

July 18, 2022

Via Electronic Mail (oddlotcomments@forefrontcomms.com)

Securities Information Processor Operating Committees for the CTA and UTP Plans

Re: Odd Lots Proposal<sup>1</sup>

Dear Operating Committees:

The Healthy Markets Association<sup>2</sup> appreciates the opportunity to once again urge the Committees to add odd lot quotations to the Plans without further delay.

### **Background and 2022 Proposal**

In 2018, the Securities and Exchange Commission hosted a market data roundtable in which there was widespread agreement – including from the dominant securities exchange families that collectively control a super-majority of voting power for the Operating Committees – that odd lot quotations should be included in the CTA and UTP Plans.<sup>3</sup> In late 2019, the Operating Committees released a proposal to do it.<sup>4</sup>

HMA, which had urged the SEC to mandate the inclusion of odd lot quotations into the SIPs in March 2019,<sup>5</sup> commented in support of the Operating Committees' 2019 proposal.<sup>6</sup> Other market participants supported it as well.

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<sup>1</sup> Proposal of the CTA and UTP Operating Committees Regarding Odd Lots on the SIPs, Mar. 2022, available at [https://www.ctaplan.com/publicdocs/ctaplan/CTA\\_Odd\\_Lots\\_Proposal\\_2022.pdf](https://www.ctaplan.com/publicdocs/ctaplan/CTA_Odd_Lots_Proposal_2022.pdf) ("2022 Proposal").

<sup>2</sup> Healthy Markets Association engages asset owners, asset managers, brokers, exchanges, data providers, policymakers, regulators, and other stakeholders to increase capital markets transparency and reduce conflicts of interest, risks, and costs for investors. To learn more about HMA or our members, please see our website at <http://healthymarkets.org>.

<sup>3</sup> See, e.g., Remarks of Oliver Albers, Nasdaq, before the Roundtable on Market Data Products, Market Access Services, and Their Associated Fees, SEC, at 158, Oct. 25, 2018, available at <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf> ("I mean, it seems like a no brainer."); Remarks of Chris Concannon, Cboe, before the Roundtable on Market Data Products, Access Services, and Their Associated Fees, SEC, at 98, Oct. 25, 2018 ("I think we can add more core data to the SIP. I think odd lots does make sense to include."); Remarks of Michael Blaugrund, NYSE, before the Roundtable on Market Data Products, Access Services, and Their Associated Fees, SEC, at 116, Oct. 25, 2018 ("NYSE has recommended four potential changes to the core data regime, some of which Stacey mentioned earlier. The first would be to expand the definition of core data to include odd lots priced better than the BBO.").

<sup>4</sup> Securities Information Processor Operating Committees, Odd Lots Proposal, available at [https://www.ctaplan.com/publicdocs/CTA\\_Odd\\_Lots\\_Proposal.pdf](https://www.ctaplan.com/publicdocs/CTA_Odd_Lots_Proposal.pdf) (last viewed July 13, 2022).

<sup>5</sup> Letter from Tyler Gellasch, HMA, to Brent J. Fields, SEC, Mar. 5, 2019, available at <https://www.sec.gov/comments/4-729/4729-5020185-182987.pdf> ("March 2019 Letter").

<sup>6</sup> Letter from Tyler Gellasch, HMA, to Operating Committees, Oct. 30, 2019, available at [https://www.theice.com/publicdocs/Healthy\\_Markets\\_odd\\_lot\\_comment\\_letter\\_10.30.19.pdf](https://www.theice.com/publicdocs/Healthy_Markets_odd_lot_comment_letter_10.30.19.pdf).

Despite a clear need and widespread support from market participants, odd lot quotations were not added to the Plans in 2018 or 2019.

In 2020, the SEC adopted the Market Data Infrastructure Rule, which will add odd lot quotations to the Plans.<sup>7</sup> Nevertheless, odd lot quotations were not added to the Plans in 2020, nor in 2021.

Instead, the dominant exchange families – who are also members of the Operating Committees – have fought the implementation of the Market Data Infrastructure Rule at every turn, including an unsuccessful challenge in the Court of Appeals for the DC Circuit.<sup>8</sup> As a result, it has been over one and half years since the rule was finalized, and it will likely be years before it is finally implemented.

Meanwhile, since the Market Data Infrastructure Rule was finalized, odd lot quotations and trades have become an even greater percentage of the overall markets. Nevertheless, odd lot quotations have still not been added to the Plans.

