



New Administration showcases what Governance means

On August 6, 2021, the SEC quietly [approved a modified version of the CT Plan](#). This CT Plan replaces the three existing plans (CTA, CQ, and UTP Plans) that currently govern the collection, consolidation, processing, and dissemination of Securities Information Processor (SIP) data. We thank the Commission for recognizing [our comments](#) over 60 times, making modifications favoring stronger governance controls, and taking the time to clarify certain control aspects were not obvious or explicitly prescribed under CT Plan but are still covered under securities laws and regulations. The three large exchange groups are likely infuriated by the aggressiveness of the SEC. They may introduce lawsuits, shuffle incentive privileges and/or update fees to make up for their losses. Should the market celebrate? Let's see the details.

1. What problem it is trying to solve?

Securities Information Processors (SIP) public market data feeds which are controlled by the large exchange groups significantly underperforms as compared to proprietary data feeds sold by 'for-profit' stock exchanges with monopoly power. We acknowledge this as one of the market structure problems. We believe, however, that there are bigger problems should be addressed in concert with this market data reform.

In our opinion, the problem should be more broadly defined as "who owns the data"? In this [warring states period](#), elites are getting [32 mils super tier rebate and other privileges](#) while others may get nothing. This is a classic problem of an "[animal farm](#)" – everyone negotiates to be more equal, but some are more equal than others.

2. Under what definitions and how broad is the scope?

We applaud the SEC for modifying many of the definitions in the CT Plan. Such as expanding the definition of "Company Indemnified Party", "Cover Persons" to include SRO Applicant Observers, and to delete the phrase, "and the employers of Non-SRO Voting Representatives", and revising the definitions of "Executive Session", "Member Observer", "Highly Confidential Information", "Party to a Processing" to include Non-SRO representative. All of these are welcome changes to strengthen governance control.

Yet, the "fees" definition remains unchanged. For that, we identified this point in our [second comment letter](#), while other industry members remained silent. We could have better articulate what we meant by the definition of "fees" should be "similar to the comprehensiveness in defining 'royalties for copyright works' in the music industry. We may be too advance in our thinking "Should market participants be compensated, and how, when aggregators sell market data?" Perhaps the Commission is only focused on the 'dissemination' of market data, while we also consider the 'reproduction', 'redistribution', and other 'performance' and/or 'licensing' the use of whoever's trade data. We may have been subtle in our [whitepaper](#) in explaining how the analogy and application of it in the context of market data.

To address the broader problems as mentioned in point 1 above, the definition of "fees" should be replaced with a royalty payment concept. In doing so misaligned [incentives](#), [disputes](#), [rebates](#), and [what not](#) with market data would be regulated under a comprehensive copyright licensing mechanism across fragmented markets (Lit, Dark Venues, and Internalizers), thus promoting the interests of fair and orderly markets and the protections of public interest.

3. How relevant the answer to the problem?

The SEC uses the new [Market Data Infrastructure Rule 614](#) and this CT Plan in hope to bring down cost of consolidated equity market data for all investors by introducing more competition. While this is an admirable goal, the CT Plan governance approach in a nutshell is "OUTSOURCED" to the decision making authority of the Operating Committee.



Despite the modified CT Plan listing out many good governance practices, such as the conflicts of interest policy; selection of Operating Committee, Processor, and Administrator; the use sub-committee; creation and assignment of any officer positions; the augmented majority voting, etc., the CT Plan LLC's Operating Committee is still dominated by the Self-Regulatory Organizations (SROs) representatives – 2/3 of the votes (limiting Exchanges within same group to have only 1 vote per group).

Non-SRO representatives are expected to be selected by Advisory Committee from these broad categories free of conflict: (A) Issuer Representative; (B) Retail Representative; (C) Institutional investor; (D) Securities market data vendor; (E) Broker-dealer with a predominantly retail investor customer base; and (F) Broker-dealer with a predominantly institutional investor customer. Some of the names from top elite firms are more obvious than others. We wonder how Tier 2 and smaller players would be able to participate in this “small private party”.

4. Has it gone far enough, would CT Plan be effective?

Given CT Plan may be an outsourcing of decision making authority, i.e. to the Operating Committee, we will not be able to see until things unfold as the devil is in the details.

Thankfully, the SEC added specified deadlines and ordering for the SROs to complete. Specific actions are needed to implement the CT Plan on a timely basis (e.g. create the LLC with 10 business days; LLC become operative within 12 months; proposed fees within 4 months of effective date, which is 2 months after the formation of Operating Committee; agreement with processors and administrator within 8 months; provide quarterly progress report, etc.). That being said, many decisions are awaiting for the Operating Committee to be made (e.g. the determination of the metrics used to evaluate the Processors, should the 10 second reporting limit be reduced, etc.)

The CT Plan being effective or not depends very much on who are at the seats of the Operating Committee. If any [existing market data aggregators](#) can spread their fixed cost across a larger base of consumers (in benefiting the industry to strike for a “fairer and non-discriminatory” outcome), it would have succeeded a long time ago. Maximizing the life of aged technologies beyond 10 years' amortization period is in existing aggregators' best self-interest. We reiterate that the representatives' ability to introduce new and useful innovation to reform the SIP should be emphasized.

5. How is Governance a moot point, what concerns we have with outsourced authorities?

The new administration strongly advocates for ESG/ governance. Irony is – this CT Plan governance proposal collected very diverse views on how far the governance of consolidated market data should go. There is no definitive answer into whether tighten it a bit more or loosen to which point to allow discretionary judgements by the delegates. When policy making and market reform is delegated or left to the hands of a few, the implicit risks of cahoots would be higher. Bureaucracy may be created to contest for party's interest rather than public interest. Further, how the [divergence between private and social costs](#) would be assessed is questionable. In turn, non-contracted parties will suffer; underrepresented groups would form echo chambers and other [DeFi initiatives](#) to counteract the elites' actions.

According to an empirical research – [Will the Market fix the Market?](#), it has proven that: “... new market design would win share ... However, imitation would result in an equilibrium that resembles the status quo...” Because [serendipity](#) will be reduced by further polarization of market, it is detrimental to price discovery. Rather than resolving the “data ownership” problem now with principle based rules to concisely delineate rights and obligations, the SEC's choice to defer decision making authority to the Operating Committee would likely leave many of us earnestly waiting for another 12 months. Would CT Plan brings fruits and grow the overall pie? Would it bring fierce fights among constituents and inadvertently harming the innocents? We'll wait and hope!



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