



135 W. 26<sup>th</sup> Street, 2<sup>nd</sup> Floor  
New York, NY 10001  
+1 212 600 1639  
[www.maystreet.com](http://www.maystreet.com)

Testimony of Manisha Kimmel

Chief Policy Officer

MayStreet, Inc.

Hearing on Oversight of America's Stock Exchanges: Examining Their Role in Our Economy,  
Before the House Financial Services Committee, Subcommittee on Investor Protection,  
Entrepreneurship, and Capital Markets

March 30, 2022

Chairman Sherman, Ranking Member Huizenga, and other members of the Subcommittee, thank you for holding this hearing, and for offering me the opportunity to appear before you today.

My name is Manisha Kimmel, and I am the Chief Policy Officer for MayStreet<sup>1</sup>, a leading market data and technology provider. Throughout my 25-year career, I have focused on the implementation of market structure regulation and its practical implications on investors and the industry. MayStreet is a fast-growing fintech that was founded on the principle that the more efficient the world's capital markets become, the greater the need for streamlined delivery of high-quality market data.

MayStreet is active in the U.S. market structure dialog through our multiple comment letters<sup>2</sup> on key market structure issues as well as our membership in industry associations, including Healthy Markets Association and the Financial Information Forum. I look forward to offering our perspective on the important role American exchanges play in our capital markets, and how the Committee and the Securities and Exchange Commission (SEC) may improve our markets by managing conflicts of interest, complexities, and costs.

### **Executive Summary**

Well-regulated and competitive exchanges are essential for well-functioning capital markets. However, the regulatory structure for exchanges has not kept up with today's market structure.

- Exchanges are now publicly traded companies, so they have responsibilities to their shareholders, in addition to regulators and their customers.
- Broker-dealers were traditionally customers of the exchanges, but now they are also competitors because competition for order flow is split across exchanges, alternative trading systems and broker-dealer internalizers.
- Exchanges sell their raw data and package it in a number of forms. Proprietary data products and related services, as well as revenues from the public market data streams are a significant source of revenue for exchanges.
- The number of trading venues has increased and markets have become increasingly interconnected.
- While exchanges have regulatory obligations as part of their self-regulatory status, the

---

<sup>1</sup> MayStreet delivers the highest-quality, most complete global market data available. The firm's solutions – which include the highly accessible Market Data Lake feed repository and Bellport Enterprise feed handler – help market participants generate maximum value from exchange data by delivering it when, where and how they want to receive it. With MayStreet, clients are freed from the difficult and costly work of sourcing and processing market data, leading to lower total cost of ownership, improved decision-making and better performance. Visit [www.maystreet.com](http://www.maystreet.com) for more information.

<sup>2</sup> See MayStreet comment letters at <https://maystreet.com/category/comment-letters/>.

Financial Industry Regulatory Authority (FINRA) performs essential regulatory services for many exchanges.

- Exchanges seek to innovate in terms of order types, product offerings and price. To support those business decisions, exchanges filed over 1,300 filings in 2021. Brokers, data providers, and investors are directly impacted by these filings, often in the form of greater complexity and costs.

Securities laws and SEC rules should be cognizant of these realities. While the incentives, operations, and roles of exchanges in the markets have evolved over the past few decades, the regulatory framework for exchanges has remained relatively unchanged. The current regulatory framework for exchanges could be improved to maintain fair, orderly, and efficient markets, better protect investors, promote competition, and serve the public interest.

MayStreet recommends taking action in the following areas:

**First, Congress should rescind the “effective upon filings” status for self-regulatory organization<sup>3</sup> (SRO) fee filings.** As described in greater detail below, the SEC is obligated to ensure that exchanges’ rules and fees comply with the Exchange Act<sup>4</sup> and SEC rules. Fee changes should not be retroactive, nor should they be effective until after the SEC has affirmatively determined that those fees are reasonable, equitably allocated, not unduly burdensome on competition, and not discriminatory.

It is in the interest of the investing public that there be time for a review of these filings to understand the impact on products, pricing, investors and technology. Additionally, filings often necessitate system changes that must be implemented and tested prior to going into production. These fees matter to investors because they directly affect order routing decisions and the ability of broker-dealers to achieve best execution for their customers.

