

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ADVISORY COMMITTEE ON MARKET INFORMATION

Tuesday, October 10, 2000
1:00 p.m.

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C.

BEFORE: ARTHUR LEVITT, Chairman

Diversified Reporting Services, Inc.
(202) 296-9626

PARTICIPANTS:

MR. MICHAEL ATKIN

Vice President, Financial Information Services Division,
Software and Information Industry Association

MR. HAROLD S. BRADLEY

Senior Vice President, Investment Management,
American Century

MR. ROBERT G. BRITZ

Group Executive Vice President,
New York Stock Exchange

MR. ANDREW M. BROOKS

Vice President, Head of Equity Trading,
T. Rowe Price

MR. ROBERT COLBY

Deputy Director, Division of Market
Regulation, SEC

MR. MATTHEW S. DeSALVO

Managing Director, Morgan Stanley
Dean Witter

MS. CARRIE E. DWYER

General Counsel and Executive Vice President,
Charles Schwab

MR. ROBERT H. FORNEY

President and CEO, Chicago Stock Exchange

MR. JOEL GREENBERG

Managing Director, Susquehanna Partners

MR. WILLIAM R. HARTS

Managing Director, Salomon Smith Barney

MR. GEORGE K. JENNISON

Senior Managing Director, Retail Equity Group,
First Union Securities

PROF. SIMON JOHNSON (via telephone)

Sloan School of Management, Massachusetts
Institute of Technology

MR. EDWARD J. JOYCE

President and Chief Operating Officer,
Chicago Board Options Exchange

MR. RICHARD KETCHUM

President and Chief Operating Officer,
National Association of Securities Dealers

PROF. DONALD C. LANGEVOORT
Georgetown University Law Center

MR. ARTHUR LEVITT
Chairman, SEC

MR. BERNARD L. MADOFF
Bernard L. Madoff Investment Securities

MR. MARK A. MINISTER
President and CEO, Bridge Training

MS. ANNETTE L. NAZARETH
Director, Division of Market Regulation, SEC

MR. EDWARD NICOLL
Chairman and CEO, Datek Online Holdings

MR. KENNETH D. PASTERNAK
President and CEO, Knight/Trimark Group

MR. GERALD D. PUTNAM
Chief Executive Officer, Archipelago

MR. PETER QUICK
President, American Stock Exchange

MR. ERIC D. ROITER
Senior Vice President and General Counsel,
Fidelity Management & Research Company

DEAN JOEL SELIGMAN, Chair/Moderator
Washington University School of Law

MR. DEVIN WENIG
Executive Vice President of Marketing,
Reuters America

C O N T E N T S

AGENDA ITEM:	PAGE
I. Introductory Remarks	
Chairman Levitt	5
Joel Seligman	9
II. SEC Presentation	
Annette Nazareth/Bob Colby - Principles underlying current regulatory regime for market information	14
III. Presentations by Plan Administrators	
CTA/CQ Plan (NYSE); Nasdaq/UTP Plan (Nasdaq); OPRA Plan (CBOE) - Overview of current Plan operations	25
IV. Discussion of Fundamental Issues	
Presentation of each topic, followed by group discussion	51
A. Value of Transparency to the Markets (including possible ramifications of decimalization and electronic quote generation for utility of displayed quotes and trades)	
B. Merits of Providing Consolidated Information to Intermediaries and Customers	
V. Summary/Next Steps	
Joel Seligman	137

P R O C E E D I N G S

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CHAIRMAN LEVITT: Hello. Those of you who I haven't greeted personally welcome. There are a good many friends and former Commission people in the room. The tables are so darn formal it's hard to convey the affection and respect I have for all of you collectively.

Individually, there probably aren't any issues that I could say we've all reached consensus on, but that seems to be a way of life at the SEC, and I doubt that this issue will be significantly different in that respect.

As you know, the Commission formed the committee to seek public guidance on issues relating to the public availability of market information --

1 It's clear that market information is the core of price transparency. I think that much we can all agree
2 upon, and it has always been one of the pillars of the national market system.
3
4 The issues surrounding this issue are not new, but the changes that have taken place in the
5 securities business, both here in the United States and abroad, have provoked the Commission to
6 think that it's time to address this issue perhaps in a different way.
7
8 You're are familiar, I'm sure, with the Concept Release of last December that solicited public
9 comment on the general issues surrounding market information, fees and revenues. The comments
10 that we received, I think, were thoughtful. They were comprehensive, and they certainly reflected a
11 wide array of views.
12
13 In light of the fundamental importance of market information and the very difficult issues raised by the
14 various commentators, the Commission believes that the issues relating to the public availability of
15 market data need to be explored in greater depth. That's the reason that we've tried to put together a
16 group as diverse as this one.
17
18 Your perspectives representing a broad range of interests will be invaluable to the Commission as we
19 decide how to move forward. The committee has a broad mandate to explore both fundamental
20 matters, such as the benefits of price transparency and consolidated market information, and
21 practical issues such, as the most effective methods of consolidating market data.
22
23 Now, my money is that the committee will be able to forge a consensus on a range of issues
24 concerning market information and issue a written report containing its recommendations to the
25 Commission within the next year.
26
27 I think many of you know that I always strive for consensus. I don't always reach it. And I don't know
28 that this issue isn't as difficult as any that the Commission has dealt with over recent months and
29 years, and I recognize that consensus may not be possible.
30
31 I also have sat where you're sitting at various times in my career, and I wondered to myself, "Gosh,
32 isn't this a cop-out? Why doesn't the agency go ahead and do what they have to do and let the chips
33 fall where they may?"
34
35 No. I don't think it's a cop-out. I think that I really want your views to be plainly heard. I want them to
36 stand the test of public scrutiny. I want to hear how persuasive you are.
37
38 I want to see how willing you are to distinguish between what is genuinely in the public interest and
39 what you say is in the public interest or, kind of, cover of self-interest. I don't dismiss self-interest as
40 being an important consideration. We're business people. We're not philanthropists.
41
42 But the perspective of the Commission has to be public interest, and overlaying any differences that
43 you have, overlaying any recommendations that you may have, rest assured that the Commission will
44 be taking that and trying to divine what is in the public interest as we move toward a long-awaited
45 solution to this very, very complex issue.
46
47 I looked around and thought a great deal about who could keep this group of entrepreneurial zealots
48 at the table, and the first person I thought of accepted.
49
50 Whenever I think of the securities industry and the public good, I think of Joel Seligman. I don't think
51 anybody in this country has given more to the securities industry in a more thoughtful and balanced
52 way, has been more willing to give of his time, take on tough issues than Joel. He is also someone

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who likes to succeed and doesn't like to waste time.

I'm deeply honored by his agreement to chair this group. I'm very, very appreciative for all of you giving your time to being part of this, and I look forward to interim meetings as we move forward on an issue which is terribly, terribly important. And the role that you're playing is going to be vital is helping us make a rational solution. Thank you.

MR. SELIGMAN: Arthur, let me begin by thanking you for bringing us together. The last time I met with you in this room was 13 months ago on the occasion when you became the longest-serving SEC chair in the history of this Commission.

And I opened at that time that no chair, to my knowledge, had faced as difficult a political context as you had throughout most of the years of your chairmanship, and I implied what is undoubtedly clearly correct that no chair, certainly in the post World War II period, has faced the issues that you had and handled them as thoughtfully and wisely and well.

This is, presumably, near the end of what will be an illustrious chairmanship, and you've given us a small part of a broader range of issues dealing with what used to be referred to as a national market system at a time of extraordinary dynamism, whether you focus on decimialization, whether you focus on de-mutualization, whether you focus on capacity issues in the options market. There have been very few times when so much has been going on dealing with the structure of securities markets.

I eagerly accepted your offer to chair this committee because I recognize the significance, the fundamental significance, that market information can make to many of these other collateral issues as well.

In the early 1970s, when the Commission through several means took a hard look at the evolving security markets and the structure it wished to support and encourage, it, in effect, began with market information. It is a little bit like returning to genesis to start there.

I want to, I guess, simply state while I recognize, as is clear to the point of banality, that there are divisions in this room, that there are stark and different economic interests at stake here.

It's a measure, I think, again of the thoughtfulness of your chairmanship not to duck a hard issue, to place us under a time line when we're asked, in effect, to wrestle both with the fundamental questions, concerns, as well as potentially the operational questions, to provide advice to a Commission which will ultimately make decisions here. Again, I thank you for this opportunity, and I express real pleasure with the opportunity to work with you.

Let me by way of starting us on our journey highlight a few, if you will, almost housekeeping points and then try to place our work in context.

First, as was observed before we met here, part of my task today will be to be a kind of more effective Jim Lehrer. I'm going to have to enforce time limits to some degree so some can speak and all can have an opportunity.

What I want to do before we open this up and have a general conversation about transparency and consolidation is to set some background, and we'll do this, in part, through Annette Nazareth's remarks which will focus on the legal structure of our current approach to market information, but I've also invited Bob Britz representing the New York Stock Exchange, Rick Ketchum representing the NASDAQ market, Ed Joyce representing OPRA and CBOE to describe the three basic systems we have in place to date.

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I asked them particularly to focus on dynamics, how they may change in the near future, how they're being impacted by a series of very significant events occurring.

Obviously, in part, what we will be wrestling with will be issues we can't take up today. To state what was clear, I think, in the SEC's Concept Release, to state what was clear for those of you who reviewed the comment letters, one inspiration for the SEC's immediate interest in this set of topics was a June 1999 petition urging the SEC to review the CTA market data fee structure imposed on broker dealers, other market data vendors and retail investors.

The fee structure issue is part of what we'll wrestle with. I'd like to put that one aside today. I'd like to put aside a number of the issues the Commission has wrestled with in the December '99 release, whether it deals with pilot programs or governance, several other topics taken up there, and just focus our attention today on the question of the merits of transparency and the question of should information be consolidated.

Ultimately, what we are wrestling with is a fundamental choice today and, conceivably, over future meetings. Is the current framework for consolidation in each of the three systems one that is appropriate and wise but needs the blessings of a series of reforms, or do we need a new model?

And this is an opportunity, given the extraordinary broad range of views, to explore that question starting today. I am not certain, as Chairman Levitt suggested, I'm not sure anyone is certain exactly how we will come out with respect to that, but that is, it strikes me, the most fundamental issue we're wrestling with.

If the course of our direction is, in effect, to say let's focus on making current systems work better, we'll go on to second-level questions over time. If the course of our direction is to explore a different approach or a new model, I'm going to try to place some rigor to our conversations by suggesting those who might propose new models do so in writing, do so sufficiently in advance of meetings so that the writings can be carefully reviewed by all of us, do so taking up a series of operational questions that I think are fundamental.

We're not dealing here really with theory. We're dealing here with the most effective securities markets in the world, and before certainly I think we should advise the Commission to consider any new approach here, we have to think it through at a level of operational detail that will be sure that our recommendations are thoughtful and wise.

I will, during the second half of our session, begin by offering each of you at the table the opportunity to comment on the issues of transparency and whether or not you have views on the current system of consolidation.

I will do so literally asking you to use a legalism to highlight the headnotes, if you will, to limit your remarks to about three minutes. This is so we can have some back and forth.

I anticipate our next meeting will probably be approximately in December. We'll try to schedule it at some point after today's meeting after there has been a chance to process, if you will, the outcome of the discussion.

As Chairman Levitt suggested, these are not easy issues, and I think we serve the Commission best if we take the time to carefully work through the dimensions of what is at stake here, but some of our working through may be in writing rather than oral comments. Some of our working through this may ultimately be in subcommittees as is appropriate under this advisory committee structure.

1
2 Subcommittees are not required to meet in public, and my sense is, if they can provide a value to our
3 deliberations, we will pursue them. It is premature, I think, however, at this point to create any or to
4 focus on them.

5
6 But I am aware, as all of us are, that there are material differences among the three systems that
7 currently exist for the communication of market information, and that may provide the basis for
8 separate looks at some of the issues involved here.

9
10 With that said, I'm going to try to do what I've always endeavored to do as a dean in a different
11 context, which is to keep a little bit ahead of the schedule, and I'm going to turn to Annette Nazareth,
12 obviously, the Director of Market Regulation, to give us, if you will, a legal framework for our
13 conversation.

14
15 MS. NAZARETH: I'd be happy to do that, Joel, although, I guess, to a certain extent, what I'm doing
16 is providing you with a little bit of a history tour as to how we got to where we are, and, hopefully, that
17 will be helpful in framing our discussions as well.

18
19 As you know, the work of this committee originated with the Commission's December 1999 Concept
20 Release, and the comments received by the Commission quite clearly evidenced a lack of consensus
21 on the issues that were raised by the Concept Release, such as the fees charged for market
22 information and the role of revenues derived from those fees in funding the SROs. And several
23 commentators expressed more fundamental concerns with our current system of consolidating and
24 disseminating market information.

25
26 Now, despite the divergence of views expressed by the commentators, I believe that most would agree
27 that the wide availability of consolidated market information is an essential feature of our securities
28 markets.

29
30 All participants in the U.S. markets today have access to a consolidated stream of market
31 information for any of the thousands of equity securities and options that are actively traded, and this
32 is the principal tool for providing transparency of the buying and selling interest in a security, for
33 offsetting the fragmentation of that buying and selling interest, and for facilitating the best execution of
34 customers' orders by broker-dealers.

35
36 By way of background, I'd like to take a few moments to discuss the concepts of transparency and
37 consolidated information and how they came to be fundamental elements of our national market
38 system, and I'll also describe briefly the origin of our existing model of consolidating and
39 disseminating market information.

40
41 I'll begin with transparency, which is the first issue that we've asked the Advisory Committee to
42 examine. The concepts of transparency and consolidated information are, obviously, closely linked,
43 and they developed together as the core elements of our national market system.

44
45 In the interest of thoroughness, though, we've asked the Advisory Committee to analyze these
46 principles separately, so I'll focus on them in turn.

47
48 As you know, transparency, and, in particular, real-time public dissemination of trade and quotation
49 information is one of the central components of our national market system. A regulatory framework
50 that promotes transparency helps ensure that prices across our national market system are available
51 to all market participants, and this, in turn, contributes to the efficient price discovery and the best
52 execution of customer orders.

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Now, as you probably know, prior to the 1970s no statute or Commission rule required market centers to disseminate market information to the public. Each market center acted individually and disseminated information on its own terms.

It decided what information to disseminate, who would be entitled to receive the information, and the amount of fees that would be charged for that information. The result that was dominant market centers with the most valuable information restricted public access to their quote information, and this limited the ability of investors to know where the best prices were, and to ensure the best execution of their orders.

So to address this, the Commission developed the concept of a transparent national market system in the early 1970s as technological advances in communications and data processing occurred and barriers to competition in the U.S. markets began to fall.

And as part of this process, the Commission sent to Congress a series of reports that would culminate in the restructuring of the equity markets in the United States, including the way in which market information is disseminated.

The Commission, for the first time, formally endorsed the concept of a central market system in 1971 in a letter transmitting the Institutional Investor Study Report to Congress, and in that letter the Commission noted that barriers to competition were distorting the evolution of the U.S. securities markets, and it recommended that a strong central market system be created for securities of national importance in which all buying and selling interests could participate and be represented under a competitive regime.

In the following year, in a statement on the future structure of the securities markets, the Commission emphasized that an essential feature of the central market system would be the availability to all investors of information on transaction prices, volume and quotes for all securities. And in this way, buyers and sellers of securities wherever located could make informed decisions and obtain the best price.

So when Congress enacted the Securities Act amendments of 1975, it unequivocally endorsed the development of the national market system and its essential component of transparency. In particular, by adding Section 11A to the Exchange Act, Congress directed the Commission to ensure, among other things, the availability to broker-dealers and investors of quotation and transaction information in securities.

And Congress specifically charged the Commission with assuring that market information be available on terms that are fair and reasonable, and not unreasonably discriminatory. So that's our statutory standard.

Price transparency formed the initial focus of Commission action after the adoption of the '75 Act amendments. To achieve the price transparency objective, the Commission adopted rules that I'll discuss in more detail in a few moments requiring that all market centers make their basic quotation and transaction information publicly available to investors on a real-time basis.

As a result, investors have ready access to market information for securities that are actively traded in the U.S. markets, and this price transparency has become a hallmark of our national market system.

The consolidation of market information is another central component of our national market system.

1 To achieve the goals of efficient price discovery and best execution, not only must quotation and
2 transaction information from each market be accessible to investors, but that information must be
3 available in one place.
4

5 The widespread availability of a national best bid or offer in trade information from all regulated
6 markets has provided investors and their brokers with the best prices from these markets. In this
7 way, it has tied competing markets together and helped ensure best execution of customer orders.
8

9 The Commission identified the need for consolidated market information in the early 1970s. Together
10 with transparency, it formed the heart of the central market system endorsed by the Commission in
11 its letter transmitting the Institutional Investor Study Report to Congress, as well as its subsequent
12 market structure statements.
13

14 In addition, in 1972, the Commission established a federal advisory committee, only
15 proving that there are no such things as original ideas. This advisory committee was called the
16 Advisory Committee on Market Disclosure, and it made recommendations on the development of a
17 comprehensive market disclosure system, including the information to be disclosed and the
18 technological means for accomplishing this disclosure. So the original federal advisory committee
19 really set the groundwork for much of what came later.
20

21 The committee submitted two reports to the Commission later that year, one dealing
22 with the composite transaction reporting system and the other with the composite quotation system.
23

24 In its report on the transaction reporting system, the committee concluded that it
25 was imperative for every trade in a security to be displayed on the same terminal regardless of the
26 market center in which the transaction took place.
27

28 The committee also recommended the implementation of a composite quotation
29 system so that an investor or his broker dealer could determine at any given time where a particular
30 transaction in a security could be effected at the most favorable price.
31

32 To help achieve the goal of making consolidated market information to all investors,
33 the Commission, in 1972, proposed two rules under the Exchange Act that would provide for the
34 reporting and consolidated display of quotations and transactions.
35

36 The transaction reporting rule was adopted later that year, and it required each
37 exchange and the NASD to file with the Commission a plan for the dissemination of transaction
38 information for securities traded through its facilities.
39

40 In addition, any such plan would have to require the consolidated display of
41 transaction information. Thus, the SRO submitted a plan for a consolidated tape system, the CTA
42 plan, which ultimately became effective in 1974.

43 After adopting the framework for a consolidated transaction reporting system, the
44 Commission focused its attention on a composite quotation system. In its 1973 Policy Statement
45 on the Structure of a Central Market System, the Commission expressed its intent to vigorously
46 pursue regulatory action for the implementation of a composite quotation system.
47

48 While broker dealers, in the past, had been willing to expend the time and effort
49 necessary to search out the best bid or offer for those sizeable investors whose volumes justified
50 such expenditures, they were unlikely to perform such services for the small investors.
51

52 With a composite quotation system, however, broker dealers were able to perform

1 the same functions economically for all investors, including smaller investors. In 1974, the
2 Commission proposed a revised rule to provide for a consolidated quotation system.

