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Markets

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December 10, 2019

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

**Re: Proposal to Rescind the Effective-Upon-Filing Procedure for National Market System (“NMS”) Plan Fee Amendments, File No. S7-15-19**

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.<sup>1</sup> 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 further advances those efforts.<sup>2</sup> NMS plans and self-regulatory organizations (SROs) play a critical role in compiling

<sup>1</sup> 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.

<sup>2</sup> See, e.g., letter dated 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 SEC, regarding Proposed Rule

and disseminating important market information via registered securities information processors (SIPs) and the consolidated audit trail (CAT). For that reason, any changes in the fees assessed to access this vital information should be considered according to the same standard procedure used by the Commission with regard to other NMS plan amendments. This standard procedure includes public notice of a plan amendment, an opportunity for public comment, and Commission approval of an amendment before the amendment can take effect. This standard procedure stands in contrast with the current “Fee Exception” procedure, whereby fee changes can take effect upon filing and prior to any notice, opportunity to comment, or Commission review. The standard procedure is particularly important given the lack of any competition in this area that would impose price discipline on NMS plan fees. By replacing the Fee Exception with the standard procedure, the Commission will, in our view, better ensure that fee-related NMS plan changes are undertaken in a manner that helps to advance the SEC’s three-part mission of protecting investors; promoting fair, orderly, and efficient markets; and facilitating capital formation.<sup>3</sup>

There are several additional reasons why we believe that the Proposal is appropriate:

First, the rationale for the Fee Exception has been eroded by the significant changes in exchange SROs since the Fee Exception was adopted in 1981. As the Proposal points out, at that time, exchange SROs were mutual organizations owned primarily by SRO members that were registered broker-dealers. By contrast, today exchange SROs are members of publicly traded exchange groups, owned by shareholders rather than by SRO members.<sup>4</sup> Thus, the interests of exchange SROs and their members are no longer as closely aligned as they were when the Fee Exception was established. It therefore becomes more important that SRO members and other stakeholders be permitted to comment on a Fee Change proposal before it becomes effective and can be imposed on them and other market participants.

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>.

<sup>3</sup> See <https://www.investor.gov/introduction-investing/basics/role-sec>.

<sup>4</sup> See “Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments”, <https://www.sec.gov/rules/proposed/2019/34-87193.pdf> (hereinafter “Proposal”) at 21-22.

Second, fees imposed by NMS plans are economically significant. According to the Proposal, “the total revenues generated by fees for core data totaled more than \$500 million in 2017.”<sup>5</sup> Other information presented to the Commission demonstrates that investors and other users have incurred substantial fee increases over a limited period of time with respect to data from NMS plans; for example, fees related to Consolidated Tape Association plans increased approximately 210% between 2010 and 2018.<sup>6</sup> According to the Proposal, during this same period, there were 10 related fee filings and only one was abrogated (and four were withdrawn).<sup>7</sup> Given this record of substantial aggregate amounts of fees, substantial increases in fees, and relatively little disapproval of fee increases, the transparency and rigorous oversight provided by the standard procedure relative to the Fee Exception will help ensure that fee changes satisfy Exchange Act requirements that, among other things, fees be (i) reasonable, (ii) equitably allocated, (iii) not unfairly discriminatory, and (iv) not an undue burden on competition.<sup>8</sup>

Third, the standard procedure will incentivize NMS plans to be more judicious in filing proposed fee changes. If filers know that their fee change application – instead of becoming immediately effective – will be subject to public notice, public comment, and an affirmative determination by the Commission about whether it satisfies the above-referenced requirements of the Exchange Act, they will be required to make the case for a fee change before rather than after the change takes effect. In our view, the current Fee Exception process, whereby fee increases become effective upon filing, discourages public comment by requiring commenters to effectively carry a higher burden: instead of commenting on whether a fee change should be permitted, they are effectively required to comment on whether a fee change that has already taken effect should be abrogated. That is, because Commission inaction results in approval under the current regime, and because increases take effect immediately, there may be a perception that the Fee Exception process is biased in favor of new and increased fees.