**Second, Congress should create a clear mechanism for the SEC to review and remand filings already on the books in light of market and regulatory developments.** The SEC needs Congressional help in potentially unwinding some of the existing fees and rules that are already in place. The SEC’s attempt to summarily reject over four hundred of them did not work. Given that the SEC’s effort failed, Congress should step in. Investors and others should not continue to pay fees that are inappropriate given today’s technology and market realities.

**Third, in order to promote the review of new fee filings and a retrospective review of existing filings, Congress and the SEC should provide definitive guidance on the definitions for each of the requirements imposed by the Exchange Act, as they relate to SRO and NMS**

---

<sup>3</sup> U.S. exchanges are self-regulatory organizations (SROs). A list of SROs is available at <https://www.sec.gov/rules/sro.shtml>.

<sup>4</sup> Securities and Exchange Act of 1934, 15 U.S.C. § 78a et seq.

**Plan<sup>5</sup> fee filings.** While Congress has explicitly declared that exchange fees need to be “equitably allocated,”<sup>6</sup> “reasonable,”<sup>7</sup> “not ... designed to permit unfair discrimination between customers, issuers, brokers, or dealers,”<sup>8</sup> and not an undue burden on competition,<sup>9</sup> it has provided no details on what that means in practice. In other contexts where for-profit entities have monopolistic pricing powers over important public functions, such as the energy markets, Congress and regulators typically have detailed processes to evaluate rules and fees to protect market participants, the markets overall, and the public interest.

**Fourth, Congress should give the SEC direct control over the public market data stream.**

This would further the goal of making market data widely available to the investing public as required by the 1975 amendments to the Exchange Act.<sup>10</sup> Put simply, keeping exchanges in charge of the public market data stream when they sell products that directly compete with that data stream creates conflicts between their commercial interests and investors’ interests that may be simply too difficult to manage under the current construct.

The SEC has tried to address this issue through recent rules including its approval of the CT Plan which among other things includes non-SROs in the governance of the NMS Plan and the approval of the Market Data Infrastructure Rule, which would bring competition to the production and distribution of the public market data stream. The major exchanges have challenged both of these rules in the DC Circuit Court of Appeals.

Regardless of the outcomes of those cases, the NMS Plan structure will continue to be a major obstacle to the SEC addressing the evolution of technology, business models and incentives currently at play with respect to the public market data streams. If Congress intends to fulfill the National Market System (NMS) mission of ensuring the timely provision of essential market information, then the NMS Plan structure for the public market data stream should be rescinded, and the SEC should take direct control of the rules and costs of this valuable public good.

---

<sup>5</sup> National market system plans (“NMS Plans”) are established under 17 CFR 242.608 (Rule 608) of Regulation NMS. NMS Plans currently govern the collection, consolidation, processing, and dissemination of the public data stream including (1) the Consolidated Tape Association Plan, (2) the Consolidated Quotation Plan, and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

<sup>6</sup> 15 U.S.C. § 78f(b)(4).

<sup>7</sup> 15 U.S.C. § 78f(b)(4).

<sup>8</sup> 15 U.S.C. § 78f(b)(5).

<sup>9</sup> 15 U.S.C. § 78f(b)(8).

<sup>10</sup> Securities Act Amendments, Pub.L. 94-29, (1975), *available at* <https://www.govtrack.us/congress/bills/94/s249/text>.

## **Exchange Background & Evolution**

Before reviewing each of our four recommendations in more detail, we would like to focus first on the role of exchanges in the national market system. Historically, exchanges have performed at least four key functions that promote fair, orderly, and efficient markets, including:

- Establishing listing standards and oversight for issuers of securities;
- Providing a centralized place for price discovery and trading of securities in the secondary markets;
- Providing access to essential market data, including prices for quotations and trades; and
- Policing market participants' trading for manipulation and other misconduct.

## **Exchange Fee Filing Approval Standards Outlined in Exchange Act**

Because of their central roles in our capital markets, Congress has mandated that exchanges file changes to their rules and fees with the SEC. The SEC, in turn, is obligated to review exchange filings and determine that those filings are consistent with the law,<sup>11</sup> including that they:

- are an equitable allocation of reasonable dues, fees, and other charges;<sup>12</sup>
- are “not . . . designed to permit unfair discrimination between customers, issuers, brokers, or dealers”;<sup>13</sup> and
- do “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of” the Act.<sup>14</sup>

Exchange filings also have to be consistent with the protection of investors and in the public interest.

