



February 10, 2016

The Honorable Jeb Hensarling
Chairman, House Financial Services Committee
2228 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member, House Financial Services Committee
4340 Thomas P. O'Neill Federal Office Building
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

The undersigned Self-Regulatory Organizations (“SROs”) are writing to express our strong opposition to legislation seeking to amend the Securities Exchange Act of 1934 to add non-SRO voting members to the various National Market System plans (“NMS Plans”).

First, granting non-SROs voting rights to NMS Plans is unnecessary because the investing public is already well-represented in the creation and operation of every NMS Plan. Each NMS Plan is subject to full notice-and-comment review. This process requires that every NMS Plan and amendment be subject to review by the Securities and Exchange Commission (“Commission”) and comment by the public, including broker-dealers, asset managers and individual investors. In approving each NMS Plan or amendment, the Commission is required to respond to comments filed and explain why the NMS Plan or amendment is consistent with the purposes of the Securities Exchange Act of 1934 (“Exchange Act”). Further, the Exchange Act provides for any party aggrieved by such an approval by the Commission to seek judicial review.¹ Moreover, the Commission has authority to amend any NMS Plan at any time, as it did in conjunction with its adoption of Regulation NMS and approval of the Tick Size Pilot Program.

Second, SROs are uniquely positioned to operate NMS Plans because each SRO, unlike broker-dealers, carries the obligation to enforce compliance with the Securities Exchange Act (“Exchange Act”), the rules promulgated under the Exchange Act by the Commission, and the SRO’s own rules.² Section 6(b) of the Exchange Act, as well as other Commission rules, such as Regulation NMS, apply different standards to SROs than to broker-dealers. For example, unlike broker-dealers, an SRO must establish and maintain a rulebook outlining the operations of the SRO. These rules are also subject to the full notice-and-comment review and must be filed with the Commission prior to implementation. These SRO rules are required by the Exchange Act to be *“designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to*

¹ 15 U.S.C. 78y.

² 15 U.S.C. 78f(b)(1).

*permit unfair discrimination between customers, issuers, brokers, or dealers...*³ Broker-dealers do not carry such obligations.

As envisioned by Congress in the 1975 Act amendments to the Exchange Act, the Commission also relies solely on SROs to design and operate national market system plans (“NMS plans”).⁴ NMS plans were intended as a tool for the Commission to use to assist in the development of a National Market System, which forms the backbone of industry-wide coordinated activities when uniformity and consistency is essential. For this reason, the Commission’s rules explicitly require that SROs have the obligation to comply, and enforce compliance, with NMS plans. Broker-dealers have no such obligations. NMS plans include the dissemination of consolidated quotation and trade information via Securities Information Processors (“SIPs”) the volatility controls set by Limit-Up/Limit-Down price bands and the Tick Size Pilot Program. The developing Consolidated Audit Trail also will be an NMS Plan.

In contrast to SROs that continually surveil and enforce SRO and SEC rules, broker-dealers have no such regulatory obligations. In fact, other than ensuring their own compliance with the securities laws and rules of SROs, broker-dealers act entirely in their own commercial interests. If broker-dealers were to be granted a vote on NMS Plan committees, it could place the SROs in the untenable position whereby broker-dealers (or other non-SRO committee members) could fail to support or veto changes that the SROs believe are necessary to discharge their statutory obligations. Since most substantive plan amendments often occur on a unanimous basis, even the addition of one non-SRO representative would expose the SROs to this risk.

In adopting Regulation NMS, the Commission balanced the need for public input with the regulatory nature of NMS plans by mandating that certain NMS Plans be amended to include a minimum of five Advisory Committee members representing: (1) a broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an ATS; (4) a data vendor; and (5) an investor.⁵ In addition, all NMS Plan operating committees regularly seek input from industry participants to help in the development and implementation of such NMS plans. For example:

- The SIP Advisory Committee for both the CTA and UTP SIPs consists of nine industry representatives, including representation from a retail broker, vendor, institutional investor, alternative trading system and prime broker. These representatives, five of which are SIFMA members, are a mix of market structure and market data experts.⁶
- The Consolidated Audit Trail Operating Committee created the Development Advisory Group (DAG) to assist in the development of the Consolidated Audit Trail. The DAG is comprised of the SROs, as well as 24 representative firms (broker-dealers, market makers, vendor firms, and a clearing firm) and three industry trade associations (FIF, SIFMA, and STA). Industry trade associations represent numerous securities firms, banks, asset managers, traders, vendors, exchanges, ATSS, and broker-dealers.⁷

³ 15 U.S.C. 78f(b)(5) (emphasis added).

⁴ Specifically, Section 11A(a)(3) states, “The Commission is authorized in furtherance of the directive in paragraph (2) of this subsection — (B) by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof[.]”

⁵ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 Fed. Reg. 37496 (June 29, 2005) at 277.

⁶ <https://www.ctaplan.com/advisory-committee>; <http://www.utpplan.com/DOC/UTP%20ADVISORY%20COMMITTEE%2010.24.15.pdf>.

⁷ http://www.catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/sro_cat_background_112315.pdf, at 6.

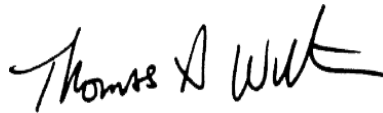
- The Tick Size Pilot Operating Committee created a Data Collection Advisory Committee to include input from a vendor, market maker, prime broker and industry association representative to assist in the development of data collection FAQs. Several adjustments were made to the NMS plan requirements mandated by the SEC as a result of the feedback received from the advisory committee members.
- The Limit-Up/Limit-Down Operating Committee created an Advisory Committee that mirrors representation of other Advisory Committees.

In closing, we oppose any legislation that would give individuals who do not carry the same obligations under the Exchange Act, a role in implementing, operating and enforcing NMS Plans beyond an Advisory Committee capacity.

Sincerely,



Thomas W. Farley
President
NYSE Group, Inc.



Thomas Wittman
Executive Vice President
Nasdaq



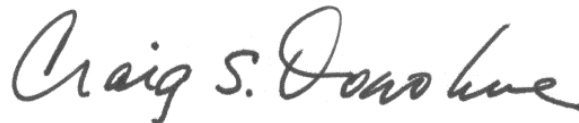
Edward Tilly
CEO
Chicago Board Options Exchange, Inc.



John K. Kerin
CEO
Chicago Stock Exchange, Inc.



Gary Katz
CEO
International Securities Exchange, Inc.



Craig Donohue
Executive Chairman
The Options Clearing Corporation

Cc: House Financial Services Committee Members