3
4 Congress echoed the Commission's sentiments when it passed the 1975
5 amendments to the Exchange Act. The legislative history makes it clear that one of the paramount
6 objectives of the national market system was to be the centralization of all buying and selling interest
7 so that each investor would have the opportunity for the best possible execution of his order,
8 regardless of where in the system it originates.

9
10 And Congress expected that in those situations where competition might not be
11 sufficient to do this, such as the creation of a composite quotation or transaction reporting system,
12 that the Commission would use its powers granted to it under Section 11A to ensure their
13 implementation as rapidly as possible.

14
15 Now, in early 1978, the Commission took steps to ensure the nationwide disclosure
16 of quotation information by adopting the quote rule. Soon afterwards the Commission approved the
17 first consolidated quotation plan, which led to the dissemination of a single quotation stream for all
18 exchange markets.

19
20 The Commission soon realized, however, that there were significant deficiencies in
21 the manner in which vendors were displaying market information. Therefore, in 1980, the Commission
22 adopted the display rule, which requires any vendor or broker dealer that displays quotation
23 information for a security to display the NBBO for that security.

24
25 It also requires any vendor or broker dealer that provides transaction reports for a
26 security to display consolidated transaction information from all reporting market centers.

27
28 The display rule ensures that broker dealers and customers have readily available the
29 quotes and trades from all regulated markets, so they are fully aware of the best prices when deciding
30 what orders to enter and where to route their orders.

31
32 I'll turn now to our current model for disseminating and consolidating market
33 information. The idea for our current model originated with the Commission's Advisory Committee on
34 Market Disclosure from 1972. That committee's report recommended a system, in which each
35 regulated market center would collect and validate its own data and then transmit it to a central
36 processor for sequencing.

37
38 The processor, which would function under a set of rules approved by the
39 Commission, would process the quotes from all participants even-handedly. The legislative history of
40 the 1975 amendments makes clear that Congress shared the committee's view that any central
41 processor of market information be neutral.

42
43 Any exclusive processor of market information, in effect, would be like a public utility,
44 and, thus, must function in a manner which is absolutely neutral with respect to all market
45 participants. Accordingly, Section 11A granted the Commission broad powers over any exclusive
46 processor of market information in order to assure, among other things, the processor's neutrality and
47 the reasonableness of its charges.

48
49 In its rule-making implementing the 1975 amendments, the Commission adopted
50 forms to enable the registration of any exclusive SIP as required by the statute. It also established
51 procedures through which market information system plans jointly established by the SROs are
52 approved and overseen by the Commission.

1
2 Each of the CTA, CQ, NASDAQ/UTP and OPRA plans has been filed with the
3 Commission pursuant to these procedures, and each of their administrators and processors is
4 registered with the Commission as a SIP.
5

6 And the Commission oversees the operation of these plans in accordance with its
7 statutory responsibilities, the national market system principles established by Congress in 1975,
8 and the regulatory framework that it has developed in the intervening years.
9

10 So, hopefully, this has given you some overview of the principles that underlie our
11 regulatory framework, and I guess Joel would now want to turn to the representatives of each of the
12 plans so that we can better understand how they operate.
13

14 MR. SELIGMAN: Thank you, Annette. We have, as I indicated, three overview
15 presentations that will be made first on behalf of the CT/CQ plan by Robert Britz, who is associated
16 with the New York Stock Exchange. Bob, why don't I give you about 20 minutes to lay out the
17 framework here.
18

19 MR. BRITZ: Thank you, Joel. I'm happy to be here representing the Consolidated
20 Tape Association and certainly representing the New York Stock Exchange.
21

22 Joel has asked me to do a, sort of, CTA Market Data 101 so that we can be on the
23 same page factually, if not with regard to our opinion on the specific issues, and I'm happy to do that.
24

25 To mention straight at the outset, in the interests of full disclosure, to those of you
26 who are not familiar with our Comment Letter to the SEC's Concept Release, we questioned the need
27 for organizations like CTA going forward. And indeed, last April our board authorized the New York
28 Stock Exchange to withdraw from the Consolidated Tape Association.
29

30 We are taking steps to do just that, and whatever the outcome of the deliberations of
31 this committee, and whatever the Commission is to do going forward, subject to regulatory approval
32 the New York Stock Exchange will not be part of the Consolidated Tape Association going forward.
33

34 I should emphasize that our view in that regard has everything to do with the future
35 landscape of market data and nothing whatever to do with the last 25 years and the performance
36 record of the Consolidated Tape Association, which in New York Stock Exchange's opinion is
37 extraordinary vis-a-vis its mission; i.e., to make real-time Consolidated Tape Association data
38 pervasive.
39

40 So with that -- the slides are mine, not Annette's -- let me start again Market Data
41 101. I have probably half a dozen slides. I'll try to go through them very, very quickly.
42

43 This is a very simplistic look at what might be called an industry structure in terms of
44 market data. On the top line, you start with the information or the content providers, those are the
45 marketplaces themselves who create and distribute the data, moving along to the consolidated tape,
46 consolidated quote, in our case, which is a consolidator and a distributor of the data; essentially, a
47 collector of a finished product for consolidation and redistribution to the next level, which have the
48 Value Added Resellers, the vendors, and so on, who distribute that data through a number of different
49 vehicles ultimately to the consumers of that data, be they broker-dealers, the buy side, individual
50 investors and corporations.
51

52 In terms of trying to get us on the same page, I would ask you to focus on that oval

1 consolidated tape and quote system. I won't dwell on that because we have handed out about 20
2 pages of chapter and verse vis-a-vis how CT/CQ works, governance, and so on, but let me make a
3 couple of points as long as we're on the subject.
4

5 Number one, it is literally a joint venture among the various national and regional
6 exchanges in this country and the National Association of Securities Dealers, and their job is to
7 oversee the distribution of trade and quote prices.
8

9 In so doing, they oversee systems plan, systems development. They monitor
10 ongoing operations, and they literally administer the CT and CQ plans. The governance is one vote
11 per participant, and at the outset that was very pure. It is less pure today because a number of the
12 participants have affiliated.
13

14 So for example, the American Stock Exchange and the NASD are now affiliated, as
15 is the CBOE and the Cincinnati, essentially, creating two votes for those affiliated organizations.
16 Most action on the part of CT requires a majority vote. Plan amendments, however, require
17 unanimous approval.
18

19 The CT and the CQ plans govern two distinct networks. Network A deals with
20 consolidated trading in New York Stock Exchange listed issues for which the New York Stock
21 Exchange itself is the administrator, and Network B governs the American Stock Exchange traded
22 issues for which the AMEX is the administrator.
23

24 The plans require contracts vis-a-vis the vendors, the Value Added Resellers that
25 redistribute the data, and also, on the part of professional subscribers, vendors who subscribe to so-
26 called non-professional investors engage in a contract with CT on behalf of those investors.
27

28 CT/CQ revenues overwhelmingly derive from professional display units. About 85
29 percent of the revenues come from that category. CT/CQ revenue distribution is along the lines of
30 market share of trades, as opposed to market share of volume.
31

32 Both plans provide for pilot programs, and both plans presently use the Securities
33 Industry Automation Corporation as the data processor for those plans.
34

35 With that as a backdrop, let me quickly try and get you caught up vis-a-vis the
36 current landscape. The first thing I would say about that is that Network Market A data is pervasive.
37 When this plan was created 25 years ago, there were approximately 40,000 professional display
38 devices in existence, and that literally was the end of the discussion.
39

40 If you fast-forward to today, more than 100 million individual investors have access to
41 free real-time data via public web sites. Another 70 million have access to free real-time market data
42 via television networks. 12 million have access to largely free real-time data through their brokers and
43 other financial intermediaries.
44

45 Another 700 individual investors access the data via subscription to vendor services
46 who service non-professional investors. And today, as opposed to the 40,000 display units that
47 existed in 1975, there are approximately half a million professional display units worldwide.
48

49 You can get this data today via PC, via PDA, telephones, pagers, ATMs, television,
50 public ticker displays. You can get it in your home, in restaurants, at shopping malls, libraries,
51 airports, even airplanes and even standing on the sidewalk in Time Square.
52

1 The simple truth is you have to live in a home that neither has a telephone or a
2 television nor a PC, and have to avoid frequenting places that have such devices in order to avoid the
3 data, and that's not by accident.
4

5 I go back to the mission of CTA, which is to make real-time market data pervasive.
6 They have done the job fairly well. An important factor leading to the growth that I've just outlined is
7 the innovative product and pricing initiatives on the part of CTA. They have an extraordinary 25-year
8 record of enhancing the transparency of our markets.
9

10 Speaking for the NYSE for the moment, as the saying goes, you ain't seen nothing
11 yet in terms of market transparency. In very short order, investors and viewers of all types will be able
12 to see the New York Stock Exchange limit order book on television via CNN/FN, via CNBC,
13 Bloomberg, and so on, and anyone, frankly, who cares to carry it.
14

15 Also, in short order, investors will be able via NYSE.COM to literally navigate through
16 a virtual trading floor to the point of sale in any individual stock they care to go to, view the level of
17 activity in that individual stock in terms of the velocity of trading, also view the limit order book and
18 query the entirety of the contents of our order database on line, interactive, on demand.
19

20 So I think augmenting the CTA's 25-year record of transparency I speak for the New
21 York -- I believe it will be true of our CTA participant markets -- we've only just begun in terms of
22 making our markets increasingly more transparent.
23

24 The second point I would make in terms of the current landscape is that broad
25 constituent participation with SEC oversight has produced fair and reasonable market data pricing.
26 By broad participation, let me describe very briefly the process by which the CTA either introduces a
27 new product or a new pricing program.
28

29 It very often literally starts with a user. It's very user centered. It either starts with us
30 going to users testing a new order, or, more frequently, it starts with the user coming to the New York
31 Stock Exchange.
32

33 We then take the raw material of that idea, attempt to develop it, play it back to a
34 broad representation or reasonable representation of users. To the extent it plays well, it then
35 bubbles up through committees at the New York Stock Exchange leading to our board of directors for
36 approval of a new program.
37

38 If, in fact, that happens, and I would remind you that our board is 50 percent broker
39 dealers; i.e., users of the data, if, in fact, that happens, it gets filed with the Securities and Exchange
40 Commission for their scrutiny and for public comment and scrutiny by members of the public and
41 other members within the broad market data and investment community.
42

43 That's what I mean by "broad constituent participation." You should understand
44 again, going back to our board, that market data -- the NYSE's budget including market data, and I'll
45 get to market data's contribution to the NYSE's budget in a moment -- is reviewed by our board on an
46 annual basis and on a monthly basis in terms of the actuals versus the budget.
47

48 It's a fact that this process has yielded the following kinds of results. Most of the
49 market data fees in the Consolidated Tape Association are at the same levels they were in 1976. The
50 last professional fee increase for display units was in 1992, a single increase at 6 percent.
51

52 On the non-professional side, there have been both substantial and recurring fee

1 reductions. All of this has occurred while production, the output, has increased dramatically.
2

3 This is a look at global market data fees. The source is the FIBC. What you see is
4 that Network A very close to the bottom of the page has an average display unit fee of \$25. It's
5 among the lowest anywhere in the world.
6

7 This is a look at professional display unit fee over time, and, as I said a moment ago,
8 it has been constant in pricing terms, and, in real terms adjusting for inflation. Obviously, over that
9 period of time, there have been significant decreases.
10

11 This is a look at the non-professional fee schedule -- not fee schedule but the prices
12 associated with that. There was no non-professional fee in 1983, and so for an individual investor to
13 have a display unit of CTA data it was \$168.50 per month. The non-professional fee was created in
14 1984 at \$13.50. Today it stands at \$1.
15

16 This is the same data looked at in a slightly different way. It's a productivity chart.
17 It's the unit cost of market data, and what that suggests is that in 1985 it was about \$1 per trade and
18 per quotation. It's now down to 23 cents and sinking rapidly.
19

20 The last point I'll make on the fairness of both the process and the pricing framework
21 is this a look -- and this is NYSE data only. This would be different for other participants.
22

23 This is a look at the contribution of market data over time as a percentage of NYSE
24 revenues, and the only point I would make there is that it has been relatively constant at between 14
25 and a half and 17 percent of NYSE revenues.
26

27 Obviously, I've stated we think that the pricing framework is very fair. Whether it's fair
28 or not is for others to say, not me, but I would suggest that this charting clearly indicates that it is no
29 more or less fair than it was in 1975 when CT and CQ were born.
30

31 The other thing I would suggest is that a government sponsored cost-based approach
32 will likely increase market data. I would refer you to our letter in response to the Concept Release. I
33 won't dwell on this.
34

35 I simply would ask you or ask you to ask yourself the question given the pricing
36 decreases I have just shown you and the productivity increases, would that kind of a performance
37 record have been achieved under a government mandated rate-making kind of scenario?
38

39 We would suspect that, on the contrary, however well-intentioned, such a scenario
40 would license frequent price increases. After all, CTA's costs go up every year. The New York Stock
41 Exchange, and I'll assume other participant markets, costs go up every year, and if we were to
42 recover our costs, that would imply frequent price increases at the CTA level, and the record has been
43 just the opposite.
44

45 That kind of an approach would likely reward inefficient producers, stifle the kind of
46 innovation and productivity that we have seen at the CTA level, and certainly add a level of incremental
47 costs associated with administering the bureaucracy and compliance with that as well.
48

49 To the extent that this committee and that the SEC is going to restructure market
50 data framework, including the pricing framework, it's fairly obvious that one eventuality is that there
51 will be winners and losers.
52

1 And the question that we need to ask ourselves is is it better to produce those
2 winners and losers via a broad-based constituent-driven process or by government mandate? We
3 would, obviously, suggest that to the participants a user-centered process is a much more
4 reasonable approach.

5
6 The last point I'll make, trying to keep within the timetable, is that market data
7 revenues are an important source of funding for CTA market participants, and that varies from
8 participant to participant.

9
10 At the NYSE, it's about 17 percent of our revenues, extremely important but not at
11 the level of other markets. It's absolutely oxygen for other markets.

12
13 One of the things that I think this committee and the Commission in general has to
14 be careful about is that given the importance of this as a funding source that we not do anything that
15 hinders markets from their ability to make very fundamental technical infrastructure kinds of
16 investments, in order to maintain their operational stability.

17
18 You have to distinguish the CT, which is the collector and the consolidator of data,
19 from the market centers themselves which produce the data. To the extent that the NYSE -- which is
20 what I know best, so I'll put that hat on for the moment -- does not make the kind of switching and
21 order processing infrastructure investments, does not make the kind of network upgrades which run
22 into the many millions of dollars on the front end, the data never gets to CTA on the back end.

23
24 Again, CTA is presented with a finished product. CTA is itself, and it's, perhaps,
25 helpful to think of it this way, as a passive vehicle. It really is a proxy for the participants in the
26 marketplace, and I think it's very important to consider the importance of this funding source and how
27 this funding source is used.

28
29 Certainly, I know at the NYSE market data does not recover its market costs at the
30 NYSE. It is, in fact, happily subsidized by other revenue sources. Notwithstanding that, that 17
31 percent equates to about \$125 million, which does go for the kind of technical infrastructure
32 investments that I've mentioned.

33
34 I've always found it a bit ironic that some of the noise over CTA has come from the
35 on-line community, a community that has a pretty poor track record in terms of operating
36 performance. One was recently quoted as saying that it would be unthinkable to plan and implement
37 against peak utilization.

38
39 That's exactly what NYSE, the other participants and CTA does. We plan against
40 peak utilization, and, in fact, we plan against multiples of peak utilization so that we do not have the
41 kind of operating performance that others have suffered.

42
43 The NYSE, and again, I'm speaking broadly, more broadly inclusive of the other
44 participants, is, at the end of the day, in the business of manufacturing prices. We tell the world what
45 a fine slice of Exxon or IBM is worth on a moment-to-moment basis.

46
47 We're all about creating and moving information, and the value we create has
48 everything to do with information, on the one hand, and fast, secure, reliable delivery systems, on the
49 other hand. That's where we spend a good deal of our money, and that's where the market data
50 revenues that accrue to the NYSE are invested in.

51
52 I think my time is up, Joel, and I'm happy to stop.