Under the SEC's rules, exchanges have the “burden to demonstrate that a proposed rule change is consistent with the [Exchange Act] and the rules and regulations issued thereunder.”<sup>15</sup> In 2010, Congress created a process to make several types of exchange filings, including those related to fees, effective upon filing with the SEC.<sup>16</sup>

---

<sup>11</sup> See *Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442 (D.C. Cir. 2017).

<sup>12</sup> 15 U.S.C. § 78f(b)(4).

<sup>13</sup> 15 U.S.C. § 78f(b)(5).

<sup>14</sup> 15 U.S.C. § 78f(b)(8).

<sup>15</sup> Rule 700(b)(3), Commission Rules of Practice, Sec. and Exch. Comm'n, 17 CFR 201.700(b)(3).

<sup>16</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 916, Pub. L. No. 111-203 (July 21, 2010).

### Impact of Demutualization on the Frequency & Focus of Fee Filings

While exchange business models and commercial priorities have shifted significantly, the oversight of exchanges has not addressed these dynamics. Congress has not changed the laws around SRO responsibilities or altered the dynamics of the public market data streams. And when the SEC explicitly permitted exchanges to demutualize over two decades ago,<sup>17</sup> we do not believe they fully appreciated how changes within the exchanges' business models would impact both their business and regulatory priorities. To be clear, we do not take issue with the evolution of exchanges, we simply believe that the regulatory framework needs to evolve as well to protect investors and promote fair and orderly markets.

In the years since exchanges demutualized, changes to the exchanges' business models have led to growing concern from market participants and the SEC that the regulatory framework needs to adapt. As exchange revenues from trading fees have been squeezed, they increasingly have sought to monetize the market data stream. Revenues from trading fees are generally capped at 30 cents per 100 shares, and there is fierce competition between trading venues (including both on-exchange and off-exchange). In some cases, exchanges now pay their largest customers to trade,<sup>18</sup> and even lose money on some trades.<sup>19</sup>

Conversely, exchanges have increased revenues through sales of proprietary data products and related services. Exchanges have also profited from the public market data stream, which they also collectively control.<sup>20</sup>

### Access to Audit Trail Data Raises Regulatory Coordination Questions

In addition to market data, developments over the last several years have changed the role of order data in the marketplace. Through the Consolidated Audit Trail (CAT), exchanges have access to equity and options orders sent to and executed on other markets. We share the SEC's belief<sup>21</sup> that this raises questions as to how best to achieve regulatory coordination. While an exchange's role in policing trading on their own exchange makes sense given their expertise and current surveillance capabilities, it's unclear what the appropriate regulatory framework for

---

<sup>17</sup> Regulation of Exchanges and Alternative Trading Systems, SEC, Exch. Act Rel. No. 34-40760, Dec. 8, 1998, available at <https://www.sec.gov/rules/final/34-40760.txt>.

<sup>18</sup> Remarks of Chris Concannon, Cboe Global Markets, before the SEC Roundtable on Market Access and Market Data, Oct. 25, 2018, Transcript at 74-75, available at <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf>.

<sup>19</sup> See, e.g., Fee Schedule Update, MEMX, <https://info.memxtrading.com/trader-alert-22-06-fee-schedule-update-effective-march-1-2022/> (published Feb. 28, 2022, and effective Mar. 1, 2022).

<sup>20</sup> See *supra* n.2.

<sup>21</sup> See *Staff Paper on Cross-Market Regulatory Coordination*, SEC, Dec. 15, 2020, available at <https://www.sec.gov/tm/staff-paper-cross-market-regulatory-coordination>.

exchanges and FINRA is in order to improve both the efficiency and the efficacy of cross-market surveillance while being mindful of data security considerations.

### **Recommended Reforms**

In light of the current market and regulatory environment under which exchanges operate, we make the following recommendations.

#### **Recommendation #1 - Rescind “Effective-on-Filing” Procedures for SRO Filings**

All new exchange products and services and fees are implemented with filings.<sup>22</sup> Each of these filings are supposed to provide sufficient information for the SEC to conclude that the filing meets the qualifications of the Exchange Act. It hardly seems possible for the SEC to review all of these filings with the attention they deserve, given that the SEC has similar resources dedicated to that task today (with well over 100 filings per month to review) as it did twenty years ago (when there were well under 100 filings per year).

