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135 W. 26th Street, 2nd Floor
New York, NY 10001
+1 212 600 1639
www.maystreet.com

December 17, 2021

Submitted electronically

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

Re: File Numbers SR-CTA/CQ-2021-03, SR-CTA/CQ-2021-02, and S7-24-89

Dear Ms. Countryman:

MayStreet welcomes the opportunity to comment on the Plan amendments that are required by the Market Data Infrastructure Rule ("MDI Rule").[1] Since the adoption of the MDI Rule, MayStreet has been interested in seeing the benefits of competition realized within the market for consolidated market data. To meet the requirements of the MDI Rule, competing consolidators must be treated as replacements to the current exclusive processors, and the Plan amendments must reflect reasonable fees for the content underlying consolidated market data. Because the Plan amendments do not meet the MDI Rule requirements, and are wholly inadequate to further the Congressional mandate to make consolidated market data widely available, we recommend that the Commission disapprove all of the Plan amendments.

To put it simply, the Plan amendments fail to reflect the following realites:

- The MDI Rule directed the SROs to set fees for the content underlying consolidated market data sold to competing consolidators and self-aggregators. But the Plan amendments conflate the fees that competing consolidators would pay for underlying content and the fees that competing consolidators would charge for consolidated market data.

[1] See Release No. 34-90610, 86 FR 18596 (April 9, 2021) (File No. S7-03-20) ("MDI Rule").

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- Competing consolidators are securities information processors (SIPs) and do not perform the same function as data vendors.
- The fees that competing consolidators pay for underlying content, which are but one component of the cost of consolidated market data, should (1) reflect the SRO costs of providing the underlying content and (2) promote the ability of competing consolidators to make consolidated market data widely available.

The remaining sections of this letter describe each of these points in greater detail.

Plan Amendments Fail to Acknowledge That the MDI Rule Changes What The Plans Sell And Who They Sell It To

The MDI Rule explains that "only competing consolidators and self-aggregators would be able to directly receive the NMS information that is necessary to generate consolidated market data from the SROs at the prices established by the effective national market system plan(s)."[2] However, the Plan amendments conflate the prices that competing consolidators and self-aggregators pay the SROs for the underlying NMS information on the one hand, and the prices that competing consolidators would charge for the consolidated data that they generate. The amendments fail to make clear that the proposed prices are for the content underlying consolidated market data as opposed to consolidated market data itself.

The MDI rule is clear, "While the effective national market system plan(s) will no longer operate the exclusive SIPs, the Operating Committee of the effective national market system plan(s) for NMS stocks will continue to develop and file with the Commission the fees associated with the NMS information that is required to be collected, consolidated, and disseminated, **i.e., the data content underlying consolidated market data**. Specifically, the Operating Committee will need to propose the new fees that will be charged for the quotation and transaction information that is necessary to generate consolidated market

[2] See MDI Rule at 18664.

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data that is required to be made available by the SROs under Rule 603(b) to competing consolidators and self-aggregators."[3]

With the MDI Rule, only competing consolidators would sell consolidated market data to vendors and subscribers. As a result, we do not understand the relevance of the sections of the Plans that discuss vendors' and subscribers' contractual relationships with the Plans. They should be removed or significantly altered to reflect that the Plans no longer have agreements with vendors and end users and instead have agreements with the competing consolidators and self-aggregators related specifically to the cost of content underlying core market data. As the MDI Rule explained, vendors "would be able to receive consolidated market data from a competing consolidator in a manner that is similar to how they receive SIP data today."[4] In other words, the relationship between competing consolidators and their customers should not include a contractual relationship with the Plan.

The confusion between the underlying content of consolidated market data and consolidated market data itself is also apparent in the description of the services offered by the Plans. Both Plans state that the pricing reflects definitions of core data established in the MDI Rule, but those definitions are inclusive of both content underlying consolidated market data and content generated by competing consolidators, e.g., aggregated quotation size and the NBBO.