1
2 MR. SELIGMAN: All right. Let me, just for clarification, you began with, let us say,
3 a memorable sentence, and let me paraphrase it.
4

5 "The New York Stock Exchange is taking steps to withdraw from the CT/CQ subject
6 to regulatory approval." I just want to tease that out a little bit. Without offering a formal legal
7 opinion, I agree with you that this would be subject to regulatory approval by the SEC.
8

9 Is it your representation of the New York Stock Exchange's position, in effect, that
10 the system is broke, that it's hopeless, that you're only interested in the new model, or is it your
11 representation that under some circumstances you would be less interested in withdrawing from the
12 CT/CQ plan if it operated in a way that, from your perspective, was viewed as a wiser one?
13

14 MR. BRITZ: Joel, we simply think that the plan is unnecessary in today's
15 environment with today's technology. Some of what has been proposed in the Concept Release and
16 elsewhere is about putting regulatory bandaids on top of a plan, a plan which has been characterized
17 as a problem.
18

19 And the problem is the "single-source monopoly." It would be our view that rather
20 than leave the problem of the single-source monopoly in place and put several layers of bandaids on
21 top of it, given that the plan doesn't need to be in place going forward on account of technology
22 developments, it's much better to offer a very straightforward solution to what others see as the
23 problem, eliminate the plan.
24

25 And without getting into the details of that, in a broad overview kind of way, the
26 infrastructure could function tomorrow without CT/CQ exactly as it functions today. I mentioned
27 earlier, as we speak, SIAC is the processor.
28

29 That doesn't have to be the case going forward. There might be competing
30 processors going forward, and that would be perfectly okay with the New York Stock Exchange.
31

32 MR. SELIGMAN: I suspect we will have opportunity to explore how we might be able
33 to function without CQ in the future and appreciate your opening remarks.
34

35 Let me, at this point, turn to Rick Ketchum representing the NASDAQ and ask him
36 to, basically, give us a similar overview of the operation of that system.
37

38 MR. KETCHUM: Thank you, Joel. You have at your seats a description of the
39 NASD/Unlisted Trading Privilege Plan. I will take the first couple minutes here to, in recognition of the
40 number of things we want to cover this afternoon, I'm not going to repeat a lot of details that are
41 included in this document and also are generally consistent with Bob's description of how the CTA
42 operates.
43

44 I will try to note the differences that exist in the NASD/UTP plan today as well as the
45 context of that plan, which is probably important to understand, and then, taking off my NASD/UTP
46 hat, recognizing that Bob and Jerry at minimum are here to reflect their personal views, you'll discuss
47 a little bit of NASDAQ's thoughts on some of the issues that Bob raised.
48

49 First, vis-a-vis the context of the NASDAQ/UTP plan, the plan stems out of the
50 desire of exchanges, under this special statutory standards, to trade securities not listed on an
51 exchange to begin trading NASDAQ securities, and the SEC approved a pilot plan in 1990, that was
52 swiftly superseded by the initial UTP plan that was struck between the NASD and the Chicago Stock

1 Exchange.
2

3 The original signatories of that UTP plan, in addition to the NASD and Chicago Stock
4 Exchange, were the American Stock Exchange, Philadelphia Stock Exchange and Boston Stock
5 Exchange. The American Stock Exchange shortly thereafter dropped out of the plan, and
6 Philadelphia and Boston operated only on a limited participant basis with regard to the small amount
7 of trading they did in NASDAQ securities that happened to be listed in their market where they
8 generally accounted for a very small market share.
9

10 More recently, the additional active participants have been increased, although not
11 with respect to actual trading yet, and that came with the Cincinnati Stock Exchange becoming a
12 signatory to the plan in December of 1999, and the Pacific Stock Exchange joining the plan last
13 month in August of 2000.
14

15 That, obviously, creates a future of the NASDAQ/UTP plan that will be, assumedly,
16 very different than about its past. Another significant point up front to know is that because of the
17 relatively small number of active participants; i.e., two, the plan has remained in an interim fashion
18 with a variety of accommodations that now really need to be looked at and addressed as the plan
19 evolves from operating in an interim fashion to a permanent fashion.
20

21 The differences or things that are worth noting of difference is with respect to the
22 NASDAQ/UTP plan. And again, understanding them, one has to understand the context that,
23 effectively, they sprung out of a two-party arm's-length negotiation between NASDAQ and the Chicago
24 Stock Exchange, as Chicago began trading Stock Exchange securities and over time during periods
25 of time unlike today where the Chicago Stock Exchange traded a relatively number of Stock
26 Exchange securities with a very small market share, as I say, unlike today where Chicago trades
27 more NASDAQ securities with a more substantial market share.
28

29 That led to two-party agreements with respect to the distribution of plan revenues on
30 an interim basis that are somewhat different than CTA. Again, they reflected the fact that Chicago
31 and NASDAQ disagreed with respect to the manner of calculation of revenues, both with respect to
32 which technological costs should be factored into it and the possibility of other costs such as
33 regulatory costs and how they might be factored into it.
34

35 As a result, in an effort to reach an interim agreement, NASDAQ and the Chicago
36 Stock Exchange agreed to a distribution plan that both was calculated somewhat differently with a
37 blend of share and dollar volume, as opposed to trades, as Bob indicated with respect to the CTA.
38

39 And secondly, in, essentially, exchange for a simplified calculation of the revenues
40 and the costs to be subtracted from them, essentially, measures that involved a floor and a cap with
41 respect to the revenue that could be passed through in the plan were agreed to and adjusted over
42 time during the life of the interim plan.
43

44 In addition, with respect to voting, the plan reads and looks somewhat like the CTA
45 plan. While many votes are majority basis, there are areas that require unanimous vote, and those
46 range from areas such as plan amendments to areas relating to the terms under which the plan
47 processor operates and any removal of the plan processor, which, I guess, gets to the third point of
48 difference in the NASDAQ/UTP plan, again reflecting its nature and limited trading volume at the time.
49

50 Unlike the environment with respect to the CTA plan, NASDAQ operates as the plan
51 processor, albeit with commitments of neutrality with regard to the collection and dissemination of
52 that data for the UTP plan.

1 That again reflects the fact that at the beginning of this process there was no active
2 participants in NASDAQ securities other than NASDAQ, and there was, I think, a mutual desire to
3 retain it at as limited as possible additional cost increases resulting from the plan.

4 The question of the exclusive processor and how it operates going forward I think is
5 very much a matter that we expect to have discussions with respect to any future interim or
6 permanent plans with regard to both Chicago and the new participants that are looking to actively
7 trade NASDAQ securities.

8
9 You requested, Mr. Chairman, information with respect to pilot programs. Without
10 going into the eloquent defense of the revenue creation and fee allocation of the plan, I agree with
11 much of what Bob said.

12
13 NASDAQ, as well as CTA, have implemented very similar pilot programs all of which
14 have been submitted to the SEC and approved by the Commission. We do believe pilot programs
15 should be submitted.

16
17 They relate to reductions in the non-professional user fees with respect to the best
18 bid and offer dissemination provided through the NASDAQ/UTP plan from \$4 to \$1, and the reduction
19 for the entire stream of data on a bulk of all market makers and ECN's participating through NASDAQ
20 and the other exchanges that may participate in the system in which that -- in the year 2000, that has
21 recently been reduced from the previous charge of \$50 down to \$10, providing dramatically greater
22 opportunities for individual investors to access streaming data than had existed before, and lend
23 dramatically greater opportunities for those brokerage firms that choose to compete providing
24 increased transparency of trading of NASDAQ securities than had existed before.

25
26 With respect to our current issues that are somewhat unique facing the NASDAQ
27 plan, I think a couple of them deserve to be noted, and then I'll, perhaps, take off my hat and talk from
28 a NASDAQ standpoint.

29
30 First, the other area of some discussion with respect to at least new participants and
31 an area of intense controversy, so it's probably useful to clarify how it operates with respect to the
32 NASDAQ/UTP plan is the NASDAQ's proposal to create a Super-montage display.

33
34 Without going into details, that display would involve a continued bottom of the
35 screen that looks like today's and the top of the screen that would involve a consolidation of all
36 NASDAQ quote information as well, on a voluntary basis, any other exchange information at, around
37 one level, multiple levels, providing the ability to know what people are interested in buying or selling
38 to the extent they voluntarily provide it away from the best bid and the best offer.

39
40 It's important to clarify with respect to NASDAQ Super-montage proposal, putting
41 aside the pros and cons of that proposal, that with respect to any UTP change, NASDAQ must
42 emphasize that it's open to different means of interacting with that exchange.

43
44 With respect to the interest of the Chicago Stock Exchange, NASDAQ has moved
45 ahead and reflected Chicago's at least preliminary desire to relate from a linkage standpoint and
46 automatic execution basis and to have its information included in the Super-montage display at the
47 top of the line, as long as its agency information is accorded a priority equal to any agency
48 information reflected from the NASDAQ market.

49
50 With respect to other marketplaces, however, NASDAQ has emphasized and has
51 stated in its filing that it is up to each individual market to determine whether they wish to be included
52 in the Super-montage top-of-the-line display, that we will be more than willing, as plan processor, to

1 accept that information and only disseminate it as part of the consolidated display lines and not
2 include it with respect to Super-montage.

3
4 On the issues that you raised in your letter,

5
6 Mr. Chairman, with respect to -- and this morning with respect to consolidation and additional
7 transparency, first, with respect to additional transparency, I passionately agree with what Bob said
8 before.

9
10 I think that the opportunities for greater access to market information over and above
11 the consolidated best bid and offer type information that is available in competing markets today is
12 critically necessary if markets are going to operate efficiently and if investors are to be well-served.

13
14 Moving into a decimalized environment, available information that only reflects the
15 best price of every market is, at best, limited information and effectively doesn't allow you to, in a
16 meaningful way, identify the trends in the market and what's really going on there.

17
18 Therefore, I think it is absolutely critical to identify ways to find greater transparency
19 than what any of the plans provide for today, and no restriction should be placed on any market that
20 wishes to provide greater transparency.

21
22 With respect to the questions of consolidation, we have a somewhat different -- I
23 guess substantially different view than the New York Stock Exchange perhaps because we have a
24 little bit different history or perhaps because we don't fully understand how it would work.

25
26 Our history is different because we've had the benefit of operating on the listed side
27 as the third market, now the NASDAQ inner market, environment as a secondary market, and we do
28 recall, as Annette indicated before, that the inevitable result of that competition is that vendors will not
29 carry information with respect to other markets in anything close to a non-discriminatory manner
30 because of the costs involved, and that prior to the vendor display rule that information was difficult, if
31 possible at all, to effectively access.

32
33 So we do believe passionately that a means of providing consolidated information is
34 terribly important. We also are unclear as to how one works without an operating plan, but that may
35 reflect a lack of understanding, and we look forward to hearing more today.

36
37 We agree conceptually with the concept that everybody should sell their own data.
38 From a free market standpoint, it makes a great deal of sense. However, we're not operating under a
39 purely free market. We're operating in an environment where the Commission, we think for good
40 reasons, has chosen to require that vendors provide access to investors of the information of the best
41 prices of all competing markets.

42
43 And separately, the Commission, I think again for good reasons, having lived through
44 that history as well, has required that ECNs have their information consolidated with respect to some
45 competing market, whether that be NASDAQ or an exchange. We think both of those things were
46 very important, right things to do for the SEC.

47
48 Given that, if all of us were given the ability to separately negotiate our rights with
49 regard to vendors, that seems like fun from our standpoint, but we're not clear how it works terribly
50 fairly for vendors.

51
52 Since they're required to make consolidated information, it's difficult for us to see

1 how each of us wouldn't be in the position to exact our pound of flesh and dramatically increase the
2 cost to vendors of that information, and with that, dramatically increase the cost to investors of
3 vendors providing them that information.
4

5 So that may reflect a lack of understanding of how it would work, but we're not clear
6 how the vendor display rule can be squared with a perfect free environment. And with that, Joel, I see
7 the rest of my time is up.
8

9 MR. SELIGMAN: Appreciate it, Rick. Let me, at this point, turn to Ed Joyce,
10 representing OPRA. You have, I take it --
11

12 MR. JOYCE: Actually, I'll take that dangerous step of straying from prepared
13 remarks. Being the third in line presenting information on market structure and the OPRA plan that
14 was modeled after CTA, I will hold back on repeating everything that was just said on the organization
15 of OPRA, and just go in and try to identify the unique differences between the options market data
16 that comes via OPRA and the topics that you've just heard, which were covered very thoroughly, by
17 the way.
18

19 First, I'd like to clarify I do represent OPRA as I look at the overview of where we have
20 come from and what OPRA is. As I look to some opinions, look forward as to where we may be
21 going, I would be representing CBOE.
22

23 I guess relative to OPRA it would be fair to say that all the OPRA participants have
24 all the same concerns over the money that's on the table, and the revenue streams that support many
25 other programs and that are supported by the exchanges in their regulatory efforts.
26

27 So with that being said, I'll give you couple minutes on the background of OPRA.
28 OPRA is, basically, the CTA of the options world with six participants, five being active currently, and
29 it's modeled, basically, after CTA.
30

31 The data that comes into the central processor, which is handled by SIAC also, is
32 communicated to the world through the vendors. There are some differences, and in the handout, the
33 OPRA, with the blue cover sheet handout that went around, I'll point to a couple of the differences.
34

35 And I think the most significant difference, when you look at the OPRA world versus
36 the stock side of the world, is the amount of data. I don't have to tell the vendors that are here that
37 there's a lot of information that goes out via OPRA. 70 percent of the market data that's distributed in
38 North America is options related data.
39

40 Given the burden that comes with that, and some of the issues that we're facing right
41 now, the solutions that relate to the OPRA problems of the future may be different than the solutions
42 that relate to the stock side.
43

44 I think it's fair to say that we'd be open-minded on the consolidation issue, but as
45 Rick, I don't think I completely understand how it would work.
46

47 Especially, when you look into the world of options and we're at the front end of a
48 linkage world where we'll be linking the markets with a substantial amount of the executions being
49 done electronically, having synchronized bid/ask information is critical. Having complete
50 transparency I believe is critical.
51

52 One of the charts in the packet entitled "Message Per Second Growth" will give you

1 a sense of one of the key differences in the markets.
2

3 If you go back to 1998, the OPRA market was disseminating 300 messages a
4 second. We're currently in the 4,000 message-a-second rate with current capacity of 8,000.
5 Projections over the next 18 months go from 12,000, 24,000, ultimately 38,000 messages a second.
6

7 The next page in that packet will give you an idea of what's driving that. Looking
8 backward, it's the number of classes that are listed, the amount of series that are added as markets
9 move, the multiple listings, a new exchange, I'm sure more exchanges on the horizon, the market
10 volatility in the tech stocks with stocks fluttering in price and driving auto-quote systems to
11 disseminate thousands of quotes, it, obviously, drives the number of messages per second at a rate
12 that we've never seen before.
13

14 A current issue which we don't have a complete handle on what the impact will be,
15 there have been studies evaluating the impact of decimals. If we were to go to penny movements in
16 the option market, across the board the amount of capacity that would be necessary would dwarf
17 what we currently have, and the capacity rates that are referred to on that prior chart are indicative of
18 what we could anticipate in that world.
19

20 So there are quite a few differences. Some of the issues are the same. We
21 completely support the transparency. The central processor, as we move into the intermediate term
22 that we're talking about, I believe is critical to have an effective linkage that is on the table currently in
23 the option market.
24

25 The number of automatic execution systems that are in use I think also bring a
26 burden that must be dealt with, with instantaneous information that's available to everyone showing
27 the various markets.
28

29 Today, there really isn't a consolidated NBBO being disseminated by OPRA.
30 Consolidation is done at the exchange level or at the vendor level, and I believe we have to look at that
31 issue.
32

33 And I don't look at the chart that shows the number going up and saying, "Well, we
34 just have to add capacity." I recognize that we have to find more efficient ways to communicate this
35 information, smarter ways to determine which information is critical, in order to address the growth of
36 the future. It can't just be buying bigger boxes. I don't think that's the long-term solution.
37

38 As I mentioned before, we are open-minded on the issue of consolidation. As I look
39 long-term, I think that's fair to say. In the short-term, consolidation is absolutely a requirement to
40 support the transparency that we're looking for, and I look forward to participating with this group and
41 trying to address some of those difficult issues.
42

43 MR. SELIGMAN: Thank you, Ed. And also, thanks to Bob and Rick for their
44 overview presentations. We are ahead of schedule. What I'm going to suggest is we begin a broader
45 conversation at this point, continue to about 3:00, then take the scheduled interruption at that point
46 for 15 minutes or so continue until our adjournment at 5:30.
47

48 Teasing out from the basic thoughts articulated by Bob and Rick and Ed and the
49 framing of the issue, two fundamental questions on our plate are, first, a question, in effect, of ends.
50

51 Should we continue with what was the fundamental objective of the '75 Act to have a
52 transparent system where relevant market information was available to all relevant individuals on

1 terms that were fair, reasonable and non-discriminatory?
2

3 And then there's the question of means. What is the mechanism by which
4 information is conveyed? Today, the dissemination is through the CTA, the NASDAQ, the OPRA
5 type of plans. I'd like to get a sense of initial points of view from each of you in the room that care to
6 share them.
7

8 Should we retain this end, the basic transparency goal? It's clearly one that Annette
9 Nazareth spoke forcefully in favor of. We, as an advisory committee, certainly have the freedom, if it
10 seemed appropriate, to say it's the wrong end.
11

12 Second, if we should retain the market transparency objective, should we retain more
13 or less the current systems of consolidation, putting to another day questions of how the systems
14 might be improved, whether it deals with fee structures or governance or public disclosure of
15 information or pilot programs, or what have you?
16

17 Let me, perhaps, start, Devin, with you, and I do so both because people almost
18 never start at the end of the alphabet or counter-clockwise. I was told by Annette before we began
19 we're the only advisory committee currently functioning for the SEC, so we're going to set lots of
20 precedents here.
21

22 MR. WENIG: I think you asked two questions. One is from a vendor perspective do
23 we agree with the end, which is a transparent market, and we certainly do. I guess I would ask what
24 we all mean by a transparent market.
25

26 I was very interested in comments by my colleagues from the exchanges about the
27 extent the market data has penetrated our culture, to the extent that market data has become such a
28 part of the American way, that it's on television and pagers and all over the place, and to what extent
29 that that has helped --
30

31 MR. SELIGMAN: Devin, excuse me for one second. We're really interested in
32 hearing you, so if you can turn on the mike.
33

34 MR. WENIG: Is that better? I was just saying that I was very interested to see the
35 statistics to the degree at which the CTA and the plans have facilitated the wide penetration of market
36 data through our culture, through television, through pagers and through screens.
37

38 Is that facilitating a transparent market? Is that real-time data? The data that's on
39 the ticker at CNBC is not real-time data. That is a very thin slice of data that is not real-time and is a
40 very thin cross-section of the market. I know that because it's a Reuters data feed that feeds the
41 CNBC ticker.
42

43 There is a remarkable explosion of market data, and I think we may have to start by
44 taking a step back and saying, what is a transparent market? It is not just an options problem,
45 although that is certainly a large part of it.
46

47 A week ago, when Intel traded 300 million shares, the update rate on Intel was
48 greater than the rate that the human eye could see on a screen. So this is very important, and I think
49 we do have to deal with fundamental principles, which is what do we mean by a transparent market?
50

51 What is going to work when updates rates reach 30,000 messages per second,
52 which they will against decimalization. We, as a vendor, serve multiple segments of the market.

1
2 We're very happy to do that. We think competition is good. But ultimately, the
3 market will need flexibility to determine what information is relevant and not. I don't think the very
4 simplistic formulas that have worked in the past, which is real-time or delayed data, will apply in the
5 future.
6

7 So I think in terms of a means, we certainly are in favor of transparent markets.
8 We're in favor of competition to get there. We're in favor of a high level of the economic interests of
9 the owners of data to realize an economic benefit of that.
10

11 But I think we really will have to take a step back and say what are we trying to
12 achieve by transparent markets? I think that's a very fundamental principle which will impact your
13 second issue on the means.
14

15 MR. SELIGMAN: And just again, if you could briefly be more precise as to where
16 you are with respect to the consolidation and means issue?
17

18 MR. WENIG: I think that there are a number of issues that are inherent in the
19 current system. One of those is the one I just raised. The other is from our perspective, sitting
20 above, or below, depending on how you see it, the plans, there are remarkable inefficiencies in those
21 plans.
22

23 Each of the exchanges that under-sits those plans has a separate contract. They
24 have a separate way that data is disseminated and billed and administered. That causes, from our
25 perspective, a remarkable amount of indirect fees or costs which we pay, which ultimately our clients
26 pay, which ultimately retail investors pay.
27

28 And we certainly think there are better ways to do that. One of those ways may be
29 competition, but we'll wait and see how the debate unfolds, but we certainly don't see the current
30 system as being the most efficient way to distribute market data.
31

32 MR. SELIGMAN: Appreciate that. Eric Roiter representing Fidelity.
33

34 MR. ROITER: Thanks, Joel. I think, on your first question regarding transparency,
35 it's a little bit like motherhood and apple pie. Of course people are in favor of transparency.
36

37 There are questions, though, of how you define "transparency." I think, certainly,
38 with regard to last sale information that's pretty easy. Everybody, I think, would agree that real-time
39 dissemination of last sale data is a irreducible objective of the national market system.
40

41 With regard to quotations, again, I think everyone would agree that the best bid and
42 offer should be displayed, and any other bids and offers that investors and market makers and others
43 are prepared to expose in a market, or in a intermarket system that would accord time and price
44 priority, ought to be displayed and given transparency to all who would like to access those quotes
45 and orders.
46

47 I think there is a point at which investors, particularly large institutional investors,
48 would want to keep some of their buying or selling interest in reserve because the very fact of their
49 buying and selling interest can itself move the market.
50

51 And hence, we would have reservations over any notion of transparency that
52 compelled market players to expose all of their buying and selling interest.