#### **Complexity of Fees and Fee Filings Should Not Be Underestimated**

Many exchanges compete with each other and other trading venues through changes to their trade pricing that can occur on a monthly basis. In response, brokers are constantly updating their order routing logic, not solely on where they can get their customers the best prices, but also where they can get themselves a larger rebate or lower fee. If brokers and investors do not pay attention to the changes that sometimes need to be implemented overnight, they can be materially harmed.<sup>23</sup>

To give you a sense of how many different prices there are on exchanges, in 2018, a study by RBC Capital Markets found “at least 3,762 separate pricing variables across the exchanges – that

---

<sup>22</sup> Notably, the New York Stock Exchange family of exchanges recently challenged the SEC, arguing that its Wireless Connectivity services need not be filed with the SEC or be subject to SEC review. On January 21, 2022, the U.S. Court of Appeals for the DC Circuit sided with the SEC, and found that these services were part of the “facility” of an exchange, and therefore subject to SEC oversight. *Intercontinental Exchange, Inc., et al., v. SEC*, No. 20-1470, (D.C. Cir. 2021), available at [https://www.cadc.uscourts.gov/internet/opinions.nsf/83EBB6E695A3FAE0852587D100546647/\\$file/20-1470-1931643.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/83EBB6E695A3FAE0852587D100546647/$file/20-1470-1931643.pdf). (“We hold that the Wireless Bandwidth Connection and the Wireless Data Connection are subject to the SEC’s jurisdiction as ‘facilities’ of an exchange. The SEC therefore correctly concluded that the fee schedules for the Wireless Connections had to be filed with the Commission as ‘rules of an exchange.’”).

<sup>23</sup> See, e.g., Letter from Jaffray Woodruff and Michael Ledwith, Quantitative Investment Management, to Brent J. Fields, SEC (Dec. 21, 2018), available at <https://www.sec.gov/comments/sr-cboeedga-2018-017/srcboeedga2018017-4827803-177046.pdf>.

is, 3,762 factors that ultimately determine the fees charged and rebates offered by exchanges.”<sup>24</sup> That study concluded that the sheer number and complexity of these pricing paths “strongly suggest[s] that exchange prices are tailored and offered on a bespoke basis.”<sup>25</sup>

Hundreds of filings are made effective, and customers are charged the fees, before the SEC and most market participants have even had the opportunity to read them. Several of these new fee levels may even apply retroactively.

Notably, while the SEC sends these filings out for public comment, only a tiny fraction of them receive comments, typically from industry associations like Healthy Markets Association and SIFMA. In some cases, those objections have led to action. For example, following an objection by Healthy Markets Association, the SEC abrogated a market data fee filing associated with the public market data stream in May 2018. While concerns have been raised on other filings, the SEC’s record for intervention is not consistent.

### Potential Impact on Competition Must Be Addressed

We would expect the SEC to assess the impact of fee filings on smaller firms and new market entrants to ensure that fees are not unduly burdening competition<sup>26</sup> and are provided on “reasonable” terms.

As Healthy Markets explained in 2018:

To the extent that different competitors fall into different pricing tiers, it will directly impact the competitive balance between those firms.<sup>27</sup> As a result, pricing tiers not only impact the competition between venues for execution, but also the competition between brokers and other market participants.

...

---

<sup>24</sup> Letter from Rich Steiner, RBC Capital Markets, to Brent J. Fields, SEC, Oct. 16, 2018, *available at* <https://www.sec.gov/comments/s7-05-18/s70518-4527261-176048.pdf> (“RBC Study”).

<sup>25</sup> RBC Study, *supra* n.17, at 1.

<sup>26</sup> Remarks of Joe Wald, Clearpool Group, before the SEC Roundtable on Market Access and Market Data, Oct. 25, 2018, Transcript at 198, *available at* <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf>.

<sup>27</sup> Remarks of Joe Wald, Clearpool Group, before the SEC Roundtable on Market Access and Market Data, Oct. 25, 2018, Transcript at 198, *available at* <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf>. *Accord* Remarks of Tyler Gellasch, Healthy Markets Association, before the SEC Roundtable and Market Access and Market Data, Oct. 26, 2018, Transcript at 280-281, *available at* <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf>.



