



## 21<sup>st</sup> Century Equity Market Reform a Throwback to pre-1976 era?

The [Market Data Infrastructure Rules](#) are effective June 8, 2021 while the ‘Transition Period and Compliance Dates’ will need to be finalized. Meanwhile, the SEC is due to approve or disapprove the [CT Plan](#) governing the public dissemination of real-time, consolidated equity market data for NMS stocks on August 9, 2021. This article delves into comparing the CT Plan with series of reforms in the music industry. The goal is to pick up lessons learned, avoid litigation fights by addressing differences, and to collectively grow and strengthen the US Equity market.

#	Self-Regulatory Organizations (SROs) proposed CT Plan changes	Our comments with a comparison to reforms and copyright licensing system in the music industry
1	Non-SRO would have one-third of the voting power on CT Plan LLC’s Operating Committee. SROs would maintain two-thirds of the voting power, while subject to a limit of one vote per exchange group	Worse than the <a href="#">repealed §116 of the 1976 Copyright Act</a> that gave equal footing (50/50) to the Performance Rights Organizations (PROs) representing the artists (traders) and musicians (algorithm developers) against the dominant Jukebox operators (Stock Exchanges). If the SIP is ‘Free Enterprise’, 2/3 (SROs) and 1/3 (Non-SROs) voting rights may result in a divide along partisan lines and only passing trivia items. The division may bog the SIP down due to the bureaucracy. A true overhaul to the market ecosystem must access the <a href="#">divergence between private and social costs</a> ; focus on growing the overall pie; avoid further “frowning” of the <a href="#">smile curve</a> ; and drive innovation to spur new economic opportunities.
2	Definition of “fees” as fees charged to vendors and subscribers for transaction reports and quotation information in eligible securities.	Don’t fall for the familiarity of quote and trade revenues. The large exchange groups may want to stick to their pursuit of ‘ <a href="#">SIP Accounting 101</a> ’. The definition of ‘Fees’ should be similar to the comprehensiveness in defining ‘royalties for copyright works’ in the music industry. Consider composing a trade strategy or developing a financial product being equivalent or harder than making music, the only difference is the end product being money, securities, or some other financial asset. The end product should not make the composing works less worthy of copyright royalties.
3	Composition, selection, and action of operating committee	If equating the Non-SRO representatives as the ‘PROs’ of the music sector, we question how non-SRO representatives would be elected under CT Plan? Would there be bias towards top elite firms and dismiss smaller players’ interest?
4	Meeting of the operating committee, disclosure of potential conflicts of interest, confidential policy, and processor and administrator functions and responsibilities	The National Association of Securities Dealers (NASD) as an “Association” would have been ideal to perform the PRO role to negotiate with the Exchanges and the traders and algorithm developers. Yet, as the NASD <a href="#">evolved to the “Regulatory Authority” structure that exists in FINRA</a> , it aligns closer to the other SROs. Rather than serving the interest of market participants despite their collection of membership fees from brokerage firms and the administration of securities licenses for the professionals in capital markets. In the music industry, different rights and corresponding rates are set by Copyright Royalty Board, Free Market and Federal Rate Counts in accordance with willing buyer/ willing seller standard, 801(b)(1) factors, etc. and royalties are collected by respective PROs, sync/mechanical rights agencies and are then distributed to the rightful constituents. The SROs’ proposals in the CT Plan may merely be closed door meetings between delegates. It is nothing compared to the comprehensiveness of the copyright licensing system established by the music industry through multi-decades of digital disruptions and accumulated experience of court rulings. Our market data/ market structure reforms should heed these valuable lessons from the music sector.



5	CT Plan structure as an (for profit) LLC agreement	The function of an Operating Committee is similar to the SoundExchange’s role that established by Congress to distribute royalties on sound recordings for the music industry. Under the <a href="#">Music Modernization Act</a> , Mechanical License Collective is set up as a non-profit responsible to collect, distribute and audit the royalties generated from blanket and voluntary licenses. Why create an LLC instead of a non-profit if the SIP is defined as public utility? A non-profit organization structure is better than LLC in preserving an independent status.
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While we recognize the SEC has the best intentions to enhance governance of the Securities Information Processors (SIPs) and Competing Consolidators, the SROs fail to provide a workable proposal to achieve that goal. We further argue that if the CT Plan is approved “as-is” it would potentially result in adverse consequences, such as dysfunctional SIP management, thus giving a permanent advantage to elite players, and behaviors potentially contrary to the public’s best interest. Please refer to [table 2 of our November, 2020 comment letter](#) for a **summary of additional concerns** we have.

Note: our definition of public’s best interest goes beyond subscribers and users of SIPs. The US Equity market is like an “[Animal Farm](#)” and is in a [warring state period](#). Unfortunately, attempts to fix the market with the exchanges’ lead innovations would not fix the broader market itself according to this [empirical study](#). When trading firms are busy consolidating or keeping their firms alive, little attention is given to the **well-being of traders and algorithm developers**. In our opinion, NMS 2.0 market reform should start with these traders and algorithm developers in mind.

Indeed, the music industry muddled through decades of the [digital disruptions](#) by developing a practical [copyright licensing](#) system that gives royalties to artists and musicians. The series of reforms removed threats to the survival of record labels and other constituents in the value chain. It fosters new opportunities for everyone. Music is now more widely distributed through newer streaming platforms. When the industry can give more respect to people that does the work, it has the power to enable every constituent in getting a bigger piece.

Please see [this whitepaper](#) for our attempt to **take learnings from music royalties system** and applying it in contexts of our capital markets. Technically, there are ways to keep a trade algorithm confidential and avoid others from using reverse engineering methods to [plagiarize](#) your trade moves. Besides, [both published and unpublished works](#) are protected under copyright laws after 1978. We understand Exchanges may seek incremental compensation for SIP ‘expanded core data’, and there are probably billions at stakes if taking into account [all the incentives](#), [rebates](#), and [what not](#) with the market data/ market structure reform. We believe if the different constituents put aside differences and look into what could be the next-generation [copyright licensing framework for the capital markets](#), it would accelerate the [advancement of NMS](#), [resolve conflicts](#), and promote the fair, reasonable, and non-discriminatory principles.

Thanks for reading and we welcome any constructive feedback.

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By [Kelvin To](#), Founder and President of Data Boiler Technologies

At Data Boiler, we see big to continuously boil down the essential improvements that fit for your purpose. Between my patented inventions and the wealth of experience of my partner, Peter Martyn, we are about finding rare but high-impact values in controversial matters, straight talk of control flaws, leading innovation and change, creation of viable paths toward sustainable development and economic growth.