1
2 There ought still to be a place for market orders because without market orders you
3 would not have the interaction that the national market systems contemplates, and investors ought to
4 be free to choose between market orders and limit orders and when they would use either.
5

6 With regard to the means, I think we start with the basic precept that regulation has
7 a place, and if that means regulating the consolidation of market information, that certainly has its
8 place.
9

10 But that place is arrived at only when careful and thoughtful analysis of ways to
11 maximize competition in the dissemination of market information is exhausted. It may well be that,
12 after considering all the practical alternatives, that the Commission and this committee might arrive at
13 the conclusion that the basic construct that has operated for the last 25 years in consolidating
14 information ought to continue.
15

16 I am of an open view on that question. It may be that there are other ways to provide
17 for a consolidation, ways in which competition, perhaps, can be greater achieved than under the
18 model of a single consolidator.
19

20 One possibility might be, if a conclusion is reached that a single consolidator is
21 necessary, that that be a function put out for bid, and not only the existing SROs and the securities
22 processors affiliated with SROs be afforded an opportunity to bid, but others now in the internet age
23 that are in the business of moving data real time -- and this is a very short list, but I would think it
24 would include Microsoft, Yahoo, Andersen Consulting and all of those others that are developing new
25 economic models in the internet world -- ought to be solicited to see whether they can come up with
26 a model and a pricing structure that would enhance competition in the consolidation of market
27 information and the distribution of that information.
28

29 I'm also of an open mind as to whether all of the steps that are necessary to gather
30 and to consolidate and to distribute market data are steps that one consolidator must do. It may be
31 that different consolidators can do different steps in that process.
32

33 MR. SELIGMAN: Eric, I appreciate it. Peter Quick representing AMEX.
34

35 MR. QUICK: Thank you. Transparency is crucial to the integrity of the markets.
36 Price discovery is in a constant mode of improvement. New systems are being developed on all the
37 exchanges which will expand that transparency with the capability of looking into the books.
38

39 Development of hand-held devices by options-based markets will also improve that
40 with input from the floor broker. Market regulation, member regulation and market operation should
41 not be overlooked as an ingredient to ensure transparency.
42

43 I don't think we have the full ramifications yet of decimalizations with the option
44 prices only being in increments of nickels and dimes, and what the full impact will be if and when it
45 does go to pennies as well as a limited view of what has happened with the equity markets in that
46 respect.
47

48 We believe the consolidation of the information is crucial to transparency. We don't
49 think the system is broke, but it could be improved. We believe that SIAC does a great job for both
50 CTA/CQ and OPRA.
51

52 SIAC has an affirmative obligation which I think is very important in terms of its utility

1 out there that doesn't -- that is regulated, that is -- its owners being New York Stock Exchange and
2 AMEX. It's extremely important for the integrity of the markets for, I think, a function like that to
3 remain with a reliable third party.
4

5 It may not be the only one, but certainly it has been a reliable one up to this point,
6 and when Bob Britz before talked about peak utilization, the exchanges, especially the primary
7 exchanges, have that affirmative obligation to be there for Easter Sunday when it is overflowing and be
8 able to handle the crowd.
9

10 MR. SELIGMAN: Thank you, Peter. Gerald Putnam, representing Archipelago.
11

12 MR. PUTNAM: We think that transparency is key. A consolidated quote is great,
13 but in the decimalized world that we're moving into, NBBO alone is not going to be good enough
14 anymore. We're going to have to see a lot more prices in-between what's current, a sixteenth world in
15 order to see the same aggregated liquidity in a decimalized world.
16

17 So NBBO plus limit order book is going to be critical. We believe that we should
18 substantially modify the current CTA/CQ/AITS and NASDAQ/UTP plans, that single-veto structures
19 are unworkable and must be fundamentally changed, that market data fees and dissemination should
20 be determined competitively, and I say this sincerely with all due respect to the New York Stock
21 Exchange, that the New York Stock Exchange speaks with forked tongue.
22

23 You've given us some overviews of some wonderful ideas about market transparency
24 and data visualization, but the New York Stock Exchange is the first one at the table complaining
25 when a handful of ECNs decide to give away their quotes to Yahoo Finance.
26

27 Not to single out the New York, Rick, we seriously are concerned with your ability to
28 remain neutral while you talk about changing your one hat and put on your other hat.
29

30 MR. SELIGMAN: Gerald, let me just interject here. I know there are strong views,
31 and certainly a recitation of facts is relevant. But let me encourage everyone to the extent we cannot
32 personalize I think it would be a worthwhile and constructive step.
33

34 MR. BRITZ: Joel, if I may, for the record, we applaud Archipelago giving out its limit
35 order book to Yahoo and any other distribution means it cares to. So there's a misunderstanding
36 somewhere.
37

38 MR. PUTNAM: Okay. We also believe that revenue-sharing by static formula is
39 unworkable, and we don't believe in exclusive SIPs. We would like the committee to consider and we
40 certainly don't have any of this figured out, we think a competitive structure should be considered.
41

42 And we think that the Commission's creation of qualified ECNs could be applied to
43 information processors, and the notion of a qualified information processor is something that we've
44 been thinking a lot about.
45

46 We think each exchange -- and under a plan like that, each exchange should be
47 required to submit information to at least one qualified information processor, and, that as a transition
48 phase, the concept of a common carrier using the existing infrastructure of SIAC and NASDAQ
49 system is one where competitors can come in and use that infrastructure to promote competing
50 systems or services is one way that we could accomplish that.
51

52 And then finally, we think that SRO funding should be unbundled from the information

1 sales process that we would like to buy our SRO services, and know exactly what it cost us, and
2 we'd like to be able to determine that.

3
4 MR. SELIGMAN: Thank you, Gerald. Kenneth Pasternak representing
5 Knight/Trimark.

6
7 MR. PASTERNAK: I'll try to confine my comments to be more market maker
8 specific than free-ranging, and I'll also say that we totally agree on the end. I think it's the means or
9 the devil's going to be in the details.

10
11 Rather than articulate some hard and fast positions, because I haven't developed
12 them. I'm looking forward to developing more of this before I dig my heels in. I do want to comment
13 on three or four observations.

14
15 One is that the lines between market utility SIPs, liquidity providers called market
16 makers and order display discovery facilities are being blurred. In fact, I just gave a speech in
17 Brussels, described the company, and people in the audience described us as a ECN and have
18 described us as a SIP.

19
20 I'm not postulating that we're any of the three above, but I am saying that many of the
21 functions are blurred. Secondly, I might say that if one is to believe that market data, by the way, is
22 imperative to a good market, we would fully support that.

23
24 But the next case is as these SIPs, as exchanges and as ECNs become -- when, in
25 fact, many of them already are for-profit businesses competing with liquidity providers, it becomes
26 problematic to know who owns the value of market data if, in fact, it's viewed as an element that's
27 incorporated in a business model. And I'll give you an example.

28
29 Knight Securities, for instance, as a market maker, about 40 percent of its
30 transactions are displayed limit orders in identical fashion to an ECN, tomorrow would it be instructive
31 to file as a SIP if, in fact, every ECN and every exchange for to file to retain competitive advantage
32 against competing business models?
33

34 So I think, in conclusion, what I would say is there has to be a consolidation. There
35 has to be a rationalization where the facility, the consolidating facility or the rules of the road, so to
36 speak, are participant neutral.

37
38 MR. SELIGMAN: Thank you, Ken. Edward Nicoll representing -- is it Datek?

39
40 MR. NICOLL: Yes. We're probably unique here in that we represent both the
41 interests of an on-line broker and the exchange in the Island ECN. To answer your question
42 specifically, we, too, would regard transparency as absolutely essential to the markets and
43 motherhood and apple pie.

44
45 It is an interesting question in terms of how you define "transparency" today, and
46 Island was the first marketplace to display its full book out on the internet for all to see, and many
47 have followed since then.

48
49 I would agree with Jerry that the NBBO, in a decimalized environment, is no longer
50 sufficient, is no longer a sufficient definition of "transparency," and that we will need to see a greater
51 depth of liquidity to reflect the actual buying and selling interest in the marketplace.
52

1 With respect to the consolidator, I think at this point we have a strong bias for a free-
2 market solution to the problems, but we, too, are open-minded and have not formulated hard
3 positions.

4
5 I would echo Kenny's sentiments that we could see solutions within the existing
6 framework or scrapping it all together and moving to an entirely new model, and we'll just reserve
7 judgment as to what our opinion is until we move through that process.

8
9 MR. SELIGMAN: Okay. I appreciate that. Mark Minister of Bridge.

10
11 MR. MINISTER: Yes. I speak on behalf of both Bridge Trading, the broker dealer,
12 and Bridge Information System, a vendor. Certainly, as a broker dealer, we're very much in favor of
13 transparency both from a viewing standpoint, as well as an access standpoint.

14
15 So simply being able to view transparency is one thing. Being able to access it we
16 think is equally important. As a vendor, increased transparency and driven by decimalization causes
17 a lot of pain, and the thought -- and we have attempted in the last year and a half to do consolidation
18 of increased transparency through those firms who will make available to us a broader book.

19
20 So we have a sense of what the world ahead could be if, in fact, we had to deal with
21 20 or 30 purveyors of information instead of three. Three is a challenge, as has been already
22 recorded both from a management and accountability standpoint, and certainly from a dissemination
23 standpoint.

24
25 Bridge very proudly would only disseminate equity stock information if you also
26 received OPRA information. This began in the early '70s. We no longer do that. We cannot afford,
27 because of the amount of cost to it, to display the amount of OPRA data to every single user of our
28 systems around the world.

29
30 And so we've actually unbundled that and begun -- because of the amount of data
31 involved -- had begun processing it on a per-demand basis. So I think one of the challenges that we
32 have is how do you disseminate the huge volume of market information.

33
34 Our initial results of decimalization have been unbelievable in terms of the growth of
35 quotation information. Is it valuable information? Does it create better markets? That's certainly
36 questionable.

37
38 The value of transparency as it relates to market execution is -- I don't know that this
39 committee will get into it but probably should because certainly the challenge of disseminating an
40 increased amount of data is not one just facing vendors but everyone, and the ability to assimilate
41 that data and make investment decisions becomes increasingly difficult.

42
43 We certainly are glad to participate on the committee and are, as others, hopeful of a
44 strong outcome.

45
46 MR. SELIGMAN: Mark, could you comment a little teeny bit on your views on
47 consolidation?

48
49 MR. MINISTER: I like the idea of competing consolidators, and certainly we've
50 viewed that, I think as Gerry's firm has, as an that's right we would want to participate and even with
51 some of the people that have been mentioned as major consolidators.

52

1 However, I do think it is essential for consolidation because, as I say, as we've
2 attempted to work across non-consolidated data information, particularly generated by new
3 participants in the marketplace who have never disseminated market data before -- we've actually had
4 to actually instruct them as to how to do it -- it becomes very difficult without consolidation, I think, to
5 get a good transparent market.
6

7 MR. SELIGMAN: Bernie Madoff, are you wearing two hats today, both representing
8 your investment services and also representing SIA?
9

10 MR. MADOFF: As far as I know, I'm only representing my firm.
11

12 MR. SELIGMAN: Okay.
13

14 MR. MADOFF: But I'll be happy to represent SIA also.
15

16 MR. SELIGMAN: I'm delighted to have someone representing just one institution.
17

18 MR. MADOFF: Well, I have to check with Cincinnati and the CBOE. First of all, I
19 would say that with all due respect to the slide shows and the numbers that I think that will probably
20 continue to be presented here, I, sort of, feel that some of the data as to statistics, as to costs, and
21 so on, related to market data are probably misleading or out of date because there have been so
22 many market structure changes over the years as to who wants the data, who is getting the data and
23 how the data is used, I don't know that it's really that relevant to start looking at a history of what the
24 costs of this market data is.
25

26 That being said, I feel that the present structure has done a tremendous job of
27 bringing the markets to the point that they are at, and I think that -- I would also think it's fair to
28 characterize it as saying that for the most part that was done in the public's best interest, and that
29 was not done, basically, to serve one particular exchange or market center.
30

31 I also take a great deal of comfort from our firm's standpoint in knowing that the
32 people that are providing that data or that are packaging that data and putting it together are very
33 reliable.
34

35 As much as I love to be an entrepreneur and look at our firm as being an
36 entrepreneur, I would tell you that this is a very, very difficult, difficult task, and I would have to think
37 long and hard as to whether or not it's in the public's best interest, as well as the industry's best
38 interest, to have somebody consolidating this information that is, basically, a profit-driven company.
39

40 I think that we all know that when we have to deal with bottom line numbers our
41 motivations change, and our style of doing business changes somewhat. So I think that's something
42 where I certainly don't think we should rule it out. I think it's something that a change like that would
43 have to come after we look at this thing very carefully.
44

45 Also, the different types of data that are required or that are desired by different
46 people is quite different, and somehow or other we have to figure out how do you charge for that data.
47

48 I mean, clearly, the active, hyper on-line investor may want as much data as
49 possible. Institutions may want different types of data. Somehow or other I don't think it's logical to
50 attach the whole industry on data that maybe only a certain segment of the public or the industry
51 wants.
52

1 Basically, I would leave it with the thought that a lot of work went into getting to
2 where we are today, and I think it's always -- it's interesting -- it's always tempting to say let's start
3 anew, let's throw the baby out with the bath water type of a situation.
4

5 I've been doing this for 40 years, and I can tell you that every project is much more
6 complicated and has a lot more barbs on it than when you first look at it, and I think that what's
7 important is that we all, sort of, resist the temptation to, sort of, rattle sabres and say we're going to
8 either withdraw or we're going to throw it open to competition, and so on, without first looking at can
9 we fix the present structure.

10
11 Because I can tell you that whether it be ITS, whether it be CTA, although there are
12 certain problems with both of them, they somehow or other miraculously have brought this
13 marketplace to an amazing place.
14

15 MR. SELIGMAN: Thank you, Bernie. Don Langevoort, who doesn't have formal
16 representation but is a public representative.
17

18 MR. LANGEVOORT: Yeah. I was wondering who you were going to say I represent.
19 Actually, I see my role, and I suspect Phil does as well, as more a mediator and looking for places
20 to find compromise and find creative solutions than one is going to represent any particular point of
21 view or bring about information to the group, so I'm not going to state any prior impressions right now.
22

23 I'm really going to start out listening. It does occur to me, though, and probably
24 worth saying that the history of this issue is inextricably bound up in the question of funding self-
25 regulation.
26

27 I suspect, hearing what I'm hearing and knowing what I do about technology, that the
28 natural flow of this group is going to be in the direction of finding most efficient solution to the
29 provision of market information and the design of institutional structures.
30

31 And as we move to efficiency, I think it's going to be worth keeping in mind what that
32 is going to do to the future of self-regulation, to the funding issue. We're probably going to come to a
33 point at which self-regulation costs get unbundled. That's the nature of efficiency.
34

35 But if we go in that direction, I think it's worth this group keeping in mind that we
36 ought to address what the consequences are going to be and keep future options in that area at least
37 close to our consciousness.
38

39 CHAIRMAN LEVITT: Thank you, Don. Let's take a 15-minute break. We'll begin
40 again promptly at 3:15.
41

42 (A brief recess was taken.)
43

44 MR. SELIGMAN: Let me continue going around the room, just slightly amend the
45 record.
46

47 I take it, Bernie, you are wearing a second hat?
48

49 MR. MADOFF: Right. Yes, I am.
50

51 MR. SELIGMAN: Okay. I cannot begin to tell you the number of days when I wake
52 up uncertain of whom I'm representing as well, so I understand.