Those without market power (e.g., smaller firms or those with less order volume) are likely to obtain the worst deals. Further, over time, as order flow has aggregated to the largest firms, this has increased their ability to negotiate even better rates; further expanding the gap between themselves and the smaller firms.<sup>28</sup>

Issues of whether such pricing meets the “equitable” standard must consider the different fees for small participants particularly in light of exchange’s fair access obligations and the Exchange Act’s requirements that fees be equitably allocated, non-discriminatory, or not unduly burdensome on competition.

#### Expand on 2020 SEC Rule that Rescinded Effective Upon Filing for NMS Plan Fee Filings

Where the SEC has the statutory authority over NMS Plan fees, it has already rescinded the ability of the SROs to make them “effective on filing”.<sup>29</sup> All of the reasons cited by the SEC in taking that action extend to fee filings from individual SROs as well. Specifically, commenters raised key issues including the need for time to review in order to assess the impact of fees on market participants, the mandatory nature of paying those fees given how the national market system operates, as well as potential conflicts of interest that may be inherent given marketplace competition.

#### Recommendation Summary/Investor Impact

Notably, unlike the fees for NMS Plans, the SEC has limited statutory authority to rescind “effective on filing” status for individual SRO fee filings. Exchange filings that are immediately effective leave little time for review much less for implementation of system changes. Complicating matters, these filings can include changes that apply retroactively. We recommend mandating that no SRO fee filing may be effective until after a notice and comment period and SEC approval. By doing so, investors and their broker-dealers will have adequate time to review and implement exchange changes. Further, those fees should not be permitted to apply retroactively.

---

<sup>28</sup> Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, SEC, at 4, Nov. 13, 2018, *available at* <https://www.sec.gov/comments/sr-nyse-2018-49/srnyse201849-4640899-176435.pdf>.

<sup>29</sup> See *Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments and Modified Procedures for Proposed NMS Plans and Plan Amendments*, SEC, 85 Fed. Reg. 65470 (Oct. 15, 2020) *available at* <https://www.govinfo.gov/content/pkg/FR-2020-10-15/pdf/2020-18572.pdf>.

## **Recommendation #2 - Create Mechanism to Review & Remand Current SRO Fees That May be Inconsistent With the Exchange Act and SEC Rules**

Since 2010, the vast majority of changes to exchange and FINRA rules – including those related to trading and market data fees – were implemented after being filed pursuant to “effective upon filing” procedures. Issues with that process are discussed extensively in the prior section.

In 2018, the SEC attempted to remand and reconsider more than 400 filings that had been adopted over a few of the preceding years; that effort was reversed by the U.S. Court of Appeals for the D.C. Circuit on technical grounds.<sup>30</sup> As a result, today, there are over 1,000 data and fee filings that have gone into effect and remained over just the past several years.

The goal of a review and remand process is not because a determination has been made that fees are inconsistent with Exchange Act standards. Rather, the fees need to be considered against those standards. The markets have dramatically changed with the advent of electronic trading, the implementation of Regulation NMS,<sup>31</sup> the proliferation of trading venues and the applicability of Moore’s Law. Are existing exchange rules and fees consistent with the requirements that fees be “equitably allocated” and “reasonable” today?

### Recommendation Summary/Investor Impact

In light of market and regulatory developments including technological developments, we recommend creating a mechanism to review existing fee filings addressing the issues the SEC raised and sought to address in 2018.<sup>32</sup> By doing so, investors will be able to benefit from developments that may drive costs down in order to meet Exchange Act standards.

## **Recommendation #3 - Provide Definitive Guidance on Exchange Act Obligations, Including What is “Reasonable” and “Equitably Allocated”**

In 2019, in recognition of the lack of clarity as it relates to how to assess Exchange Act standards in a fee filing, the SEC staff released guidance (“2019 SEC Staff Fee Filing Guidance”) on the information needed to make that determination for fee filings.<sup>33</sup> Unfortunately, since then, many exchanges appear to not consider the guidance while making their filings, and have nevertheless been able to continue to collect new fees.

---

<sup>30</sup> See, e.g., *NASDAQ Stock Mkt., LLC v. SEC*, 961 F.3d 421, 424 (D.C. Cir. 2020) (vacating and remanding the Commission’s 2018 decision to remand approximately 400 SRO filings).

<sup>31</sup> See Regulation NMS - Regulation of the National Market System, §§ 242.600 - 242.613.

