

February 19, 2021

Submitted electronically

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

Re: Notice of 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:

MayStreet welcomes the opportunity to provide feedback on the Consolidated Equity Market Data Plan (“CT Plan” or “Plan”). The CT Plan produced in response to the Commission’s governance order has the potential to bring transparency, consistency and clarity to the collection, processing, and dissemination of U.S. equity quotes and trades. MayStreet is a market data technology company that collects, stores, and transforms global exchange market data for use by industry professionals. Over the years, we have worked with the stakeholders involved in the Equity SIP Plans including exchanges, financial institutions and vendors. We seek to offer productive and practical recommendations to improve Plan governance.

Specifically, we believe the CT Plan could be improved in the following ways:

- Stagger implementation to include non-SROs in key Plan decisions
- Promote constructive involvement of non-SRO representatives
- Enhance transparency to the public
- Reference Exchange Act purpose of the Plan and Operating Committee
- Subject Member Observers to Confidentiality and Conflict of Interest Policies
- Require recusals as part of Processor and Administrator Selection Procedures

Each of these recommendations is discussed in more detail below.

Stagger implementation to include non-SROs in key Plan decisions

As written, the CT Plan separates the effective date of the Plan from the operative date. It is our understanding that the CT Plan only becomes operational after a series of decisions have been made regarding fees, policies, Administrator selection, Processor agreements and the selection of Non-SRO Voting Representatives. We believe that it is important to include Non-SRO Voting

Representatives in the decisions around these major operational issues and recommend that the CT Plan makes the Plan operational after the following activities have been performed:

- (1) The Plan is approved by the Commission pursuant to Rule 608 of Regulation NMS;
- (2) the Company has been formed by filing a certificate of formation with the Delaware Secretary of State; and
- (3) the SRO Voting Representatives and Non-SRO Voting Representatives of the Operating Committee have been determined;

This approach will allow for deliberation by the newly formed Operating Committee to perform the remaining operational items as described in Paragraph (c)(ii)-(c)(v) of the Recitals.

Additionally, setting timeframes for the completion of these activities will give certainty to the marketplace and provide for timely deliberations by the Operating Committee. We recommend forming the new Operating Committee with SRO and Non-SRO Voting Representatives within two months of the Plan approval and Company formation. The remaining activities should follow the formation of the Operating Committee as follows:

- Policies and procedures approved within 4 months
- Agreement with current Processors within 4 months
- Administrator selected within 10 months
- Fees established within 12 months

While these time frames reflect the timing of initial decisions, we believe timeframes should also be set for the implementation of these decisions by the Operating Committee.

Promote constructive involvement of non-SRO representatives

We believe that all of the stakeholders impacted by the CT Plan can contribute meaningfully and productively to the Plan's implementation, operation and evolution. To that end, we appreciate the CT Plan's inclusion of Non-SRO Voting Representatives on the Operating Committee. We are concerned that the inclusion of non-SRO voices is perceived as counterproductive by some. It appears there is a concern that Non-SRO Voting Representatives will be adversarial and at odds with their SRO counterparts.

To address these concerns, we recommend that Article IV, Section 4.7 allow Non-SRO Voting Representatives to be Subcommittee co-chairs and allow Non-SRO Voting Representatives to join all subcommittees. Ideally, the Operating Committee is a voting body that considers recommendations of its subcommittees. If Non-SRO Voting Representatives participate in the deliberations and development of subcommittee recommendations, the likelihood of consensus at the time of voting is higher. We also believe the quality of recommendations will be better. Further modifications to Article IV, Section 4.7 may also be needed to require that all Plan-related discussions occur within the Operating Committee or subcommittees such that Non-SRO Voting Representatives participate in all Plan matters except for Executive Sessions and matters subject to attorney-client privilege.

With respect to Executive Sessions, we recommend removing the language from Section 4.4(g)(ii) which states that the “list provided in subparagraph (i) is not dispositive of all matters that may by their nature require discussion in an Executive Session.” We believe the SROs and Commission staff have extensive experience with consolidated market data plans including the invocation of Executive Sessions. We recommend taking a data-driven approach to determining the all-inclusive list of Executive Session topics based on past experience and limit Executive Sessions to only those topics.