1
2 Rick, you have, I think, spoken to the issue, so I'm going to proceed on to George
3 Jennison, who is representing First Union
4

5 MR. JENNISON: Thank you. And like Kenny, I think, I come today with a lot more
6 questions than I do conclusions. I have no conclusions. My heels are dug in nowhere. First Union's
7 heels are dug in nowhere on this issue. We are very much at the beginning of this process.
8 However, I would like to say a couple of things.
9

10 One is transparency is obviously great. The investor in the last few years has been
11 the big winner of some of the battles that have gone on, the ECN exchange battle, if I could call it
12 that, and clearly the investor has been the big winner out of that.
13

14 I guess when I think about transparency I think -- a couple of things come to mind.
15 One is information here is not scarce. I feel like all of us probably in our lives every day try to drink
16 from a fire hose and I think that's true with some market data.
17

18 I think useful information is scarce today, and I think you can look at the Island Book
19 as an example of that, and I'm certainly not trying to pick on it. I think it's fascinating that we can pull
20 up the Island Book on the web, go right down, see every order in the book on a given stock.
21

22 It's useful only to the extent that you care about the bids and offers that are in that
23 one venue and the same will be the case with the NYSE's book on line. Perhaps the real value is in
24 the consolidated information, and so I think consolidation is paramount.
25

26 I think value added information will be paramount. I think to that end, Rick's
27 comments earlier about the Super-montage -- at the risk of sounding like an advertisement for the
28 Super-montage, Rick -- I think the depth of book that will be there on the top part of the screen is
29 going to be valuable, and I don't know how your discussions have gone with vendors about how that
30 will be disseminated, but I think it will be a good lead in to what might be provided by other
31 exchanges or other vendors with decimals coming, because clearly the inside bid and ask in a
32 decimal world in pennies may not be what you need, although if you look at AOL today, it's still pretty
33 good information.
34

35 I guess I would also say transparency is great. Information is great. Probably the
36 most important thing, though, is having the linkages behind it that make it all work.
37

38 You know, all I have to do is think about Select Net and ITS to think about there's
39 still some dysfunctionalities that exist in the market that we operate in today and I know, you know,
40 we all kind of fight with those, and we all work hard to try to improve them, think of new solutions to
41 those problem situations and try to make it better.
42

43 I guess just the only other comments I'd make here, when I think about the money
44 involved here, it's really interesting. I hear such divergent views around the room and some views
45 saying it's, you know, that market data is a loss leader or a loss perhaps, some saying it's -- you
46 know, there's a big opportunity for gain there, or for exacting more efficiencies.
47

48 I guess, you know, when I think about the money, though, the important point of
49 discussion, I think, is what the money from market data goes for and this brings me straight back to
50 competition, and I think of the innovations that have happened in that last five to ten years in the
51 equity markets.
52

1 I think to a great extent a lot of those innovations have been caused by the creation
2 out of really nowhere ECNs, ATSS, et cetera, that through the grace of the SEC were allowed to
3 operate with a business model that perhaps, you know, funded their operation at the beginning. And
4 that's purely my view, maybe I'm the only one in the room with that view, but I think that caused
5 innovation that has been extremely valuable to the marketplace.
6

7 That competition that came to bear caused innovation, in my opinion, and I think
8 that's been very valuable, very beneficial, and I guess I would say to the extent that we can going
9 forward, if we try to recreate this or if we try to bless what we already have, I think it will be very
10 important to be sure that barriers are lower, innovation can flourish, and competition can flourish.
11 And, you know, in that vein, unbundling of the fees and revenues will be, I think, very important.
12

13 MR. SELIGMAN: Thank you, George.

14 We are joined by Commissioner Unger.

15 Commissioner Unger, would you like to make any sort of statement?
16
17

18 COMMISSIONER UNGER: Well, I would probably like to echo the words that I'm
19 sure you've heard from our chairman, to thank you. It's such a distinguished group of individuals to
20 talk about an issue that is, I think, very important to the industry and very timely.
21
22

23 I did have a chance to talk to a number of firms about market data and some of the
24 issues that especially the on-line firms were facing with respect to the cost of the data, et cetera,
25 during my roundtables and had some recommendations in my report about it, so I am glad that you
26 all are tackling this issue together, rather than us having a number of hearings on it, which I guess is
27 the alternative, because it is something worthy of careful consideration and thought and certainly you
28 all are the ones who are probably in the best position to have that dialogue.
29

30 So I thought it would be interesting to hear at least part of it, and wish you the best
31 and let you know that if you ever want one of the commissioners involved in the meetings or whatever,
32 that I would be happy to do so to the extent that I am allowed.
33

34 Thanks.

35 MR. SELIGMAN: I will certainly welcome your participation whenever it's convenient
36 for you.
37
38

39 William Harts is representing Salomon Smith Barney.

40 MR. HARTS: Thank you. I'm just going to make a couple of quick points because a
41 lot of things that we've been thinking have already been said, so I won't belabor them, but I think, in
42 general, transparency is great when the customer or the investor wants it.
43
44

45 We have a lot of clients and many people around this table have a lot of clients, and
46 some of our clients are around this table, that tell us they don't always want their orders shown and I
47 can think of many ATSS that have built a business model that actually encourages anonymity and
48 they have tried, some successfully and some not so successfully, to build large client bases around
49 that anonymity, which obviously is the opposite of transparency.
50

51 So maybe what this group could think about is what can be done from a market data
52 perspective, and maybe from an economic perspective, to encourage more transparency in the

1 markets and what that really leads to a level playing field that allows the customer to decide, or if
2 they want to abrogate that decision to their broker, what level of transparency is necessary for a
3 particular order or a particular firm.
4

5 And then on your other question concerning should we retain the current system of
6 consolidation, while we would certainly like to see more competition among SIPs and there's certainly
7 a lot of room for improvement, not only on the technology side, but on the economic side, I also want
8 to point out that the existing information processors have spent huge sums on infrastructure over the
9 years that has served our industry well and I guess going to Bernie's point, we really have to be
10 careful not to throw out the baby with the bath water, or to not utilize, if we can, the result of all that
11 work.
12

13 MR. SELIGMAN: Thank you.

14 Next we have Joel Greenberg, representing Susquehanna.
15

16 MR. GREENBERG: Thank you. Just to tell you a little bit who Susquehanna is,
17 we're probably the largest market maker in single stock options and index options. We don't unlike
18 some have a large client base, we're purely in a market making capacity. We're also Nasdaq market
19 makers and New York Stock Exchange specialists.
20

21 Like some other people at the table, we come at it with really an open mind.
22 Obviously, we're in favor of transparency in the markets. One thing that I need to learn as we go
23 forward is really the economics of the situation. I think that just throwing the charts up on the screen
24 it's very hard to see exactly who is making what money where. Until you get down to that bottom line
25 issue, it's very hard to see what the proper result should be.
26

27 Along those lines, I think one thing, I was reading through the information, is the lack
28 of information on SIAC. I just would -- if it's possible that we could get some background information
29 on that, and how the economics flow through SIAC, I think it would be an important part of the puzzle.
30

31 So, again, we are willing to keep an open mind. We have no preestablished
32 positions.
33

34 Thank you.
35

36 MR. SELIGMAN: Joel, I appreciate that.
37

38 Bob and Ed, you've each spoken before and obviously you'll be back in the
39 conversation later.
40

41 Bob Forney representing the Chicago Stock Exchange.
42

43 MR. FORNEY: Thank you, Mr. Chairman. I appreciate very much the process that
44 we're going through here today or beginning today.
45

46 I think we have certainly done well over the last six years because I think we've
47 listened to particularly our customers, and because we've been willing to change, and I think that's
48 what this is all about.
49

50 I agree with the notion that it's not broken, but I certainly agree that there are
51 substantial improvements. Consolidation certainly has a place in the future.
52

1
2 Today, there are three consolidated points. Whether those three need to be one or
3 the three become more than three, I, like I think the rest of the members of the panel, want to learn
4 about that.

5
6 I think also in picking up on Devin's comment and Ed's comment about the increased
7 volume of information, the inability of the human eye to see the information, which is clearly already
8 there and on more than one day and more than one time during the day on quotes and could be there
9 on sales in the not too distant future.

10
11 If that's in fact the case, then that begets the notion of abbreviation or summarization
12 or selectivity or whatever, but I think that also suggests the importance of consolidation.

13
14 I would hate to think of an environment where we abdicate the responsibility for telling
15 the world what the quotes are, what the prices are and just give us the blunt of the representatives,
16 albeit that there may be one or two in the group that, you know, think that they're capable and well
17 enough positioned to do that.

18
19 I think the consolidation has to take place, again, at as many places as is efficiently
20 appropriate, and then, after that point, then we can deal with the notion of appropriate abbreviation,
21 limiting some of my data as well as limiting some of New York's data that might be too voluminous.

22
23 I think those are the things that we should be looking at. Clearly, the notion that
24 there is only a limit order and a market order, is a simplistic view of the future that we're going to be
25 dealing with, and lots of these changes are going to come back, you know, day after day to confront
26 us with the need for more change.

27
28 I don't, as we have demonstrated in our filing, our response to the concept release,
29 we are not advocates of unanimity in the approval process. On the other hand, we've worked with the
30 primary markets, as Rick Ketchum described in his comments, as well as New York, and certainly
31 AMEX also, and we have also learned in that process that even though they're a competitor, they can
32 provide independent aggregation of data and distribution of information.

33
34 So it can work the way it is and we are willing to listen to what is in the best
35 interests of the industry.

36
37 MR. SELIGMAN: Thank you, Bob. I appreciate that.

38
39 Carrie Dwyer, Representing Charles Schwab.

40
41 MS. DWYER: Thank you. Well, I think this committee is fortunate in that most of
42 the arguments pro and con have been laid out in excruciating detail in black and white over the last
43 two years, so we have a pretty good record to draw from. And, fortunately, I won't go into all of that.

44
45 I would say that in terms of transparency, yes, Schwab is very much in favor of
46 transparency. The questions Devin and others have raised is what does it mean today.

47
48 And also I would question that hasn't been asked yet, what does it meant to
49 individual investors? They are not fully represented here. I'll do my best, but their needs are different
50 than institutional investors. I think we have to find something that balances them both.

51
52 We got into this issue because we experienced a tectonic shift in our business that

1 made market data, the current market data structure, uneconomic, and that was the migration of
2 investors to the web.

3
4 That was two years ago. Even as we are resolving some of the pricing issues that
5 came from that shift, we are moving into another era of decimalization where we are going to have
6 another shift, with a system we're on record as saying that it's expensive, cumbersome and unfair,
7 but principally the issue is its cumbersome nature, and that the quality of the information and the
8 pricing of the information really reflect an era gone by in many cases.

9
10 Decreased depth of the inside quote, quotations that change multiple times a
11 second, the limited snapshot of the current quote is not something that may be entirely useful to
12 investors going forward.

13
14 And so as we talk about what market data means and how it's priced, we're also
15 going to be talking about new forms of data delivered to customers and whatever system we evolve
16 here needs to be able to address those needs in a timely fashion as customers' needs change, and
17 as markets change.

18
19 I would also say with decimals the ability of investors to step ahead of one another at
20 very tiny increments may lead individual investors, particularly, to believe that the markets are
21 inherently unfair if we remain at this very limited NBBO as they are currently shown because it
22 doesn't reflect the market.

23
24 So others have raised the issue of increased depth, showing more of the book and
25 so forth. We are delighted to hear that the New York Stock Exchange is going to move forward with a
26 greater look at the book, and we have supported Super-montage for the same reason. It's all to the
27 benefit of individual investors.

28
29 In terms of consolidation, I would again say yes, it has been an enormous good for
30 our country and our markets for the last 25 years or more, but I would urge us to figure out a way, and
31 I don't have an answer, to have an effective and efficient way of consolidating, and I mean efficient in
32 every sense of the word, consolidating data, because even now because of the high cost of
33 consolidated data or its uninformative nature, there are folks moving to come up with other streams of
34 data, other ways of producing data that may be less than 100 percent of a consolidated quote that is
35 nevertheless useful.

36
37 Those may be very effective tools going forward, but we would urge that we not lose
38 the ability to have a consolidated quote, and have it fairly distributed among everyone who needs it.

39
40 Thanks.

41
42 MR. SELIGMAN: Thank you, Carrie.

43
44 Matthew DeSalvo, who is representing Morgan Stanley Dean Witter.

45
46 MR. DESALVO: Yes. Thank you. I represent the only fully integrated broker
47 dealer. However, since we do disseminate current data across our building, possibly by December,
48 maybe we will have a vendor hat also.

49
50 We maintain transparency because obviously, yes, to the question. We continually
51 look forward to the improvement of transparency. Historically, that's been most recently in the vendor
52 display rule as well as the ECN alternative, regulation ATS.

1
2 Current proposals pour in Super-montage and the opening up of the books by New
3 York -- institutions and individuals would both benefit from that. With regards to the Super-montage
4 specifically, we think its approval should be as swift as possible.
5

6 With regards to the consolidation, yes, it's going to benefit both individual and
7 institutional investors alike in the consolidation situation that they have right now.
8

9 We clearly look forward to the innovation that Eric first brought up, non-industry
10 proposals that we should look at such as Microsoft or Arthur Andersen, and I'm sure there are many
11 others, with which to disseminate new ways and technologies of consolidation. We really believe that
12 that could be an answer and must be addressed.
13

14 The single vote structure that Jerry brought up that currently exists is also something
15 that --
16

17 MR. SELIGMAN: Excuse me, Matthew. I couldn't quite hear the single --
18

19 MR. DESALVO: The single vote structure --
20

21 MR. SELIGMAN: Single Vote. Okay.
22

23 MR. DESALVO: That Jerry brought up earlier also is something that we view needs
24 to be changed. It allows stagnation.
25

26 A couple of things structurally that occur right now is the difference between how
27 vendors are charged and the broker dealers. Broker dealers are charged on a per terminal basis for
28 data, as well as their clients on a per use basis. We are also not allowed to disseminate that data
29 freely, we have to sign covenants with which to do that.
30

31 Having proprietary trading systems that clients sign up for stagnates innovation
32 coming from the broker dealer side to the benefit of the clients. Vendors are charging a flat rate and
33 allowed to disseminate. We think that dichotomy needs to be changed.
34

35 MR. SELIGMAN: Thank you, Matthew.
36

37 Let me turn to Andrew Brooks, representing T. Rowe Price.
38

39 MR. BROOKS: First of all, on behalf of T. Rowe Price, I want to thank the
40 Commission for the opportunity to serve on this committee and I would echo -- certainly we don't have
41 any preconceived notions and I think we are looking at the proverbial onion here and this is going to
42 be a fascinating process.
43

44 I would say that we represent individual investors and we represent institutional
45 investors. There is a misnomer often that mutual funds don't represent the individual. We definitely
46 do. Over one million of them. So we've got a lot of individual investors at T. Rowe Price and we're
47 going to speak on behalf of both individual investors and institutional investors.
48

49 I think it's important to define transparency. Of course we're all in favor of it. I agree
50 with what Mark Minister said. I think if you can't access it, it has very little value.
51

52 I also believe that any effort to further the goals of the national market system

1 mandate are worthy ones and we ought to keep that in mind.
2

3 When it comes to data and the system by which it's distributed, I have to ask a
4 couple of rhetorical questions, I guess. Who should profit from it? Who generates it? Who owns it?
5 I think these are questions we'll have to struggle with.
6

7 I also would urge the committee perhaps to thoroughly probe the vendor community
8 as to their capacity and ability to accurately disseminate market data. If they don't seem to be able
9 to do this in a decimal environment, perhaps we need to consider minimal increments. I think it
10 would be hazardous and a bad thing if we jeopardize our market structure simply to disseminate
11 penny increments, and we heard one vendor this afternoon talk about the capacity problem. I would
12 love to see an honest appraisal of that.
13

14 Finally, I would like to say I look forward to a careful and considered process in trying
15 to find opportunities for greater transparency, reduced costs and better markets.
16

17 MR. SELIGMAN: Thank you, Andrew.
18

19 Harold Bradley, who is here representing American Century.
20

21 MR. BRADLEY: I can echo Andy's great words about individual investors down here
22 on this heavily weighted side of the table. I represent two million individual investors who invest in our
23 general mutual fund line up and we are really true consumers of service and payers of service. And
24 we've been involved or I've personally been involved -- I didn't realize that once you got onto this
25 escalator it just keeps going, but the order handling rules, market fragmentation debate starting in '93
26 and again this last year up on the Hill, and decimals are all things we've taken a very strong and
27 investor-oriented belief in because they're really things that are costs to us to do our job, better
28 returns for investors, and that's what this is all about, I think.
29

30 I really think when you asked the question, Chairman, about transparency, the real
31 question is for everybody that I know around this table, they all want asymmetry of transparency. In
32 other words, I want to see what you're doing, but I don't want you to see what I'm doing because then I
33 can make better decisions. And I think that that's classic in terms of the debates that I've been
34 involved in that makes it so hard to come to compromise and awareness.
35

36 I'm a little troubled by some of the earlier statements that related how the SIP is
37 structured. The last increase in SIP costs were in 1991. When I look around the table, I haven't paid
38 more to anybody providing me any services, I've had a number of rate decreases over the last nine
39 years as technology, Cisco and Intel and others have created far more efficient platforms and
40 economics of information transfer. So I wonder how come there's so much friction to keep those
41 costs from coming down?
42

43 Percent of revenues have been constant, the SIP revenues as a percent of revenues
44 have been constant over those years while there's been about a seven or eight fold increase, I believe,
45 in revenues over that same period of time, so the absolute costs have gone up dramatically.
46

47 Is there not -- again, if I read the comment release correctly, there is a belief that
48 there are some fixed costs or there should be some scale economics involved there that would bring
49 those costs down as a percentage of revenues. Troubling again, but I think very consistent with
50 looking at a monopoly function.
51

52 Another point that was made this afternoon was that right now the SIPs are an

1 important source of funding for CTA participant markets and the implicit notion that without it, they
2 would collapse and die.

3
4 We have a number of things we've offered up in recent commentary specifically
5 regarding the Pacific Coast Exchange and the Optimark utility as a facility of that exchange that
6 represent, I think, serious problems with both the functioning of the plan and what constitutes a plan
7 amendment, and the ability for one participant to veto the plan if it's competitively threatening.

8
9 And, secondarily, when we had one of our vendors build us a link to the Pacific
10 Coast Exchange to display our orders, they refused to take our orders at that exchange, and,
11 instead, sent them directly to the New York Stock Exchange because of embedded economics that
12 relate to linkages, SIPs and all sorts of other stuff that I'm just now finding out about after 13 years in
13 this business.

14
15 I think another big question that came up as I was reading the release that was
16 troubling was what is the cost to new entrants? We have all these people lined up to be exchanges.
17 I haven't seen anywhere in the disclosure, maybe I've just missed it, what it costs to join CTA and
18 CQS.

19
20 MR. SELIGMAN: Harold, just to interrupt for a second. These are valuable points
21 you are raising and we'll get to the cost structures in due course, I'm sure. For the moment, though,
22 if I could just focus your attention on maybe the consolidation issue and perhaps link your thoughts
23 up to that.

24
25 MR. BRADLEY: Yes. And that's where I'm going on the last one, which is as a
26 former trader and portfolio manager, in a day with Intel and Microsoft, Cisco and Dell, the functional
27 difference between Nasdaq and NYSE is increasingly blurred as well.

28
29 Do we really need two SIPs doing exactly the same job? And why are they
30 functionally different other than by accident of history?

31
32 So those would be the points that I would like more clarification on, but all these
33 issues, to me, are interrelated in terms of real market competition, and how do we create competition
34 both among markets and in the delivery of information so we can make better decisions?

35
36 Thank you.

37
38 MR. SELIGMAN: Thank you, Harold. I appreciate that.

39
40 Michael Atkin, representing the Software and Information Industry Association.

41
42 MR. ATKIN: Just a word on who we are. I run our financial information services
43 division and over half of the people sitting around this table are members of ours, including the
44 exchanges, the brokerage firms, the banks and the vendors, so frankly, in this conversation, I don't
45 represent any of them. Our objective is to try to facilitate kind of an open, neutral discussion on
46 market data issues exclusively.

47
48 I'm not sure that I can agree with Devin that it's best to go last. What more can I add
49 to this conversation?

50
51 And it kind of reminds me of the child's game of telephone, you know, where you go
52 around the table and when it finally gets to the last person, the answer has absolutely no relevance to

1 the question that you asked and I won't disappoint you.
2

3 Let me just give you a couple of perspectives. We've had this conversation on
4 market data concept release throughout our association for a while. There's two or three perspectives
5 I would like to offer.
6

7 First, we at least want to keep it in the realm of practicality. There's a lot of issues
8 that get talked about and a lot of conversations about ownership of data and other things that are
9 clearly important, but there are a lot of practical things that could be done.