<sup>32</sup> See Statement on Market Data Fees and Market Structure by Chairman Jay Clayton, Oct. 16, 2018 available at <https://www.sec.gov/news/public-statement/statement-chairman-clayton-2018-10-16>

<sup>33</sup> *Staff Guidance on SRO Rule Filings Relating to Fees*, SEC, May 21, 2019, available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

### Consider Direct & Indirect Costs When Pricing Market Data Fees

Beyond the actual price point, Congress must consider the complexity of the pricing terms. Exchanges charge different rates for market data, depending upon who is using it and for what. This forces purchasers of market data from exchanges to have complex and costly systems to keep track of all these usage details.

Exchanges often “audit” their customers’ usage, which often leads to the exchanges demanding additional payments and details.<sup>34</sup> Worse, we have seen instances where exchanges have sought information about their customers’ customers through this audit mechanism, and then tried to sell their own, competing products to those customers.

The direct costs of all these connections, data streams, and data management systems – across all exchanges – can easily exceed several hundred thousand dollars per month. There are also significant indirect costs of managing reporting and compliance risks. These costs are incurred before even a single order is sent to an exchange.

The successful implementation of the Market Data Infrastructure Rule,<sup>35</sup> recently approved by the SEC in December 2020, has the potential to increase the amount of market data available to investors at an affordable price with simplified administration. However, this rule is currently being litigated, and the related Plan fee filings submitted in November 2021 do not meet the standards required of the Exchange Act, much less achieve the benefits intended by the rule.<sup>36</sup> Without guidance on what the terms “reasonable,” “equitably allocated,” “non-discriminatory,” and undue burden on competition actually mean, particularly in the context of the public market data stream, we are concerned that investors will not benefit from the timely provision of essential market data at a reasonable price.

### Recommendation Summary/Investor Impact

Establish definitive guidance on how SRO and NMS Plan fee filings should be reviewed, identifying objective criteria for determining whether a fee filing should be approved consistent with the Exchange Act. Investors should benefit from the unconflicted determination of fees focused on expanding availability to essential market data.

---

<sup>34</sup> See, Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, SEC, Oct. 23, 2018, available at <https://www.sec.gov/comments/4-729/4729-4554022-176182.pdf>.

<sup>35</sup> SEC, [SEC Adopts Rules to Modernize Key Market Infrastructure Responsible for Collecting, Consolidating, and Disseminating Equity Market Data](#) (Dec. 9, 2020)

<sup>36</sup> For a detailed discussion of the Plan fee filings, see MayStreet’s [comment letter](#), submitted March 23, 2022

## **Recommendation #4 - Eliminate the NMS Plan Structure as it relates to Equity Consolidated Market Data**

One benefit of being an SRO is that the exchanges acting individually or jointly<sup>37</sup> effectively establish the rules and costs for all access to essential market data - their own proprietary data as well as the public data streams.

In order to understand the state of the market, broker dealers, investors, and other market participants need to buy market data. At this point, the public market data stream does not include odd-lot quotations, depth of book information, or auction information – all of which is essential to understanding the markets. The public market data streams are also slower than the exchanges’ own proprietary data streams. As a result, market participants buy exchange-provided proprietary data. These data streams – from each exchange – often run over \$10,000 per month.

Exchanges’ efforts to compete with the public market data stream – which they also control – also directly harms investors. For example, some brokers use exchange-provided top-of-book proprietary feeds as benchmarks for their customers’ trading prices. This practice often deprives retail traders and smaller investors of a complete view of all available market prices, and may lead to them receiving prices that are not the best. According to Cboe’s U.S. Equities Market Volume Summary, no single exchange has even 25% market share based on either notional or share volume.<sup>38</sup> And yet, the exchanges sell their top-of-book feeds as alternatives to the public market data stream. While these products may be cheaper, and easier to administer for customers, they are also facially inferior. None of these feeds provides a full view of the markets.

Put another way, when a retail broker uses an exchange’s top-of-book feed for its customers, reference prices may not be the best available prices across all exchanges and trading venues. If the broker was using the public data stream, it would have the actual national best bid and offer for all listed stocks.