All Plan Amendments Should Treat Competing Consolidators as Replacements to the Exclusive SIPs, not as Data Vendors

Subjecting competing consolidators to the same fees and contractual requirements as data vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and not similarly situated to today's data

[3] See MDI Rule at 18682. (emphasis added)
[4] See MDI Rule at 18664.

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vendors. That failure deprives competing consolidators of their protection under the Exchange Act for fair and reasonable terms that are not unreasonably discriminatory. Competing consolidators are SIPs in that they will be *generating* and disseminating consolidated market data.[5] By contrast, data vendors merely *re*distribute SIP output. The MDI Rule is clear that "In the decentralized consolidation model, **competing consolidators will replace the exclusive SIPs** in generating the NBBO as defined in Rule 600."[6] Additionally, Rule 600(b)(16) defines a competing consolidator to mean "a securities information processor required to be registered pursuant to § 242.614 (Rule 614) or a national securities exchange or national securities association that receives information with respect to quotations for and transactions in NMS stocks and generates a consolidated market data product for dissemination to any person."[7] However, the Plan amendments treat competing consolidators like data vendors across a number of dimensions:

- **Validation Procedures** - Both Plans currently include provisions for Processor validation. While some of those obligations are on Participants rather than the Processor, we would expect similar procedures to be in place for the interaction between competing consolidators and Participants. We acknowledge that these procedures may be different from Processor validation but establishing validation procedures with the new SIPs, i.e. competing consolidators, that will be consistent across SROs is a prudent measure for ensuring data quality of the inputs to consolidated market data.

- **Redistribution Fees** - Given that competing consolidators are generating consolidated market data, any distribution from a competing consolidator is an initial distribution, not redistribution. The comparison between competing consolidators and data vendors is not valid since competing consolidators are not redistributing

[5] Despite the fact that competing consolidators generate consolidated market data, the Nasdaq/UTP Plan as amended at IV(B) states that consolidated data is disseminated to competing consolidators.
[6] See MDI Rule at 18657 (emphasis added).
[7] 17 CFR 242.600(b)(16)

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consolidated market data; they are generating it and distributing it for the first time. Additionally, these are not fees that should be assessed by the Plan since the Plan no longer governs the provision of consolidated market data.

- **Access Fees:** The exclusive SIPs currently do not pay access fees since they do not access consolidated market data feeds. Similarly, competing consolidators and self-aggregators should not be required to pay access fees because competing consolidators are not in fact *accessing* consolidated market data, they are *generating* it. Additionally, these fees should not be assessed by the Plan since the Plan is setting fees for underlying content only.

- **Contractual Arrangements:** Given that the data that competing consolidators would receive from the exchanges is content underlying consolidated market data and different from the SIP data that data vendors receive, we do not believe the contracts applicable to current data vendors will suffice for competing consolidators. Issues related to validation procedures as described above, which are not relevant to data vendor contracts, should be covered in competing consolidator contracts. The language of the Plan Amendments that states that competing consolidators and self-aggregators will be receiving and using consolidated market data is inconsistent with their role in actually generating consolidated market data based on the receipt of NMS information.

The lack of recognition that competing consolidators are SIPs puts competing consolidators at a competitive disadvantage to data vendors. Competing consolidators take on additional expense and risk that data vendors do not, including the costs associated with generating consolidated market data, disclosing operational and performance metrics, registering with the SEC, and ongoing compliance with Rule 614.

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The Plan Amendments Proposed Fees for the Content Underlying Consolidated Market Data Are Too High for Several Reasons

Whether fees are set on a cost basis or a value basis, the Plan amendments ignore that fees for content are but one component of the fees for consolidated market data. As it stands, the proposed fees are too high to meet either the Exchange Act standard or the requirements of the MDI Rule.