10 Devin started with that comment and I'm going to end with that comment because
11 there's a lot of efficiencies in the system that need to be looked at on the billing side, on the market
12 data reporting side, on the contractual policy side.
13

14 The whole complexity of tracking and reporting digital rights in this business is way
15 behind the technology that exists, and I would encourage this Committee to look at what we'll call the
16 straight through processing of market data, administrative cost issues, as it relates to market data
17 costs.
18

19 And, fundamentally, that is about allowing the people who pay for the data to
20 manage that resource as a strategic resource within their companies, what they're spending, what
21 they're using, so they can make the right decisions on what they want to buy and what they don't
22 want to buy.
23

24 The second thing, and I'll kind of pick up on a comment that Carrie made about the
25 shifts that are going on because there's not just a shift from Internet or a shift to decimalization,
26 there's a globalization shift and there is a market structure shift that's happening around the world that
27 we all need to keep in mind as we look at what this committee is dealing with.
28

29 Certainly there is a blurring of lines of distinction between vendors, exchanges and
30 firms becoming vendors and certainly Morgan Stanley is now a vendor as much as it is a user firm.
31 Morgan Stanley is also an exchange with JAWAY. There are a lot of things that are going on in this
32 marketplace and there are two points here:
33

34 One, there is a global precedent to what this group decides, what this commission
35 decides, that needs to be kept in mind primarily for the operational efficiencies that take place
36 because there is a world of differences in the way people manage market data. What you guys
37 decide, what we decide on in this discussion has a lot of impact globally.
38

39 And the second part is that the policies of the providers lag far behind the technology
40 themselves, and I think we should really do ourselves a great service by looking at the market data
41 policies themselves and whether they have kept pace with the dissemination technology.
42

43 And then the final point I would like to make is about the fact that ultimately
44 everything here we've talked about is moving toward automation. That's the goal that I think we all
45 need to keep in mind in terms of the role of data and data linkages in terms of being able to facilitate
46 this industry moving toward automation, straight through processing automation, and automation in
47 terms of the linkages of data through things like standards, XML and the like.
48

49 MR. SELIGMAN: Thank you very much, Michael.
50

51 Let me see if I can give our conversation, for the balance of today, a framework.
52

1
2 I wanted us to focus on two fundamental issues today, transparency and
3 consolidation. With respect to transparency, it seems to me from what I've heard there is one level of
4 agreement that's been characterized as an almost motherhood and apple pie level, and that is the
5 mandate of information being available on a non-discriminatory, fair and reasonable basis. I don't
6 think anyone questions that.
7

8 There are, however, real issues that have been posed about whether or not the
9 current information that is mandated is the correct information. And these questions are various, but
10 just to focus on different kinds, on the one hand, as we move towards decimalization, there have been
11 practical questions posed as to whether or not the NBBO or the inside quote will retain the same
12 significance it did at an earlier point.
13

14 I think some of the praise of the Super-montage plan was the notion it was capturing
15 more data. I think what we're seeing is a desire on the part of this group to explore not so much
16 should there be transparency, I don't think anyone questions there should be, but rather are we
17 requiring the proper information to be made public.
18

19 And on the equity side, clearly decimalization, clearly the practical significance of
20 automation, gives us possibilities that simply weren't there before. So that's one level of
21 consideration we're going to walk through.
22

23 It struck me in listening particularly to Ed Joyce's points there is another type of
24 issue both existing in the options markets and suggested more generally.
25

26 In the options markets, the struggle that is currently much discussed about is
27 capacity, it is the notion that you're going -- Ed, forgive me if I get the numbers wrong, but I think you
28 said you're at something like 3000 or 4000 messages per minute?
29

30 MR. JOYCE: Per second.
31

32 MR. SELIGMAN: Per second? Excuse me. That just shows you why I needed
33 your help. And you think you will soon be at eight and you're toying with systems that may go to
34 38,000 messages.
35

36 You don't have an NBBO kind of structure in the options market. There was in a
37 different context reference to the fact that sometimes whether it's reports or quotes are coming so
38 quickly, the human eye can't keep up with them. And so we may have a different kind of issue that
39 we're focusing on in the options markets with respect to transparency, both because of the lack of the
40 best bid/best offer kind of model and because of the fact that there are just so many more options
41 that are traded and capacity questions.
42

43 One issue I would like us to focus on, and, I will suggest that for the balance of today
44 we confine ourselves to the equity markets, would be what information exactly should be transparent
45 and I think there was a question, if my memory is correct, that began at this side of the table and was
46 echoed by several individuals.
47

48 Now, the other basic question that I posed for today was what I referred to as the
49 means question. If we are to retain a transparent system, how are we to disseminate information?
50 And the question can be reduced to operational terms, do we retain a CTA/CQ type of plan, do we
51 retain the current Nasdaq type plan, do we retain the current OPRA type plan?
52

1 Bob, in beginning the presentation for the New York Stock Exchange, I think it is fair
2 to say you reflected the New York Stock Exchange's unhappiness with the current CT/CQ plan.
3

4 I think from a different perspective an issue that Rick only slightly touched upon but
5 it's on the horizon, the Nasdaq is moving to a new model. It is moving towards being an exchange
6 itself. That will have implications as to how it complies with current rules, or whether the current rules
7 are the appropriate ones.
8

9 MR. BROOKS: Mr. Chair, can you amplify that a little bit? Because I view Nasdaq
10 as an exchange now, so what do you mean by that, if I can ask?
11

12 MR. SELIGMAN: Let me defer that for the moment.
13

14 And, Rick, I hope I did not speak out of turn. I believe it's been publicly known, your
15 view --
16

17 MR. KETCHUM: No, we are moving to register as an exchange. I think probably
18 what Andy is saying is that while for the peculiarities of U.S. regulation we're treated differently,
19 we basically operate and have operated more or less like an exchange for years from a regulatory
20 standpoint, albeit an electronic one, but have only in recent years had the type of electronic
21 executions that you normally associate with an exchange.
22

23 MR. SELIGMAN: There are nonetheless potential regulatory and other questions
24 that will have to be wrestled with.
25

26 When you focus on the consolidation question, there were views that were all over
27 the lot. They range from some perhaps wistfully saying we should have in effect a free market or free
28 competition kind of model. There were a number, and perhaps it was close to a majority if not an
29 actual thin majority, who said in effect the system has worked well in the past, don't throw the baby
30 out with the bath water, sure, there needs to be various improvements.
31

32 There was then a very different kind of comment that emerged from the conversation
33 which had a very different orientation and that is maybe we have too many consolidators, maybe we
34 should go to a system where the consolidator is put out to bid, or where efficiency considerations are
35 given heavier weight.
36

37 And what I infer from all of this is this is an area I don't think we should try to resolve
38 in any meaningful sense today. I will suggest that the topic I would like to pursue at our second
39 meeting will focus on alternative models of consolidation. I don't think we should miss the practical
40 import of what Bernie said, either representing himself or the SIA or others, that doing nothing is not
41 really always an option, but sometimes it proves to be the very wisest of options.
42

43 What I am going to suggest in correspondence that I will circulate a little bit down
44 the line, I am going to request proposals on the question of how we should consolidate in the future,
45 that will be the basis of our second meeting.
46

47 I'm going to suggest that clearly the New York Stock Exchange will want to make
48 such proposal and that what I will try to articulate in the letter which will go, of course, to everyone is
49 that anyone who makes proposals can't do it at the level of a Ph.D. thesis.
50

51 What we're interested in is operational questions. What we're interested in are the
52 details. What we're interested in is compliance with statutes and rules. And you can say, you know,

1 I'd rather change the statutes and rules and that's a legitimate choice, we could ultimately
2 recommend that.

3
4 But the key is I anticipate, and I'm sure Bob will not disappoint me, that the New
5 York Stock Exchange will want to make a proposal.

6
7 I would suggest that a second type of proposal that would be very useful for us to
8 consider would be one where we might have a different kind of SIP system, where we might in fact
9 have a true monopoly SIP selected through some competitive means, where we might focus on the
10 efficiencies involved.

11
12 And I don't want to preclude other ideas from being circulated, but it seems to me
13 consolidation is a fundamental issue on which there didn't seem to be the kind of consensus we saw,
14 say, on transparency.

15
16 Now with respect to transparency, we have an hour or hour-and-a-half. I would very
17 much appreciate perhaps we focus just on equities, initially, and follow up on a number of comments
18 to the effect that, yes, we like motherhood and apple pie, we like the idea of mandated transparencies
19 done, but we're maybe not mandating the right information.

20
21 I'd be interested in fleshing out if we're not mandating the right information, what
22 information should we be focusing on? How would we define it? And then if there's time, we'll go and
23 take a look at the options side, or we can continue that conversation at a later point.

24
25 We don't have to do this in any rigid order. I'll try my very best to recognize people in
26 the order in which they raise their hands. I will ask that, again, we try to pursue, at most, a three
27 minute rule, so that as many people can participate as possible.

28
29 Who would like to start?

30
31 Rick?

32
33 MR. KETCHUM: I just offer two things that I think do reflect where there may be
34 some common viewpoint, perhaps where there is also disagreement.

35
36 It seems to me that there are a couple basic things that should be protected,
37 whatever the Committee is up for. One of which is that a single consolidated best bid and offer
38 system or best prices of every competing entity, as competing entities change more, et cetera, I
39 believe is still very useful, but it isn't, as Carrie, among others, said, isn't enough.

40
41 And there should be a very clear standard in which there are no restrictions on
42 anyone, whether they be a market ECN, a market maker, or anyone else, putting out other
43 information freely or charging for it in any way they choose to, outside of whatever is regulatorily
44 required to come under the consolidated plan.

45
46 So I think there ought to be a general thought that people should compete, from a
47 transparency standpoint, any time they want to, and there should no question of restrictions. I'd say
48 today I don't think there is, but it should certainly be clear that there isn't any.

49
50 The second piece is, it's not the best bid and offer information or the best price of the
51 various competing entities isn't important. It is important. It's valuable, even in a decimalized
52 environment. It is that there is a variety of other information that all of the plans carry that is less

1 useful.

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And I say that without saying that it is a difficult process of parsing when you decide it's less useful and when it's not. There are a variety of prices, speaking of whether it be as a third market, as a secondary market, feeding into the listed plans, or, speaking from a NASDAQ standpoint, collecting literally hundreds of market makers and a few ECNs.

There a variety of prices, both times, which are so far away from the market as to be unhelpful. There are a variety of other prices that reflect auto-quoted prices on secondary markets for a small number of shares, usually 100 shares, which generally are effectively unhittable because they are timed and designed to move away from the market as soon as the market price reaches that point.

Those two things, particularly the latter, generate a tremendous percentage of the total quotations that the plan processors have to handle, we have to collect, from a NASDAQ standpoint, the vendors have to pass through. On an option side it's even more complicated, without getting into, since you've got lots of information and lots of classes and lots of series that is, at best, of interest to a tiny few in the entire country.

So, again, I do think there's a task of being -- and I don't pretend that it's easy -- but a task that would be valuable in saying that getting information out as to what those best prices are, we're putting out a lot of information that is literally ignored and thrown on the floor by everyone who trades in the whole country. And, while it's not easy, I think that should be a -- it could be a legitimate effort of this committee to try to come up with a better way of handling that.

MR. SELIGMAN: Andy?

MR. BROOKS: I might say this. I think as a general principle, markets and price discovery and prices and the investing public as a whole is best served when you have the maximum confluence of orders interacting. We need, I would think, to keep in mind, we have to have an environment that allows for that and perhaps requires it.

As people try to syphon order flow off and match it up with things that they have internally or in a separate closed system, we have a dilemma. We have a dilemma between execution and transparency. And, generally, even though it's not always clear, I think we ought to try and figure out how to err on the side of transparency and fight the self-interest that we all share at different times of trying to pair off order flow, of trying to react to a separate pool that only I can get to and Harold can't, kind of thing.

There's a rub there and there's an issue of competition, but I think when we talk about transparency, we ought to try and figure out ways that incent, require, mandate, urge people to come together, because it's only then that investors get better pricing, it seems to me.

MR. SELIGMAN: Thank you, Andy.

Kenneth?

MR. PASTERNAK: Thank you. What Andy talked about, first off, I think, these conversations about transparency without talking about access might lead you to nowhere. So I'm not suggesting we backtrack, but I think, again, information without being able to produce an actual

1 event, might take you only part of the road.

2
3 The second comment I might make is about --

4
5 MR. SELIGMAN: Kenneth, why don't you amplify that?

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7 MR. PASTERNAK: How do I do that?

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9 MR. COLBY: No, your comment.

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11 MR. PASTERNAK: Well, I'll give you an example. We're going to start displaying
12 our limit order book -- I am from the country now, don't make fun of me -- and I think that a lot of
13 people would like to see our book. More meaningful is to have access to that would create an actual
14 event. I mean just in itself, the piece of information without being able to act on it as an investor has
15 relatively de minimis value beyond being able to see and interact with information.

16
17 And the second comment was actually -- I'm learning vocabulary every day --
18 asymmetry of how we'd like to view information. I think in the way we devise transparency, we have
19 to understand that there is a constructive balance between liquidity providers and the discovery
20 mechanism of limit orders and between institutional investors and individual investors.

21
22 There seems to be -- and I'll give you an example -- meaningful amounts of
23 information that could be useful to investors. Somewhere we have to make a value judgement about
24 how much anonymity and control an institutional investor can have.

25
26 And I might suggest, for instance, a compromise: if one wanted to have a reserve
27 bid in the market, they might not have to reveal the size of the reserve bid, but there might be a
28 connotation, for instance, that says to individual investors who are required to reveal their intent to
29 trade, that that is a reserve bid and, in fact, that bid could be larger than it appears. The second kind
30 of release of information that might be constructive to the discovery process is differentiating between
31 the agency bids and principal bids.

32
33 So there are ways in the way we release information that we could promote both
34 liquidity providers to be recognized in the marketplace, and possibly we'd encourage more vigorous
35 price discovery with limit orders.

36
37 MR. SELIGMAN: Kenneth, you said that Knight is going to display, I take it, certain
38 limit order books?

39
40 MR. PASTERNAK: That's correct.

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42 MR. SELIGMAN: Should everybody equally display limit order books?

43
44 MR. PASTERNAK: I actually think that's about choice. I think the marketplace will
45 actually rule here. It will demand that market participants reveal multiple levels of liquidity.

46
47 MR. SELIGMAN: Okay. Bob?

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49 MR. BRITZ: I agree with that comment 100 percent. I wonder why we start this
50 conversation by asking the question: What types of information might we mandate, going forward? I
51 absolutely think that Ken has the right answer. Markets, liquidity providers, might actually compete
52 on the basis of the information that they provide, and how cleverly they provide it in an era of

1 information overload. Everybody wants more information. People need it and traders crave it in order
2 to do what it is they do, but they are overloaded with it, on the other hand. So there's advantage to
3 the extent that you can provide or turn data into meaningful information.
4

5 I mentioned that New York is going to deliver its book through a variety of media, and
6 also our order database through a variety of media, but those are sort of broad products. In a decimal
7 world, looking at the book may be a whole lot less meaningful than a package piece of information
8 that says: where can I buy 150,000 shares on a sort of on-demand query basis.
9

10 So I think that markets have the opportunity to compete. Clearly there should be a
11 base level of information, but I'm just a little -- I guess I shouldn't say surprised, we're sitting in an
12 SEC conference room, after
13

14 all -- but disappointed that we start the conversation with what might we mandate as opposed to how
15 might markets innovate in terms of the provision of information and, all things being equal, investors
16 will, I think, patronize the market that provides the most valuable information.
17

18 MR. SELIGMAN: Bob, in fairness, this is not where we started. We went around
19 the table and there was general support for the concept of transparency. But it poses, it seems to
20 me, the logical question: exactly what information should be transparent? That's why I followed up
21 on what I thought was a consensus in the room.
22

23 COMMISSIONER UNGER: Wait. Can I just interject for a second? I don't think
24 those questions are so mutually exclusive -- I have to defend the SEC conference room -- because I
25 think, and I obviously wasn't here for the whole conversation, but in talking about what the minimum
26 level of information should be, I think you want to take into account what will be done with that
27 information.
28

29 I think you're totally right about the fact that there is information overload and people
30 are looking to do things with the information more than just receive it passively. And you see that in
31 on-line trading, and I'm sure you're going to see it with market data. So hopefully you can look at
32 both of those things together to give us a guiding minimum or a guiding post as to what information
33 will make that innovation possible and so that it can be provided with some uniformity.
34

35 MR. SELIGMAN: Could I just follow up with one question to Bob, though?
36

37 MR. BRITZ: Sure.
38

39 MR. SELIGMAN: You said, "There should be some base level of information."
40 Could you perhaps, again, amplify a little bit by what you would view as the appropriate base level of
41 information?
42

43 MR. BRITZ: Well, I don't know that that's for either me or the NYSE to decide. I
44 mean that is, at the end of the day, what we are here to do. Clearly, today it's the NBBO and it's the
45 size around that and it's the last sale of the stream of last sales.
46

47 But I agree with what a number of commentators around the table have said vis-a-vis
48 the decimal environment. We now trade some 57 issues in decimals and we've received lots of
49 plaudits and congratulations in terms of the systems performing the way they ought to perform, but
50 have gotten a lot of noise from the trading community that it's increasingly hard, even in this relative
51 handful of stocks, to find out where you can trade in size, on account of penny jumping and seeing
52 two by six markets, a penny spread. It's not terribly helpful to most of the people I think sitting

1 around this table.

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But I repeat, Joel, and I apologize for repeating, I wonder if competition and innovation ought not to be what drives that in differentiation, as opposed to mandated.

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MR. SELIGMAN: Well, that's a fair point, but let me offer a few observations. First, we're an advisory committee. We will ultimately, I presume, all have an opportunity to review a final report. Until we've all agreed, or at least had access to agreeing to a final report, nothing is resolved. It's an evolving process. We're not taking votes. We're not resolving things today. We're getting a sense of each other's views. We're trying to see where there is consensus.

19

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23

Second, we do function under a statutory and rule structure, and your preference for free markets is one a lot of people strongly support and understand, but there are aspects of certainly Section 11A of the 1975 Act which strongly suggest that Congress has expressed a different view, at least as of this time.

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Third, I took up the question of transparency, and one can argue that everything is connected to everything else, in part, to have a meaningful conversation. We're clearly going to go on to a lot of other issues. It may be that we'll come back to transparency when we've gone through consolidation mechanisms, when we've gone through some of the other issues, and we may have a different take on it at that point.

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I don't mean to suggest that we're precluding the opportunity to look again or look anew, but the word "mandate" was derived from the interpretation I think that most of us have made of the '75 Act and the walking around the room, and basically seeing that there seemed to be a general consensus in favor of it, at least for some category of information.

35

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MR. BRITZ: I think we agree on the notion of transparency as the starting point as to how you get there, whether it's the proper role to mandate the disclosure of information or whether markets will compete on that basis.

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MR. SELIGMAN: Carrie?

MS. DWYER: I actually partially agree with Bob, so let the record reflect that.

MR. BRITZ: Is there a doctor in the house?

(Laughter.)

MS. DWYER: But let me now veer off. In terms of --

MR. SELIGMAN: Wait a minute. What was it you partially agreed on? I'm dying to know.

(Laughter.)