Fourth, evaluating fee change applications by the standard procedure, rather than by the Fee Exception procedure, will help ensure that the financial and operational costs of fee changes are imposed only after notice, comment, and an affirmative determination by the Commission that the fee change conforms to the requirements of the Exchange Act. This approach will help mitigate the risk of unwarranted fee changes, avoid complications with refunds should an application be withdrawn or subsequently be denied, and place the cost of delay in imposing a

<sup>5</sup> Proposal at 20.

<sup>6</sup> See Securities Industry Financial Markets Association letter to SEC dated October 24, 2018, Appendix at 13-14. <https://www.sifma.org/wp-content/uploads/2018/10/File-No.-4-729-SIFMA-Comments-on-Roundtable-on-Market-Data-and-Market-Access-October-24-2018-002.pdf>.

<sup>7</sup> Proposal at 32. From 2010 to 2018, there have been a total of 38 Proposed Fee Changes filed under Rule 608(b)(3)(i) by the NMS plans that either charge fees or could charge fees – an average of 4.2 per year. Of that number, 3 filings have been abrogated, and 7 have been withdrawn.

<sup>8</sup> See SEC Staff Guidance on SRO Rule Filings Relating to Fees dated May 21, 2019, <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

new fee on the filer, which is the party best able to control those costs -- both before and during the pendency of the application -- through advance planning and/or delayed implementation of a fee change.

Fifth, rescinding the Fee Exception would not materially add to the administrative burden of filers. The information that they would have to provide under the standard procedure would be no different than the information they are currently required to provide under the Fee Exception process. As such, they and the plans they administer would not be disadvantaged relative to the current process.<sup>9</sup>

Sixth, the Proposal would facilitate more fair, orderly, and efficient markets by giving investors and other market participants time to prepare for a new or altered NMS plan fee. In this way, investors and others would know significantly in advance that such a fee may be imposed, and they could make an orderly transition.<sup>10</sup> This aspect of the Proposal is particularly important given the complexity and nuances of today's automated trading systems and markets. The broad range of exchange fees and rebates have a material impact on order routing and trade performance for both liquidity-taking and liquidity-providing orders. As more exchanges enter the market, this complexity is compounded. Under the current Fee Exception regime, important order routing decision-making is compressed. Market participants would benefit from an appropriate lead time to think through and plan for exchange fee and rebate price changes that could be forthcoming. By contrast, under the current Fee Exception process, new or altered fees can be imposed with virtually no notice, causing disruption and attendant costs. Further, in the event a new or altered fee is abrogated, those subject to that fee would potentially have to navigate the further disruption of unwinding it.

Seventh, and lastly, the Proposal restores an element of fundamental fairness to the process of establishing or altering NMS plan fees. To our knowledge, there is little relevant precedent in law or regulation to impose a significant economic cost on private entities without prior notice, opportunity to comment, and agency approval. This is especially the case where, as here, there is no compelling public policy -- such as public health or safety -- justifying such an approach. Here, the policy is, essentially, to accommodate the convenience of the filers. By rescinding the Fee Exception and considering fee-related applications by the same standard procedure applied to other NMS plan applications, the Proposal will help ensure that all interested views regarding a fee-related application are considered prior to disposing of the application.

The Commission has asked whether, as an alternative to rescinding the Fee Exception and reinstating the standard procedure, it should consider permitting NMS plan fee applications to take effect 60 days after filing if the Commission does not act. In our view, this approach -- while preferable to the current Fee Exception -- essentially establishes a Fee Exception by another name. As is the case under the current Fee Exception, the alternative, 60-day

<sup>9</sup> Proposal at 17.

<sup>10</sup> Proposal at 38.

process, as described by the Commission, would still allow a fee change to take effect without an affirmative determination by the Commission during the 60-day abrogation period that the fee change comports with the requirements of the Exchange Act. More fundamentally, the Commission has taken notice of the fact that NMS plan fees are not economically *de minimis* or otherwise trivial; to the contrary, the total revenues generated by fees for core data totaled more than \$500 million in just 2017. Given that fact alone, we are hard-pressed to understand why fee-related applications should be subject to a lesser standard of review than applications that pertain to other matters and that may be less significant economically to investors and other market participants.

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,

A handwritten signature in black ink, appearing to read "R. Steiner". The signature is written in a cursive, slightly slanted style.

Rich Steiner  
Head of Client Advocacy and Market Innovation