Oddly, the Operating Committees are now seeking further input on a thoroughly resolved issue, asking two new – asinine – questions:

1. Do data feed recipients want the current SIPs to proceed with adding Odd Lot Quotations in 2023 or instead wait for Odd Lot Quotations to be made available once the MDIR has been implemented?<sup>9</sup>
2. If adding Odd Lot Quotations to the existing SIPs is preferred, would data recipients prefer Odd Lot Quotations be disseminated through a single, integrated feed, as reflected in this proposal, or a channel separate from existing SIP data?

Neither the questions nor the answers they solicit materially enhance the Committees' understanding of any relevant issues. For the record, the answers are:

1. Odd lot quotations should be added to the SIPs as soon as technologically possible, and by not later than January 1, 2023, and
2. Odd lot quotations should be disseminated on the same integrated feed as other information, and not separately.

## Timing

We are aware of no significant challenges in adding odd lot quotations to the Plans. Nearly a decade ago, the Operating Committees added odd lot trades to the Plans – in just a few

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<sup>7</sup> *Market Data Infrastructure*, SEC, 86 Fed. Reg. 18596 (Apr. 9, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2020-28370.pdf> (“Market Data Infrastructure Rule”).

<sup>8</sup> See, e.g., *The Nasdaq Stock Market, LLC, et al, v. SEC*, Civ. No. 21-1100 (D.C. Cir. 2022), available at [https://www.cadc.uscourts.gov/internet/opinions.nsf/F6450AF20E3C34AC8525884C004E0670/\\$file/21-1100-1947763.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/F6450AF20E3C34AC8525884C004E0670/$file/21-1100-1947763.pdf).

<sup>9</sup> 2022 Proposal.

months. Technologically, the exchanges are already separately distributing odd lot quotation information in their proprietary data products.

Nearly four years ago, a Nasdaq executive stood on stage in the SEC's auditorium and declared that "we're all for expanding the SIPs to include odd lots. I mean, it seems like a no-brainer, the way the markets have evolved over the years."<sup>10</sup> That same day, top executives from NYSE and Cboe also declared their support for adding odd lot quotations to the Plans.<sup>11</sup>

At the time in the years since, these three firms collectively controlled the majority of voting interest in the Plans. And yet it hasn't happened yet.

The Operating Committee should finally do what it should have done many years ago, and add odd lot quotations to the Plans as soon as practicable.

We see no credible argument for delaying dissemination of odd lot quotations on the SIPs beyond December 31, 2022.

### **Data Integration**

Odd lot quotations are core data and should be treated the same as other core data. Odd lot quotations should not be separately disseminated.

Separately disseminating odd lot quotations would perversely create another opportunity for the Operating Committee members to exploit their control over essential market data access and pricing. At the same time, we see little advantage for customers to buy it, since many market participants already buy the odd lot quotation data from the exchanges pursuant to the exchanges' proprietary data feeds. Put simply, why would a broker buy this feed, if it is separately already getting the data in another product in a more timely manner?

However, our primary objection to the separate dissemination of odd lot quotations is not based on the advantage it would create for exchanges, but rather the impact it would have on their customers. Separately disseminating odd lot quotations could dramatically reduce the value of requiring their dissemination in the first place.

Separate dissemination would mistakenly suggest that odd lot quotation data may be somehow not collected, assessed, and used by brokers as part of their best execution obligations. As we have explained in detail before, by failing to accurately reflect

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<sup>10</sup> Remarks of Oliver Albers, Nasdaq, before the Roundtable on Market Data Products, Market Access Services, and Their Associated Fees, SEC, at 158, Oct. 25, 2018, *available at* <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf> ("Roundtable Day 1").