1
2 MS. DWYER: I was getting to that. I was getting to that, in that the question I think
3 is not so much, do we decide what the content is, because we'll always be looking in the rear view
4 mirror, and this world is going to keep on changing, no matter what we decide at this committee.
5

6 I think that the information is there. For instance, right now if we could develop
7 products based around streaming real time data for our customers, we could give them a much more
8 dynamic and clear picture of the markets, even with the narrowing of spreads the decimals have
9 created and the volatility in the quotes. But we can't do it because it costs too much. That's where
10 we now disagree again. It is too expensive.

11
12 So to folks who mention access as a key issue, cost is an enormous barrier to
13 access to good data here, and that, unfortunately, gets us back to the structural issues we started
14 with. But I don't want to lose sight of the fact that there is data now that could enormously help
15 investors that is not readily available to all of them because it's too expensive to furnish it to them.
16

17 MR. SELIGMAN: I think I saw Matthew. And then, I apologize, I haven't been
18 looking at this side of the room, I'll go over there and then come back.
19

20 MR. DeSALVO: As we improve the granularity of transparency on the cusp of
21 decimalization, I raise an
22
23 issue -- and this may not be the committee -- but it is increasingly more difficult with which to
24 ascertain a prevalent short sale rule, whether it's the bid test of the NASD or the tic test of the New
25 York Stock Exchange.
26

27 I don't understand how we can go forward with talking about transparency with going
28 from a steenth to a decimal increment, and without talking about a rule that exists that we're not
29 addressing. It's nice to talk about all the stuff that we're talking about today, but this is a very
30 important rule that exists in the marketplace, both with the institutions and increasingly more so for
31 individuals, considering what the market has done recently. To address transparency without that, I
32 think we're not addressing the whole of the market structure.
33

34 MR. SELIGMAN: And in fairness, we have a charter which somewhat limits what we
35 are expected to address. We may be aware of it, we may need to take cognizance of it, but that's
36 outside the charter of what we're supposed to address.
37

38 MR. DeSALVO: Can you amend the charter?
39

40 SEVERAL: Yes.
41

42 MR. SELIGMAN: Let's go to Ed, Eric, and then we'll come back to this side of the
43 room.
44

45 MR. NICOLL: I'd like to tell you a little bit about our ambivalence about some of
46 these issues. I mean one of the things -- I agree with Bob -- one of the reasons that Island has been
47 so successful is because of our ability to innovate, to publish information which is valuable information
48 and which is unique, at least for a short period of time, to our marketplace. We believe -- you initially
49 asked us if transparency was a good thing. You didn't ask us if mandated transparency was a good
50 thing, and those are two different questions, okay?
51

52 Island is keenly aware of the paradox here. Island wouldn't be the success that it is

1 today, but for the order handling rules and the consolidation of its quote within the NASDAQ quote.
2 Island would be much more successful in competing with the New York Stock Exchange if there were
3 a similar regulatory structure in place with respect to listed quotes. So we are keenly aware of the
4 benefits of consolidation and of the regulatory scheme that we exist in today.
5

6 But we also believe, strongly, in competition, in innovation. We are actually
7 sympathetic with the New York Stock Exchange's position here in many respects, and it is for that --
8 perhaps because of that paradox that we have yet to -- that we come here with an open mind in terms
9 of what we would recommend in terms of mandated transparency. It's a different question from
10 whether transparency is a good thing.
11

12 With respect to cost, on our on-line brokerage side, we already offer 100 percent
13 streaming, real time data for our customers, who tend to be more active customers, say, than
14 Schwab's customers, who find offering that information in the present regulatory environment too
15 costly. Our customers tend to use that data and to transact their business much more frequently
16 than the typical Schwab customer does.
17

18 I'm not sure that that's fundamentally unfair, as Schwab's position is, because our
19 customers effectively are paying a greater burden than Schwab's customers are paying as a result of
20 their higher frequency of transactions.
21

22 So I just wanted to reflect what our position is. We strongly believe -- and I agree
23 certainly with the starting point that Rick started with -- that any mandate for transparency ought to
24 be some kind of minimum baseline from which we can then innovate and compete.
25

26 MR. SELIGMAN: I appreciate that, Ed.

27 I think Eric?

28 MR. ROITER: Is this on now?
29

30 Well, my view is that 11A is a little more complicated and Congress was a little more
31 ambivalent itself about what a national market system would be about, and that at some level there is
32 some inherent tension among the different objectives that are embodied under 11A. It's not simply a
33 regulatory model. It does seek to promote different objectives that I think are, at some level, in
34 conflict, because congress does evidence in 11A a decided preference for competition among
35 markets and among market participants.
36
37

38 I think if you look at the model that the SEC has followed over the last 25 years in
39 this very area of fees for market information, I think what you really find is a hybrid of regulation and
40 competition. It's a rather imperfect hybrid model, but as the SEC release on market data itself
41 recognized, these fees come to the SEC, the product of some type of negotiation among the different
42 constituencies in the market, and that the SEC itself sort of presides over that negotiation rather than
43 regulates directly the setting of fees.
44

45 I had tried to suggest earlier that if you recognize that there are inherent tensions
46 among the different purposes of the national market system and this very function of arriving at fair
47 and reasonable fees, you would want to give a place for competition to operate, as well as regulation
48 to operate. I think the model we have now is an imperfect one that probably should give way to
49 another model that allows competition a more vibrant role to play.
50

51 In the release, the SEC noted that some fees that have come in, in the past, from
52

1 the NASD and SIAC have not received public comment. Well, I don't know what inference to draw
2 from that, other than that's not really the best way to test the reasonableness of fees, whether people
3 actually comment on a specific fee proposal or not. I think the best test for whether a fee is
4 reasonable is whether in a competitive environment people are willing to pay the fee that's being
5 assessed.
6

7 So I think that the choice is a false one of having to say, "Let's give competition full
8 rein" or "Let's stay with the current system." The current system itself does provide for a form of
9 competition. I just think it's a rather rudimentary and rather blunt way to go about it.
10

11 MR. SELIGMAN: If I was going to generalize from the several comments now that
12 have been made on this point, there's an idea that's kind of lurking in the discussion. Let me see if I
13 can articulate it. It goes something like this.
14

15 Several of you appear to support the notion that we should have a bi-modal, if you
16 will, system, by which there's some baseline or minimal, whatever word you want to use, of mandated
17 information. Then, in effect, you stay out of the way. You allow the market centers, the vendors, et
18 cetera, to negotiate their own deals. You allow it to be designed so that Island can provide a different
19 stream of information say than Charles Schwab, and so forth.
20

21 What would be the sense about that type of approach? That is you essentially retain
22 some current or modified version of an NBBO inside quote system in equities and then, in effect, take
23 a very clear position that above and beyond that the various players at issue should be allowed to
24 experiment, innovate, design to their heart's content.
25

26 I think I saw Bernie first.
27

28 MR. MADOFF: I was about to say that we were sort of getting ahead of ourselves on
29 this whole issue, and I think you sort of brought me right to where I wanted to be.
30

31 The issue here -- this argument started or this debate started about who owned this
32 data, who had a right to it, what was the right, what was the right amount of money to charge to
33 supply this data? I think that everybody understands that everybody is going to use it in a different
34 way, and some people want it, some people want more of it, some people don't want it at all, and so
35 on.
36

37 The problem is that in order for us, as an industry, to evaluate what the right price for
38 the data is, assuming that you cross the gap as to whose data it is to sell, which is not an easy gap
39 to cross, then we could wrestle with, well, okay, what is the right fee to charge for this data? So the
40 problem is that right now it's impossible for people to evaluate, in the industry, what this data -- you
41 know, what the fee structure is all about.
42

43 Is it being used for regulatory purposes? Is it being used for marketing purposes? It
44 is being used
45

46 for -- probably most people in the industry I would say agree that the revenue that is coming from the
47 fees are being used for greatly more than what we envision they were going to be used for originally.
48 And people want an accounting. They want to know, "Okay. What is this all about?"
49

50 We know that there is this huge pool of money being collected. We know that it's
51 clearly being used for other things than to run the Exchange from a regulatory standpoint or for the
52 SRO to run their regulatory budgets. We've never been able to come to grips with that, which,

1 hopefully, this committee will deal with that.
2

3 I don't think it's so much an issue of what data is going to be released because I
4 think there are some firms that, as I say, would want almost endless data, and a lot of firms would
5 want much less of it. Clearly, you're never going to be able to come up with a fee that is going to
6 cover everybody.
7

8 So I think that's going to be a negotiated -- that's going to be negotiated privately.
9 That will depend upon each vendor or each firm saying: okay, I'm willing to pay X number of dollars
10 for this data. They just want to know what they're being charged for.
11

12 So I think that we have to first dig -- drill down to the issues before we go to the
13 levels that I think you're trying to take us to, because I don't know how it's possible for us to make the
14 evaluations that I think you're asking for.
15

16 MR. SELIGMAN: Okay. I think I saw Gerald.
17

18 MR. PUTNAM: As far as setting minimum standards of levels of information, I'm
19 uncomfortable with the idea of minimums or maximums. A good example is setting a range for circuit
20 breakers in a marketplace based on points, only to find out that the market moves tenfold and then a
21 100 points doesn't matter any more. So you run the risk of setting the wrong standard or the wrong
22 minimum level.
23

24 I think that a standard or a way that we could come up with something -- it goes
25 back to the example of the order handling rules and providing some level of information -- I guess to
26 make this short -- that if you set the standard
27
28 at -- you have to display as much information to the marketplace as a whole, as you do to any one
29 participant.
30

31 So if you're off the mark and you have no prices, then the standard is no prices for
32 everyone, so then you don't have to show any prices. If a marketplace, though, has a specialist that
33 sees the entire depth of book, then the minimum amount of price dissemination for that marketplace
34 should be the entire depth of book. There you get a world that is based on a level playing field.
35 Everyone sees the same amount of information.
36

37 MR. SELIGMAN: How would you wrestle with comparability issues?
38

39 MR. PUTNAM: Again, you set standards at -- based on, you know, that no one
40 participant should see any more information than another participant gets to see from that market
41 center.
42

43 I'm not sure I understand exactly what your question is.
44

45 MR. SELIGMAN: Well, for example, if you have multiple-traded stocks and you have
46 one exchange providing one set of data, a second exchange providing a second set of data, how
47 would you wrestle with that?
48

49 MR. PUTNAM: Right. Just within the exchange environment then, so that the one
50 exchange decides that the only price it's going to show to any participant on that exchange is just the
51 bid and offer. So no one gets to see more. But if that exchange has, again, you know, a specialist
52 or market maker or whatever that gets to see more information than that, then everyone gets to see

1 all of that information. That's how you settle it.
2

3 If another marketplace decides that what information is going to be available is the
4 entire depth of book, then it has to disseminate its entire depth of book to the marketplace, and that's
5 how it's settled. It's just based on how much information any one participant gets to see, is the
6 minimum level that you would set for that market center.
7

8 MR. SELIGMAN: Okay. Thank you.
9

10 Let's see. Am I ignoring anyone? Oh, I'm sorry. Oh, forgive me.
11

12 MR. HARTS: I'm not sure that comparability is required. I mean in a perfect world it
13 might be something you might strive for, but if what Ed Nicoll was saying is right, then maybe it's true
14 that marketplaces that display more information, or market makers or market centers feel that it's a
15 competitive advantage for them to do so, they should be allowed to do so. In a free market world, that
16 would mean more business for them.
17

18 I mean in a sense this is where we're at today, because we are allowed -- we're all
19 allowed to disseminate as much information as we want, for the most part, within the rules. Brokers
20 for years have sent out indications of interest, for instance, which is a form of market data, largely for
21 block transactions and that type of thing.
22

23 So I think we have a dynamic marketplace today in terms of dissemination of
24 information. I probably want to think it through more, but I'm not sure that we should require
25 unanimity of transparency.
26

27 MR. SELIGMAN: Okay. I appreciate that.
28

29 Bob, I'll get back to you. It think it's Devin and then I'll come back to this side.
30

31 MR. WENIG: I said I think to make progress, we're probably going to have to be
32 more specific in what we mean and what we're trying to accomplish by consolidation and
33 transparency. I think consolidation ultimately fulfills a couple of functions. One of them is a physical
34 function. It's about processing large amounts of data -- and although I don't know, I would suspect
35 that there are scale economics involved there. I would also suspect that all of our interests are for the
36 lowest cost and most efficient means of processing large amounts of data.
37

38 But consolidation is also about a view of the world. It's about something called
39 transparency, which means the way that we present what's happening in the markets to a segment of
40 the market. And I would proffer that one of the things that's happening is that everyone's view of the
41 world is increasingly diverging due to some of the factors that we've talked about today. So
42 transparency may mean something different to somebody who is trying to call up their account at
43 8:00 in the evening on the Web, then to a hedge fund running a proprietary trading model at 8:30 in
44 the morning.
45

46 I think that is exactly part of the benefit that we see vendors providing in the new
47 world. We don't think of ourselves as a phone company. We don't just want to ship around large
48 amounts of useless data because we run the biggest network or we have the biggest pipes. What
49 our value is, is we want to get close to market segments, we want to get close to technology
50 providers, and we want to compete on providing the best view of the world for our client segments.
51

52 So I think it's more about competition and it's more about enabling market

1 participants to have the flexibility to provide views of the world, rather than mandating a set of
2 information or mandating a specific type of consolidation that may not fit all segments of the market
3 equally. I mean this is exactly where we see the value of being independent and outside of the
4 market, yet close to technology and participants and the exchanges in data owners as the value
5 proposition of the venter in the new world.
6

7 MR. SELIGMAN: I appreciate that.
8

9 MR. JENNISON: Okay. I, Devin, very much agree with your comment. And to get
10 specific about what transparency means, I think individual investors would like to see the NBBO
11 certainly as a starting point, and the full order book market-wide as the end point. I think back about
12 the evolution of, first, we had exchanges, then ECNs, then we had something called the ECN portal,
13 and then we had Schwab buy one ECN portal, Cyber Corp.
14

15 Would we call that an ECN portal? A conglomerater of the data, displayed on one
16 screen -- put all the information in one place in front of an investor and it's very interesting. I think we
17 could end up with the same thing if you thought about pulling together market-wide order book
18 information from competing marketplaces. You could end up with the same thing either mandated or
19 not.
20

21 Jerry, I'm a little suspicious of one of the best innovators in the marketplace arguing
22 against mandating kind of a minimum level, because you might be concerned that everybody
23 becomes your competitor then because they're mandated to provide what you provide.
24

25 But mandates, I think from the individual's standpoint, coming from the little guy's
26 standpoint, mandates are probably okay. It sets the minimum bar. I would fully expect there will be
27 quantum leaps of innovation beyond that. I mean that will be tomorrow's product and value-added that
28 gets delivered.
29

30 MR. PUTNAM: What I was saying was that if -- a good example of it, if Ken wants
31 to make his book available to someone for a price, he should make it available to everyone, not just,
32 you know, he can choose to make it available to you and then shut me off from that same
33 information, therefore I can't make all those prices available to all the market participants.
34

35 MR. SELIGMAN: Thank you, gentlemen.
36

37 Bob?
38

39 MR. BRITZ: I actually think that's noble, but flawed. I think Bill made an excellent
40 point. Markets aren't the only ones who provide market information. There are brokers in our
41 marketplace today, standing right at the point of sale with wireless order -- messaging and order
42 management systems that zap messages to their upstairs trading desk or directly to an end
43 customer at virtually the speed of light, and that information is -- that's between the broker on the one
44 hand and the end customer on the other, with all sorts of color or commentary customized to the
45 needs of that customer.
46

47 So we're talking about market information as though it were structural and
48 institutionalized, and that which has historically come out of the market centers has been structural
49 and institutionalized. But if we're going down a path to sort of fool ourselves that we're going to make
50 the world flat here, from an information point of view, that's simply not the case, because markets
51 aren't the only ones that put out market information.
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So I think that gets to the equality and the availability issue.

MR. SELIGMAN: Harold?

MR. BRADLEY: Thank you. When I think of reading your particular book, Dean Seligman, these issues are also old. And I'm just recounting a little bit of my experience of --

MR. SELIGMAN: I wrote the book a long time ago, Harold.

MR. BRADLEY: Well --

MR. SELIGMAN: It was unavoidable.

MR. BRADLEY: Nothing has changed, right? When I look at transparency and this discussion on transparency is today. Given ten years ago virtually none of the innovations in transparency occurred on major exchanges. Transparency is evolving because of what the ECNs have meant in terms of a competitive infrastructure. What did Instinet do starting in the late '60s?

And then finally attaining the technologies caught up, and distribution caught up, in the '80s, that's a thought. In a number of ICI meetings institutions line up. They want price and time priority. That's not transparency. That's the access and the anonymity is what they want. They don't want to give up the information to a guy standing in the crowd to immediately wire 18 other competitors about what an individual might be doing. Of course, they do want that information about the 18 other competitors, though.

MR. PUTNAM: Well, that's the asymmetry.

MR. BRADLEY: That's the asymmetry. But pricing time is important, and depth of book. And I've been on committees -- I was on a committee with others that brought the New York Stock Exchange with a "buy" sign sitting around saying, "We want the depth of the book" and there was no real interest in providing depth of book.

With the ECNs now encroaching with their market on NASDAQ and others where there is depth of book, I believe, make transparencies coming from competitive where folks don't have to file rule filings to change the rules on how to display their information. And that's where this is kind of unique.

When I'm upset or I want a different way to display it because I think people are taking advantage of information, in the past I asked Jerry or I asked Bloomberg or I asked Instinet to change and they innovated it now, when one guy innovates for a customer three of them were innovating in three weeks.

I mean, there is no real edge if it adds value for the customers. What I would really think is essentially with transparency is that nobody from the exchanges can really compete and put in a competitive position. And I guess these are all bound together. But I think transparency is fairly easy from at least the institutions that I'm listening to. There's pretty much unanimity of views on some of those basic issues.

MR. SELIGMAN: Well, Harold, let me take that to another step. Ed told me and Bob told me, in effect, "We like transparency. We don't like mandate." We currently have rules in effect that mandate, the NBBO and so forth. So we don't have those rules?