The Plan amendments' proposed fees are not reasonably related to cost. Given that the Operating Committee is made up of the very SROs that will supply data to the competing consolidators, we do not understand how they cannot determine the costs associated with supplying content to competing consolidators. The exchanges already supply this data to their proprietary feed subscribers, so any added cost of supplying this data to competing consolidators and self-aggregators should be minimal. Although exchanges may have some additional fixed costs due to higher service level agreements and validation procedures, those costs do not support the *usage* fees proposed by the Plan amendments because competing consolidators and not exchanges incur the per user costs associated with the processing and distribution of consolidated market data to end users and data vendors.

The Plan amendment's proposed fees impede the Congressional mandate to assure availability and place no value on the service that competing consolidators will provide. The SROs propose setting fees on a value basis rather than a cost basis,[8] but their approach in this regard also does not work. Given the Congressional mandate to assure the availability of consolidated market data, pricing should be set at levels that maximize availability of SIP data. SIPs are government-regulated entities intended to provide market participants with timely access to essential market information at a reasonable cost. The Plan amendments set pricing based on the prices that the SIPs currently charge for consolidated market data. But those prices actually limit availability, because the cost of SIP feeds is too high relative to top-of-book proprietary feeds. Market participants are choosing less expensive

[8] See 86 FR 67565 and 86 FR 67519.

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top-of-book proprietary feeds for a number of use cases, which indicates that Level 1 consolidated market data is not priced in accordance with its value in the market. To rectify this, the underlying content of Level 1 data should be priced so as to make the content (plus additional charges for normalization, consolidation and distribution) available at a price that is competitive to proprietary top-of-book offerings. The fact that the Plan amendments leave the price of Level 1 data unchanged from the current SIP prices reflects a failure to accurately assess the value of Level 1 data. Additionally, it fails to address Commission concerns that "market participants who solely use individual exchange proprietary TOB products are not getting the full consolidated view of the market, may be missing better priced quotes on other exchanges, and may only have a partial view of the trades that were executed in the market."[9]

Separately, conflating the value of the underlying content with the value of consolidated market data fails to reflect the value that competing consolidators bring to the provision of consolidated market data. In other words, the Plan amendments ascribe zero value to the service that competing consolidators are meant to provide.

Beyond Level 1 data, the value of the additional content should be focused on achieving greater access and availability to depth of book price levels and auction information. Rather than charging a multiplier based on proprietary feeds that are inclusive of top of book data, order by order data, and in some cases auction data, the Operating Committee should consider what price point would increase the availability of this information. In other words, adding this new content to consolidated market data furthers the Congressional mandate only if it is priced at a discount to current proprietary feed prices.

Perpetuating the current fee structure is not fair and reasonable to competing consolidators. The language of the Exchange Act is broader than the price point itself and includes the terms associated with access to quotation and transaction information. These

[9] See MDI Rule at 18603.

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terms include administrative and compliance costs associated with adhering to a complex pricing structure. The Plan amendments make no attempt to address these issues, which increase the ongoing costs of receiving market data and limit competing consolidator innovation with respect to consolidated market data pricing. The purpose of the MDI Rule is to adhere to the Congressional mandate to make consolidated market data readily available, and to that end, the Plan amendments must consider terms that are favorable to competing consolidators and their subscribers. As written, the inclusion of multiple tiers, user types with bespoke definitions, and high compliance costs do not amount to fair and reasonable terms. In fact, they unreasonably discriminate against competing consolidators who seek to bring competition, innovation and broader access to consolidated market data. Among other alternatives, simplifying the pricing structure to allow for enterprise caps at multiple tiers should be considered, along with easier to track proxies for usage based on data already reported by firms e.g., in FOCUS reports or other existing regulatory reporting. As it stands in the Plan Amendments, depth of book data has no enterprise caps and current Level 1 enterprise caps are out of reach for most market participants.

Conclusion

The Exchange Act requires data to be provided to securities information processors on fair and reasonable terms. The MDI Rule requires fees to be for the data underlying consolidated market data that reflect the move away from exclusive SIPs. We do not believe the Plan amendments meet the requirements of either of these mandates and respectfully request that the Commission disapprove all of the MDI Rule-associated Plan amendments.

Sincerely,

/s/

Patrick Flannery
Chief Executive Officer, MayStreet