requirements would be overly burdensome and have little impact on the utility of our service to the marketplace.

This regulatory requirement and attendant costs present a serious barrier to developing credible competition. We understand that existing SIP operators and SROs already employ significant legal resources for other aspects of their business, for example, their matching engines and other exchange systems. Thus, they can spread the costs of being a regulated entity across many of their business lines, while any new entrant (other than an SRO) cannot.

We therefore ask the Commission to reduce the legal cost burden by adopting a formal “regulated entity lite” regime whereby firms that primarily need to be registered for purposes of being a Competing Consolidator do not incur substantial additional costs related to legal and paperwork. By “substantial” we think 10 hours of legal work should be a reasonable limit.

Data Pricing Transparency

We are concerned about the ability for SROs, some of whom will presumably operate Competing Consolidators, to set the fees that non-SRO Competing Consolidators would pay for data. We note that even under the recently ordered Consolidated Data Plan (CDP) governance, non-SRO representatives will only have 1/3 of the voting power. If SROs can arbitrarily set fees charged to their competitors and jam them through the CDP, no new firm will be able to compete effectively. We doubt many firms contemplating becoming Competing Consolidators will carry out those plans absent assurances that the prices charged for the SRO feeds are fair, reasonable, and do not unduly benefit any one participant. To address this problem, transparency of data production costs of enhanced services is critical, as demonstrated in the commentary around shared tape revenues.

ACTIV appreciates the opportunity to provide comments on the Proposal and would be happy to assist the Commission in any way possible as you move forward on drafting the Final Rule. Please feel free to contact us at any time regarding these comments.

Very truly yours,

/s/ Stephen J. McNeany
Chief Executive Officer, ACTIV Financial Systems, Inc.

/s/ Frank W. Piasecki
President, ACTIV Financial Systems, Inc.