As discussed in more detail below, we recognize the value of having more than one SRO representative involved in Plan deliberations. The CT Plan covers a wide range of topics including billing, technology, policy, compliance, and operations. Allowing an SRO Voting Representative to draw on subject matter experts from within their SRO should increase the quality of decision making. The same principle applies to Non-SRO Voting Representatives. We recommend adding a new definition to Article I, Section 1.1 for Non-SRO Observers. Non-SRO Observers should be subject matter experts from Non-SRO Voting Representative firms that would contribute to a subcommittee or Operating Committee discussion on a specific matter. We would expect the Confidentiality and Conflict of Interest Policies to apply to Non-SRO Observers with an added question on the disclosure to elicit the subject matter expertise they are sharing with the Operating Committee or subcommittees.

We appreciate the CT Plan’s staggering of the terms of Non-SRO Voting Representatives to allow for continuity but would suggest initial terms of 2 years or 3 years followed by two year terms to allow for a greater overlap between new and seasoned Non-SRO Voting Representatives. There is broad interest in consolidated market data within the industry so we do not believe the term limits should be an issue in terms of finding new candidates to fill these positions.

Enhance transparency to the public

Beyond non-SRO involvement in the Operating Committee, the CT Plan should be modified to bring further transparency to the public as a whole. To that end, we recommend modifying the definition of public information in Article I, Section 1.1(kkk) to specifically include Plan policies, Plan interpretations, subcommittee minutes, Processor Selection Procedures and Administrator Selection Procedures.

Additionally with respect to Processor Selection and Administrator Selection, we recommend these processes be open and transparent including posting of RFPs, bidder lists and periodic status on the CT Plan website. We do not understand why any of this information needs to be hidden from market participants who are directly impacted by the outcome of these important decisions. We appreciate that Processor and Administrator Confidentiality Policies will be publicly available and would expect to see monitoring and testing of controls as part of the policies including a mechanism for industry participants to raise concerns.

We do appreciate the CT Plan’s willingness to allow Non-SRO Voting Representatives to share confidential information subject to the terms of the Confidentiality Policy as described in Exhibit B (b)(iv)(C).

Reference Exchange Act purpose of the Plan and Operating Committee

We note that sections of the Plan explicitly articulate where the SROs do not have an obligation to Plan interests including Article XII, Section 12.1(b) and Article IV, Section 4.6(b). While Article XIII, Section 13.4 states that those involved in the CT Plan including SROs are “subject to any applicable provisions of the Exchange Act and any rules and regulations promulgated thereunder” there are no specific references to what those provisions entail. To make it clear what the purpose of the Plan is and to frame the obligations of the Operating Committee, we recommend including in Article II, Section 2.4 that the purpose of the Company is to support 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.”¹ We also recommend updating Article XII, Section 12.1(b) and Article IV, Section 4.6(b) to reference Article XIII, Section 13.4 to make it clear that those provisions are subject to the SRO’s obligations under applicable governing laws.

We believe these references will also be helpful for the new Non-SRO Voting Representatives to help frame their role on the Operating Committee which is in support of the CT Plan’s purpose.

Subject Member Observers to Confidentiality and Conflict of Interest Policies

As indicated earlier, we support the SROs bringing subject matter experts to bear on CT Plan decision-making and see value in Member Observer participation. Given the significant role these individuals may have in Plan deliberations and subcommittee recommendation formation, Member Observers should be expressly included in Article I, Section 1.1(n), Section 4.10, Exhibit B and Exhibit C. Like the Non-SRO Observers discussed earlier, the disclosure should include an additional question regarding the subject matter expertise being shared with the Operating Committee or subcommittees.

Require Recusals as part of Processor and Administrator Selection Procedures

In addition to making the Processor and Administrator Selection Procedures transparent as described above, we recommend going beyond simply identifying conflicts as required by the Confidentiality Disclosures to also effectively managing those conflicts. Specifically, we recommend that the CT Plan include a requirement for Selection Subcommittees for both Processor Selection (Article V, Section 5.3) and Administrator Selection (Article VI, Section 6.3). These subcommittees should exclude any person affiliated with a bidder and be responsible for establishing and implementing the Selection Procedures such that the subcommittee provides a recommendation to the Operating Committee as the culmination of their deliberations. As discussed above, Non-Voting Representatives should be eligible to co-chair these subcommittees and comment on the selection of a new Processor or Administrator.

¹ 15 U.S.C. 78k-1(c)(1)(B)



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In conclusion, we thank the Commission for the opportunity to comment on the CT Plan and look forward to progress in consolidated market data plan governance.

Sincerely,

Patrick Flannery
Chief Executive Officer and Co-Founder, MayStreet