



Consumer Federation of America

February 16, 2018

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-1090

Re: Petition to Address Conflicts of Interest, Complexity, Opacity, and Costs Related to Market Data

Dear Chairman Clayton:

We are writing to express concerns about ongoing conflicts of interest, complexity, opacity, and costs related to the provision of U.S. equity market data, and to urge the Commission to initiate rulemaking to address these deficiencies in the market.

Healthy Markets recently published a report on these very issues, finding that for-profit exchanges exploit their essential role in the market to add complexity and cost to a broad swath of market participants.¹ Exchanges are able to do so because they effectively control a two-tiered market data regime. They both oversee the government-mandated public market data process, provided through the Securities Information Processors (SIPs), while they also compete directly with the SIPs by selling their own private data and connectivity offerings. The public data feeds are persistently slower and offer less information than is available through the private data feeds and connectivity offerings, which the exchanges sell at a premium. Yet brokers, advisers, and institutional investors are forced to consume both feeds -- and pay the costs to consume them -- in order to stay competitive in the market and fulfill their best execution obligations. Ultimately, those costs are borne by investors, many of whom are saving for retirement and other important long-term goals.

According to the report's findings, the current regulatory regime that governs U.S. equity market data, developed in 1975, has not evolved to reflect a number of significant changes in the marketplace since that time, including the conversion of exchanges from non-profit, mutualized trading platforms to for-profit, shareholder-owned commercial enterprises. As non-profit organizations, exchanges were able to function in ways that minimized conflicts of interest, provided high-quality data to market participants, and served investors' interests. However,

¹ Healthy Markets Association, US Equity Market Data: How Conflicts of Interest Overwhelm an Outdated Regulatory Model and Market Participants, November 16, 2017, <http://bit.ly/2EwnvKe>.

given exchanges' fundamental transformation to for-profit, shareholder-owned commercial enterprises, their interests are at odds with these goals. That exchanges can and do dictate the costs that other market participants pay for critical services is anti-competitive and has resulted in a market failure that demands a regulatory solution.

There is broad support among some unlikely allies for Commission action on this front, including investors advocates, a large group of broker-dealer and asset management firms,² and the Treasury Department, which recommended in its October 2017 Capital Markets Report that the Commission "recognize that markets for SIP and proprietary data feeds are not fully competitive."³

In our view, Congress and the Commission ultimately should eliminate exchanges' regulatory responsibilities and privileges in this area, so that they are treated like any other for-profit market participant. However, in the interim, we urge the Commission to improve exchanges' governance and transparency so as to ensure that exchanges provide market data on terms that are transparent and properly justified, fair and reasonable, and not discriminatory. We support the proposed actions that Healthy Markets has recommended to the Commission to accomplish these goals.⁴

When Congress mandated a national market system in 1975, it emphasized that the systems for collecting and distributing consolidated market data to the public would "form the heart of the national market system." Given the recent proliferation of conflicts of interest, complexity, opacity, and costs relating to the provision of equity market data, that heart is badly in need of surgery in order to restore and promote its original and essential purpose.

Respectfully submitted,



Micah Hauptman
Financial Services Counsel



Barbara Roper
Director of Investor Protection

² Letter from Bloomberg, LP et al., to the Securities and Exchange Commission, Petition for Rulemaking Concerning Market Data Fees, December 6, 2017, <http://bit.ly/2GjvPNO>.

³ U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities, Capital Markets, October 2017, <http://bit.ly/2fPPMR3>.

⁴ Letter from Tyler Gellasch, Healthy Markets Association, to the Securities and Exchange Commission, Petition to Address Conflicts of Interest, Complexity, and Costs Related to Market Data, January 17, 2018, <http://bit.ly/2o4HDNf>.

cc: The Honorable Michael Piwowar, Commissioner
The Honorable Kara Stein, Commissioner
The Honorable Hester Peirce, Commissioner
The Honorable Robert J. Jackson, Jr., Commissioner
Brett Redfearn, Director, Division of Trading and Markets
Brent Fields, Secretary