Additionally, the current public data stream does not include odd-lot quotations, depth of book information, or auction information. Without this information, investors do not have access to essential market prices. Specifically with respect to odd-lot data, a recent study by professors at several major universities found that “using information only on round lot quotes has the

---

<sup>37</sup> The CTA/Q and Nasdaq UTP Plans that oversee the provision of the public market data streams are overseen by an Operating Committee that includes the exchanges and FINRA. The SEC has attempted to add additional members to the Operating Committees, but those reforms have been mired in litigation and uncertainty. Nevertheless, it is worth noting that Congress has explicitly authorized the SEC to adopt rules to ensure “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.” 15 U.S.C. 78k-1(c)(1)(B).

<sup>38</sup> See Cboe U.S. Equities Market Volume Summary *available at* [https://www.cboe.com/us/equities/market\\_statistics](https://www.cboe.com/us/equities/market_statistics), accessed March 16, 2022 based on a review of month to date and 5 day average volumes.

potential to lead to erroneous conclusions, especially for high-priced stocks.”<sup>39</sup> Because execution quality statistics allow brokers to ignore odd-lot quotations on exchanges in their calculations, these statistics are rendered largely irrelevant to retail investor’s actual trade execution quality.

The SEC has tried to remedy some of these issues with two recent rules. The CT Plan which among other things includes non-SROs in the governance of the Plan and the Market Data Infrastructure Rule, which would expand the content of core data and bring competition to the production and distribution of the public market data stream. With the implementation of both of these rules still uncertain due to pending litigation between the SEC and major exchanges, the value of operating the public data streams as NMS Plans is called into question.

There is a fundamental misalignment of interests - the Congressional mandate to ensure timely access to essential market data at a reasonable price, and the commercial interests of the major exchanges seeking to maintain (1) the over \$400 million revenue stream generated by the public market data stream and (2) the revenue stream associated with the exchange top-of-book proprietary feeds that compete with the public data stream. In the interest of treating public market data as a public good, we believe that the Commission should take control of the public market data stream and disband the current NMS Plan structure.

### Recommendation Summary/Investor Impact

The SROs have not demonstrated their ability to price the public market data stream in a manner that will promote its availability among investors. We recommend eliminating NMS Plan governance for the public data stream and have this public good be regulated directly by the SEC. Investors would benefit from the unconflicted approach to pricing that focuses on fees that promotes the timely access to essential market data at a reasonable price, rather than profitability.

### Conclusion

We believe the potentially competing interests of exchanges and investors need to be managed to ensure that the markets work for all investors. While we are not opposed to exchanges evolving in terms of business models, our regulatory framework must reflect these changes to ensure fair, orderly, and efficient markets.

Exchange rule changes have dramatically shaped, and are continuing to shape, the market structure landscape. Their rule filings merit careful review and consideration.

We recommend that you modernize the oversight of exchanges to ensure that investors have warning on changes to exchange fees, changes are not retroactive, and they do not go into effect

---

<sup>39</sup> See Bartlett, Robert P. and McCrary, Justin and O'Hara, Maureen, The Market Inside the Market: Odd-Lot Quotes (February 1, 2022). Available at SSRN: <https://ssrn.com/abstract=4027099> or <http://dx.doi.org/10.2139/ssrn.4027099>.

until after the SEC affirmatively determines that those fees are reasonable, equitably allocated, not unduly burdensome on competition, and not discriminatory.

Further, we recommend that you consider how the SEC might unwind some of the existing fees and rules that are already in place that are not in keeping with market and regulatory developments. The SEC's attempt to summarily reject many fee filings did not work. Congressional action is required.

Additionally, providing definitive guidance for both new and existing fee filings is essential to promoting consistent and objective review of filings in a timely manner. We believe the 2019 SEC Staff Fee Filing Guidance would be instructive in Congress' considerations.

Finally, we urge you to consider whether the exchanges' interests in overseeing the provision of market data through the NMS Plan process are irreconcilable with their interests in selling their own market data and related services. While adding non-exchange stakeholders to the oversight of NMS Plans might limit the skyrocketing costs and complexity of these public utilities, we are concerned that the underlying misalignment between exchange's interest and the Congressional mandate to ensure availability of quotes and trades will remain unaddressed.

Exchanges are incredibly important components for fair, orderly and efficient markets particularly as it relates to promoting lit price discovery. The markets and the dominant exchange business models have evolved dramatically over the past several decades, now is the time for the regulatory apparatus designed to ensure they continue to perform their essential functions to do the same.

Thank you for your consideration and for the opportunity to share my thoughts with you on this important topic for our markets.