1 MR. BRADLEY: Well, this is really complicated stuff. I was a big backer of the
2 order handling roles. And the reason was, is that Instinet setting aside from liquid pools you could
3 put an order out there and lock with the market maker being a real buyer and he wouldn't move and
4 he wouldn't trade. Then you would bid through that offer and he wouldn't move and he wouldn't trade.
5 Locked and cross market is what they call it.
6

7 In supply and demand equilibrium, I should have exceeded the equilibrium clearing
8 price but couldn't do it. So the mandate then for order handling rules basically said that folks had to
9 interact with those orders. And so order interaction can mean that's really where the issue and what
10 it goes back to Andy's earlier point about if there's no real confluence of orders, you don't have price
11 discovery.
12

13 MR. SELIGMAN: Good answer. I'm not sure if it's still the same question.

14 MR. BRADLEY: I trade stocks. There is not an easy answer.
15

16 MR. SELIGMAN: Okay. Well, let me throw it out and go back to Ed. We are an
17 advisory committee. We're not required to say, you know, where the doctor would cover what is best
18 in all universes. You've suggested discomfort at least with mandate.
19

20 MR. NICOLL: Yes.
21

22 MR. SELIGMAN: We currently have in effect the bi-model system that Rick talked
23 about and I articulated. It's one where there's certain, let's say, minimal information which is required,
24 the NBBO and so forth. And everything else is fair game. Would you recommend to this committee
25 that this shouldn't be a mandate of the NBBO?
26

27 MR. NICOLL: Well, first of all, I think that technology today allows that to be
28 considered for the first time. I mean, one has to take into account the world in which that mandate
29 was first promulgated. It is a lot easier for people to look at a lot more data simultaneously and for
30 people to collect data and to display that data in a consolidated way without the mandate.
31

32 So it is now possible, it seems to me, to have a marketplace where the average
33 investor actually sees the best bid and offer without that mandate existing. I don't think, though, that
34 we as an organization yet are prepared to recommend that. So the answer to your question is no. At
35 the beginning of this process we are not prepared to recommend that. We would like to explore that
36 possibility, to think about it further, to hear what other people have to say.
37

38 But to answer your question directly, I think we would still prefer some baseline,
39 some minimum baseline be established and then allow markets to innovate above that baseline.
40

41 MR. SELIGMAN: Thank you. Bill?
42

43 MR. HARTS: Also, I think we should talk a little bit about what the NBBO means if
44 we're going to say we like it or we don't like it, because Rick started going down a path before about
45 auto quoting, which really at its most basic level is what a market maker or specialist is really saying.
46 I don't particularly want to trade at that price. But I'm forced to put a quote up there by regulatory
47 mandate. And as Rick also pointed out, a lot of those quotes are not accessible because by design
48 they move away as the markets get closer to them.
49

50 On the over-the-counter side, I think we have a real problem or a similar problem
51 where there are quotes in the NBBO that may not be at the actual price they're being displayed at
52

1 because of access fees or whatever, other charges get tacked on to them. So I think the NBBO has
2 to be formed in such a way that it's very clear to all participants that that is the price available to
3 participants in the marketplace, not a penny more or a penny less or a fraction of a cent or anything
4 else. But that is the price. When there's a 20 bid that if someone hits it they don't actually have to
5 pay a penny or a penny and a half in addition to that \$20.
6

7 MR. SELIGMAN: Appreciate that. Rich.
8

9 MR. KETCHUM: At the risk of adding more complexity to this, I thought I'd also just
10 say that I think there's one other issue we've skated around that is, again, worthy of the Advisory
11 Committee focusing on in the coming weeks/months. And that is, and as I've said before, I don't
12 think anyone should ever be discouraged from putting out information.
13

14 We are careening towards a situation in the U.S. markets in which the amount of
15 information that would become transparent is wholly unrelated to the amount of information which is
16 accessible, in which if you take what was suggested by Ken and what has already been done by
17 ECNs that an individual investor is going to be faced with the opportunity for finding out what the
18 books are of multiple market makers and multiple ECNs.
19

20 Yet the only linkage that they have, depending on which broker they're using and
21 depending on what access that broker has to the various different people, comes through a market,
22 and that linkage is to the best bid and offer. So if we think about additional transparency without
23 thinking about accessibility, we will manage to create exactly the irony and difficulties that Harold
24 referred to with respect to NASDAQ five years ago, of lots of information available out there to some
25 people where various other people, in ways that they can't get.
26

27 And the frustration that a Datek may face with investors seeing lots of information
28 that they simply can't access in a variety of places. And while there aren't easy suggestions or
29 solutions to that, if we just look at this from a transparency standpoint without looking at this with
30 respect to how you access from an execution standpoint for both institutional investors and individual
31 investors, I think we will have missed what probably is the next trend in the last two years, rather than
32 sort of looking back on what has been the trend for the last three or four years.
33

34 MR. SELIGMAN: Okay. I appreciate that. Let me -- obviously we're going to have
35 to go further with transparency, and I think we've probably put enough on the table to deal with the
36 frame issues for a second meeting or a third meeting focused on transparency. Maybe I'll pick up on
37 what Rick concluded with when he talked about access and spend a few minutes focusing on
38 transparency and the options arena. And maybe I'll just ask Ed to start off by flushing out a bit the
39 complexity of transparency in a world where you're dealing with what seems like an ever-maximizing
40 number of messages per second.
41

42 MR. JOYCE: Well, first, before I get into the capacity side of it, when you talk about
43 transparency and whether to mandate it, it seems to me that indirectly you mandate it through order
44 handling rules. While you might not mandate consolidation of the best quote, if you mandate that an
45 order handler give the best price that's available, they have to consolidate the information themselves
46 in order to fulfill their obligation as an order handler.
47

48 I don't know if that's clear. I mean, you might not say that you're going to force
49 consolidation of the NBBO. But every firm on the street to fulfill its obligation has to take the
50 unconsolidated information and consolidate it. So you might not mandate it but you have already, I
51 think, unless we change order handling rules. And I think that as you take that and apply it to the
52 options markets it's some of what Rick was saying when he talked about auto quote, but it's the

1 inverse.

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On the stock side there are people auto quoting because they don't want to trade. On the options side auto quote people are auto quoting because they do want to trade. And so the auto quotes that are coming through are ever improving in the market and then backing away and improving and backing away. It's that volatility of the stock market that's driving that auto quote. And because there are hundreds of thousands of securities that we're dealing with in a series of options.

And the only way you can really make a market in them is by auto quoting. And if you take and put on top of that the linkage requirements and the NBBO requirements in filling your orders, we have little alternative but to mandate directly or indirectly consolidation of information. I don't think there's another way of handling it. That doesn't deal with the issue of capacity.

Having said all that, the more series there are, the more classes that get listed, and then in a DPM world we start to exceed a reasonable level of capacity. Earlier someone made the point that different people want different types of information. And we may be getting to that point where we don't have the same information available in all series of options.

That's a difficult pill to swallow in the markets because customers have become used to seeing a bid and ask at every option series. It takes the conversation that just went around for the last two hours and it adds another level of complexity to it when you translate it into the options market, not that it was simple before you did that.

MR. JENNISON: Is your -- could I ask a question?

MR. SELIGMAN: Please.

MR. JENNISON: Is your statement that today you basically have a consolidated quote in the options world because of some of the requirements of the market?

MR. JOYCE: I think we are moving to the obligations that are placed on the person who is responsible for handling the order requires that they seek out the best market. Whether or not there's a mandate that there be a national best bid or offer disseminated through market information systems. The member firm has still taken that responsibility on. The specialist or DPM that's filling the order has taken that responsibility on. It doesn't really relate to whether or not there is a requirement for market information processing.

MR. JENNISON: I would just say that's a great opportunity to put a mandate on it. I'm an equity guy who stumbled into the options world over the last couple of years. I think that's where we could use a mandate. But clearly, the options market, as you pointed out, is there's such an evolution happening there.

MR. JOYCE: Right.

MR. HARTS: Yeah, the biggest problem we have with options is that -- and you're right. I think the brokerage community does feel that in order to get best execution for our clients that we do have to make those decisions about where to rub. The biggest problem we have in the options market is that there's no transparency in terms of size. There's no size being disseminated today. And there are people who have made the arguments that "Well, size is meaningless in the options markets" and so on. But that's a real problem for us, especially as we go to more automated order routing systems.

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MR. JOYCE: I think it is an issue, and I can speak to it for a minute, if you will.

MR. SELIGMAN: Please.

MR. JOYCE: The size is implied in many series of options. In most series of options, the size is implied by the availability of an automatic execution system. So there's an implied minimum that means that you know that the best bid asked is available to a committed size because it's available in electronic execution.

In the early part of -- in the first quarter of the next year I think OPRA will have the ability to disseminate size beyond that. But the implied size is really there for the public orders right now, or others that are coming in as public. Some traders might know what that means. But the size is there. It's a firm commitment to automatic execution.

MR. HARTS: But I wonder if -- I'm sorry.

MR. SELIGMAN: Go ahead.

MR. HARTS: I wonder if market makers on the options exchanges would be more competitive if they didn't have to guarantee that minimum size for every particular price that they're quoting.

MR. GREENBERG: First of all, I think the market makers are extremely competitive on the options exchange. But secondly, we would like to have a system where we can decide to which auto quote provider we can be up what amount -- professional customers and retail customers. I think if the NASDAQ becomes an exchange and that's in the system now they can decide how big up they can be to which auto quote provider. We'd like to have that system on the options exchanges.

MR. JOYCE: I agree.

MR. WENIG: I think we're missing a really practical issue that's coming on us in the next six or seven months, which is if we go to penny, even if we go to nickel and you look at the projections that have been done, the studies, they haven't built a box big enough to handle it. So it's not a matter of are we going to handle it? Can we handle it?

Moore's law is not going to bail us out of this one. So we have to do something. And it really comes down to very simply either OPRA itself is going to have some sort of BBO that's going to help us with that, or the vendors are going to have to slice and dice the feed in ways that the market wants, but are manageable. And it would be great to say there's other options, but no pun intended, but there are none. And at the worst projections, one of those two things will have to happen -- not even at the worst projections, even in the middle projections.

So I think -- I'd love if we could focus on that and drive to an efficient decision on that because we will have to. Not making a decision is making a decision.

MR. SELIGMAN: Let me pose a framing issue. Should we separately focus on options from equities? Are the issues so different when you -- either you deal with, you know, should there be an NBBO for options? What are we going to do for capacity? And so forth. This might invite a subcommittee or what have you that would split them out for separate consideration. Obviously, there will be some overlaps before we're done. What's the sense of the committee? Bernie.

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MR. MADOFF: I think the principle I think is the same. You probably don't want to separate --

The principle I believe is the same, so you don't want separate subcommittees. I think that you -- how you -- the practical application of what we decide can be dealt with differently. And we've done -- the industry has done that, you know, on many occasions. So I clearly -- you know, they're different -- you know, the operational aspects of options as opposed to equities is different for the reasons that have been brought out today, but the concept and the theory is the same.

So I think we'll basically say, look, we're going to have different timetables, and we're going to deal with it differently than we deal with equities. But you have to -- I think the principle is basically the same.

I just want to say that, you know, I -- this is starting to sound more and more like a market structure committee than access fees. And I think that they're related, so clearly -- you know, I don't know that it's easy to deal with one rather, you know, versus the other. That being said, I worry -- unless you are more brilliant than I think you -- let's say you assume that you're as brilliant as I think you are -- and being able to frame this subject going forward, those of us that I guess that have been in this process for a long time look at these things from a jaundiced view because with all the wonderful intentions we all have trying to work these issues out, when you get down to the nitty-gritty, boy, everybody locks horns on these issues and digs their heels in.

So I think that it would be helpful if somehow or another going forward you can frame what you want us to do from a practical standpoint, because when you start getting into some of the issues that have been brought out about this table, those are really market structure issues. And when you start talking about access and trade through rules or who's disclosing what information, that's great. And you know, all of that has to be addressed. But I have to tell you I think there's a more immediate issue here than trying to solve all these other issues. And I think that, as I said before, we have to drill down to that because otherwise we're never going to -- even going into 2002, I suggest that we're still going to be around this table discussing some of these issues. So it's going to take some genius to keep us focused on what I think the -- what I believe we are here to discuss.

MR. SELIGMAN: In fairness, I am not claiming anything, but I am claiming that I was given a charter which we are all operating under. We are to focus on market information issues. The questions we've addressed today with transparency and consolidation are clearly covered by the charter. There were comments suggesting the interconnectedness of those questions with other issues that, you know, were fair. But we're not going to propose new trade through rules and address a number of other points that basically are outside our framework.

It seems to me that realistically we're going to do one of two things or perhaps both. Either we're going to basically say the model we now have should be replaced. And if we do that, we have the burden of spelling out in precise detail why and what it should be replaced by and why it's better. Or we're going to ultimately say the model we have right now should be retained but it needs to be improved in a series of systematic ways. And what I'm going to suggest is that, at that level, let's have our next meeting. I think before we conclude, if we do conclude, that the model should not be replaced. The proponents who are basically saying there should be a different model should have their day in court, if you will. It's not really court but should have their opportunity to make proposals.

As I suggested at the outset, I think it's most useful that the proposals be in writing,

1 be circulated a period of time before the meeting so they can be studied in careful detail at a level of
2 operational detail that can be useful.

3
4 It may be at the end of the day what we ultimately propose is, for want of a better
5 term, a kind of on the one hand, on the other hand. If the Commission did decide to replace the
6 current model, here's what we suggest you do. If you decide you want to improve or reform, if you
7 will, the current model, here's how you go about it. But that's our big choice, and it is limited to
8 market information, and we do have a time limit. And my sense is, you know, our next step has got
9 to be at the level of the model itself. We then have to go on. And whether we begin to take this up at
10 the next meeting or a subsequent one, we'll see.

11
12 To take up exactly what information should be involved, how it should be paid for if
13 we retain the kind of model we now have, how it should be governed, whether there should be different
14 rules for pilot programs at least from some of the systems involved. And those are very, very
15 important issues. And obviously, as you've said, there will not be total unanimity at least ex ante.
16 With respect to -- we'll have to work through it.

17
18 But the big choice for us is the model. And I'm going to suggest -- I will study, you
19 know, the minutes and perhaps the transcript from today's meeting, and obviously the comment
20 letters on the December '99 release and other publications, other writings you want to provide to me
21 in the next two weeks. And let me suggest if you want to amplify comments made today, let's all
22 understand it has to be in the next two weeks for it to be operational. I will try to circulate a proposal
23 letter, if you will, between the second and third week. And I think we're aiming towards a meeting
24 presumably in December, at worst in January, where we'll take up this fundamental question, exactly
25 what model are we dealing with?

26
27 I do not mean to suggest that there needs to be only one model that can be
28 proposed. I think there are different points of view. I also mean to suggest that this is a public
29 process. So those of you who aren't on the committee who have been sitting here who want to write
30 to me have the same ability to do so. But I do think let's focus at that level. We've explored in effect
31 the New York Stock Exchange's suggestion that they believe a new model should be proposed.
32 Certain of you have explored the notion that the real issue is economic efficiencies, that we'd be
33 better off with a single monopoly maybe put out to bid, maybe not. If someone wants to come
34 forward with that proposal, I think it's well worth doing.

35
36 I am going to suggest just at the level of the efficiency of our own proceedings that
37 for the next meeting and the model, let's just limit ourselves to equities. And this is not in any sense
38 meant to derogate options. But I do think Ed's point was well taken. You know, when you look at
39 the complexity of options, it's like the equities plus. And if we had some sense of the general
40 principles we wanted to pursue with respect to equities, then we can question, you know, do they
41 make sense in the options area? Do we want to treat them differently?

42
43 Let me, before perhaps adjourning and, again, a little bit earlier than anticipated, turn
44 to our representatives from market reg and ask if they want to offer any comments or suggestions.

45
46 MS. NAZARETH: No, I would very much like to thank everybody for their
47 participation. I definitely applaud you for raising all the right issues, and I think that everybody is
48 coming at this certainly with the right level of open-mindedness. And I think we're on a good track
49 here to come up with a good result.

50
51 MR. SELIGMAN: I appreciate that, Annette.

1 MS. DWYER: May I just ask a couple of quick questions at the risk of holding
2 everybody here?
3

4 MR. SELIGMAN: Sure.
5

6 MS. DWYER: One, it would be very helpful, especially for us who have to travel a
7 long way to get here, to have a fixed meeting dates going out into the future as far as we could do it.
8 If you could throw out some proposed dates, that would be great so that we could get our calendars
9 in order.
10

11 And secondly, I'll throw out an idea that came to me last night, which is that given
12 the importance of these issues to individual investors, and even though this is a public hearing,
13 Washington, D.C. is not where most of them are found. I wonder if you ought to consider whether we
14 should have some field hearings or use the Internet to solicit more input from folks who otherwise
15 might not have a chance to weigh in on issues that are actually pretty important to them.
16

17 We'd be very happy to host something in California, and we'd be very happy to
18 facilitate either using existing chat rooms or websites to solicit interest in this topic or sponsoring it
19 as it were. So it's just something to consider. I don't know what other folks thoughts be on any of
20 that.
21

22 MR. SELIGMAN: Carrie, let me take that one under advisement. Part of what I need
23 to wrestle with are two separate considerations. On the one hand, I do like meeting deadlines, and I
24 would like to complete this report by September 15th, 2001.
25

26 MS. DWYER: I'd actually like to complete it sooner, but I think that's not
27 inconsistent with getting full input.
28

29 MR. SELIGMAN: I do share that preference as well, but whether or not it's feasible,
30 we'll see.
31

32 The other is there are certain aspects of what it means to be a federal advisory
33 committee that I needed to be guided on as to whether or not there are any limits on whether it's SEC
34 budget or what have you or meeting places, and I don't honestly know the answer to that.
35

36 MS. DWYER: Okay. Well, I think that my limited memory of the act was that it
37 favored wider public comment rather than lesser. So if we can in any way help, we would love to.
38

39 MR. SELIGMAN: Appreciate that. Bob, did you have a --
40

41 MR. FORNEY: Just a quick admin question. Could you amplify how you want us to
42 correspond with you or with who else?
43

44 MR. SELIGMAN: I think probably the best place to do it would be to write me and
45 copy Annette Nazareth.
46

47 MR. FORNEY: Annette's both with any amplification, as well as our thoughts about
48 the alternative either changes or market -- I guess --
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50 MR. SELIGMAN: That's with respect to any correspondence.
51

52 MR. FORNEY: Right. So you'll give us some dates as to when you want that

1 information prior to the next session?
2

3 MR. SELIGMAN: In terms of amplification of comments and thoughts here, two
4 weeks. We're talking about October 24th. in terms of, you know, focusing on models or what have
5 you for the next meeting, I will try to communicate as quickly as I can when the next meeting will be,
6 and then try to allow sufficient time after I'm able to circulate a letter -- a framing how to go about it.
7 It's obviously going to take a little bit of time. I don't think we can possibly meet sooner than like two
8 months from now.
9

10 In terms of a schedule of overall meetings, let me just take that one under
11 advisement. It may well be, you know, if we decided we don't want a new mode. It would be easier
12 then after that to come forward with a series of specific meetings and topics for it. We do want a new
13 model, and we may need to think through the pace and how we're proceeding at that point.
14

15 Anyone else want to offer final words?
16

17 Let me just thank all of you for participating. We will see each other again. I will
18 look forward to hearing from those of you who want to write and our next meeting.
19

20 (The meeting was adjourned at 5:10 p.m.)
21 *****