<sup>11</sup> Remarks of Chris Concannon, Cboe, Roundtable Day 1, at 98 ("I think we can add more core data to the SIP. I think odd lots does make sense to include.") and Remarks of Michael Blaugrund, NYSE, Roundtable Day 1, at 116 ("NYSE has recommended four potential changes to the core data regime, some of which Stacey mentioned earlier. The first would be to expand the definition of core data to include odd lots priced better than the BBO.").

accessible odd lot quotations, execution quality statistics are often materially misleading.<sup>12</sup>

And while adding odd lot quotations to the Plans does not, by itself, modify Rules 605 and 606, it would provide added transparency that can be used to help identify clear best execution failures. We are deeply concerned that many brokers may be improperly asserting that they are providing the “best prices” (or “better than best prices”) to investors despite the fact that those prices may be materially inferior to prices available in resting odd lot quotations.<sup>13</sup>

This is because the odd lot prices are quite often better than the best available round-lot prices.<sup>14</sup> For example, one study examining the NBBO found that from January through March 2021, “60% of the time a better odd lot bid was available for Amazon, 54% of the time for Google, 53% of the time for Tesla.”<sup>15</sup> Not surprisingly, there is significant academic research showing that many investors are receiving executions at prices that are inferior to the best available prices in the markets.<sup>16</sup> This information should be distributed together so that market participants would be forced to reconcile this disconnect.

Disseminating odd lot quotations separately from other core data would serve no legitimate purpose. Rather, it would simply undermine the change’s efficacy and potentially create a new saleable product for the exchanges.

### **Operating Committee Conflicts of Interest and Transparency**

As has been well articulated by the SEC in its Governance Order and elsewhere, members of the Operating Committee have material conflicts of interest in their oversight of the Plans. For example, they already sell odd lot quotation information in their proprietary data feeds. Why would they potentially undermine the value of those products by including odd lot quotation information in the Plans?

In 2018, amidst concerns that the Committees’ members were deeply conflicted and their governance of the Plans was insufficiently transparent, one member of the Operating Committees and the Committees’ Chair expressed support for webcasting the Committees’ meetings to improve transparency.<sup>17</sup> That hasn’t happened.

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<sup>12</sup> See, Letter from Tyler Gellasch, HMA, to Brent J. Fields, SEC, Mar. 5, 2019, *available at* <https://www.sec.gov/comments/4-729/4729-5020185-182987.pdf>.

<sup>13</sup> March 2019 Letter, at 8.

<sup>14</sup> Robert Bartlett, Justin McCrary, and Maureen O’Hara, *The Market Inside the Market: Odd Lot Quotations*, Feb. 1, 2022, *available at* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4027099](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4027099).

<sup>15</sup> Robert P. Bartlett, III, Justin McCrary, and Maureen O’Hara, *The Market Inside the Market: Odd Lot Quotations*, Feb. 1, 2022, *available at* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4027099](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4027099).

<sup>16</sup> See, e.g., Robert P. Bartlett, III, *Modernizing Odd Lot Trading*, *Columbia Bus. Law Review* (2021), 102, *available at* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3849763](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3849763).

<sup>17</sup> *Remarks of Emily Kasparov, NYSE, before the Roundtable on Market Data Products, Market Access Services, and Their Associated Fees*, SEC, at 98, Oct. 26, 2018, *available at* <https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf>.

While the Committees' meeting minutes are now published, they tend to be released months later and offer only very limited insight into the real discussions. For example, the minutes for the Committees' February 2022 meeting (which discussed odd lots and the associated request for comment) were not publicly disseminated for nearly four months following the meeting, and after the expiration of the comment period for the 2022 Proposal.

The only way any member of the public would even know that the Committees were seeking comments would be to (1) scour the CTA Plan website on an extremely regular basis or (2) have an inside operative share the news. Not shockingly, despite the impact of the Operating Committees' decisions on millions of investors, they do not typically receive significant outside engagement. Prior to this comment, a whopping total of nine commenters submitted in response to the Committee's request for comment. Of those nine, three commenters are members of the Operating Committee, and another is a longtime Advisory Committee member with decades-long financial ties to the Plan administration and members. Other commenters include a single market maker, a trade association, an investor, and a market data firm.

The Operating Committees appear to offer perfunctory transparency, at best, while quietly declining to materially improve the market data that impacts pricing for millions of investors every single day. We urge the Committees to publish transcripts of all meetings. The Plans implement government-mandated public utilities, and should be operated with the transparency needed for public trust.

## **Conclusion**

Implementing the Market Data Infrastructure Rule should be a top priority. But as those details are being hammered out, there is no rational policy or technological reason to continue contemplation of an issue whose merits were long-ago decided: odd lot quotations should be added to the core data already disseminated by the Plans without further delay.

Thank you for your consideration. Should you have any questions or would like to discuss these matters further, please contact me at (402) 312-7918.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Nagy".

Chris Nagy, Research Director