

Policy on Advisor Selection and the Role of the Advisory Committee

1. Background and Purpose

- a. The Operating Committees of the Consolidated Tape Association (“CTA”) and Unlisted Trading Privileges (“UTP”) Plans are charged with overseeing the Plans. Article III, Section (e) of the CTA Plan and Article IV, Section E of the UTP Plan provide that the Operating Committees are to be assisted by an Advisory Committee.
- b. In proposing to require the creation of advisory committees as part of Regulation NMS, Securities and Exchange Commission (the “SEC” or “Commission”) noted the significant contributions that advisory committees could make in improving NMS Plan governance. In particular, the SEC noted, advisory committees could help assure that the views of interested parties other than SROs have an opportunity to be heard on Plan matters, and that their views are heard prior to any decision on a matter by the Plan’s operating committee. Earlier and more broadly based participation contributes to the ability of the Plans to achieve a consensus on disputed issues.¹
- c. On May 22, 2019, the Operating Committee voted to approve a “Policy Formalizing the Consultative Role of the Advisory Committee” (the “May 22, 2019 Policy”) which provides, among other things, that the Operating Committee must inform the SEC if a majority of the Advisory Committee opposes any action taken by the Operating Committee that requires a filing submitted to the SEC.
- d. Additionally, on September 5, 2019, the Operating Committee voted to adopt a “UTP/CTA Confidential Information Policy,” pursuant to which the Operating Committee will be able to share with the Advisory Committee additional financial information about the Plans and the anonymized results of audits of Plan customers.
- e. In light of the foregoing, the Operating Committee believes that it is in the best interests of the Plans for it to adopt the policy stated herein, amending the May 22, 2019 Policy and reflecting the Participants’ agreements on: (i) the role of the Advisory Committee in the governance of the Plans, (ii) procedures for the selection of members of the Advisory Committee, and (iii) the term of members’ service on the Advisory Committee.

2. Role of the Advisory Committee

- a. The Plans specify that:

¹ See Securities Exchange Act Release No. 49325 (Feb. 26, 2004), 69 FR 11126 (Mar. 9, 2004) (Proposing Release; File No. S7-10-04).

- i. “Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan” (CTA Plan, Art. III, section (e)(iii); UTP Plan, Art. IV, section E(c)); and
 - ii. “Members of the Advisory Committee shall have the right to attend all meetings of the Operating Committee and to receive any information concerning Plan matters that is distributed to the Operating Committee; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants entitled to vote, the Operating Committee determines that an item of Plan business requires confidential treatment” (CTA Plan, Art. III, section (e)(iv); UTP Plan, Art. IV, section E(d)).
- b. The Operating Committee and the Participants additionally agree to the following:
 - i. As part of its consultative role to the Operating Committee, the Advisory Committee may initiate its own recommendations to the Operating Committee, to which the Operating Committee will formally respond.
 - ii. Any member of the Advisory Committee may attend any meeting of the Operating Committee or any subcommittee thereof, except for meetings in Executive Session, or of the Legal Subcommittee, or any subcommittee in which information subject to the attorney-client privilege or the work-product doctrine, or other confidential information will be discussed. Advisors will be able to attend any meeting in which confidential information will be discussed after a confidential information policy is in effect or after a particular advisor has signed an appropriate confidentiality agreement, except for meetings in Executive Session, or of the Legal Subcommittee, or any subcommittee in which information subject to the attorney-client privilege or the work-product doctrine will be discussed.
 - iii. For any meeting that a member of the Advisory Committee may attend pursuant to subsection (2)(b)(ii) of this policy, the Advisory Committee will be made aware of that meeting and will receive supporting materials for that meeting at the same time as the Participants.
 - iv. The Advisory Committee may provide a formal recommendation or views to the Operating Committee on any item on which the Operating Committee votes, with the limited exception of those items that qualify for and are ultimately discussed only in Executive Session or the Legal Subcommittee. The Operating Committee encourages the Advisory Committee to provide its formal recommendation or views in advance of the Operating Committee vote so that the individual Operating Committee Participants can consider and take into account the views of the Advisory

Committee as they internally discuss and formulate their position on the item. Advance notice, while not required, is particularly helpful where an item to be voted on will be subject to a filing with the SEC.

- v. The Advisory Committee shall annually select a chairperson to facilitate formal majority recommendations, views, and opinions from the Advisory Committee. The chairperson will work in close connection with the Operating Committee chairperson and the Participants in facilitating the business of the Operating Committee.
- vi. To the extent possible and practical, the Advisory Committee will provide to the Operating Committee, before the Operating Committee vote, a description of the majority Advisory Committee view and, if applicable, any minority Advisory Committee views. Even where the Advisory Committee provides a majority view at or in advance of the Operating Committee meeting, it is understood that, upon further discussion of the item at the Operating Committee meeting, the Advisory Committee view collectively, or the views of individual Advisory Committee members, may change and the majority Advisory Committee view may change accordingly.
- vii. If the Operating Committee subsequently approves any item that was opposed by a majority of the Advisory Committee, the Operating Committee's reasons for proceeding contrary to the majority view of the Advisory Committee will be recorded in both the non-public minutes and the public summary of the meeting.
- viii. In the event that the matter is the subject of a filing with the SEC, the Operating Committee will summarize the views of the Operating Committee and Advisory Committee in the filing submitted to the SEC.
- ix. Nothing above precludes any advisor or group of advisors from acting in an individual capacity, or on behalf of a firm, to comment through any other means, including, but not limited to, the SEC comment process.

3. Selection of Advisory Committee Members

- a. The Plans specify that the members of the Advisory Committee will be selected as follows:
 - i. "Operating Committee Selections. By affirmative vote of a majority of the Participants entitled to vote, the Operating Committee shall select at least one representative from each of the following categories to be members of the Advisory Committee: (i) a broker-dealer with a substantial retail investor customer base, (ii) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trading system, (iv) a data vendor, and (v) an investor" (CTA Plan, Art III, section (e)(ii)(A); UTP Plan, Art. IV, section E(b)(i)); and

- ii. “Participant Selections. Each Participant shall have the right to select one member of the Advisory Committee. A Participant shall not select any person employed by or affiliated with any participant or its affiliates or facilities” (CTA Plan, Art. III, section (e)(ii)(B); UTP Plan, Art. IV, section E(b)(2)).
- b. The Operating Committee and Participants additionally agree to the following:
- i. Identifying Candidates for the Advisory Committee
 - 1. Any Participant or member of the Advisory Committee may suggest candidates to fill any opening on the Advisory Committee.
 - ii. Selection of Operating Committee-Selected Members
 - 1. In order to encourage qualified individuals to consider serving as members of the Advisory Committee, the Operating Committee will publicize all openings for Operating Committee-Selected members of the Advisory Committee using any mechanism that the Operating Committee determines to be effective and appropriate.
 - 2. The Operating Committee shall employ the following process for filling such open positions:
 - a. The Administrators of the UTP and CTA Plans (collectively, “Administrators”) shall gather applications for the open positions and distribute those applications, including supporting materials, to the members of the Operating Committee and the Advisory Committee.
 - b. The Advisory Committee, or any member or group of members of the Advisory Committee, may submit comments on any candidate or group of candidates, or may recommend a candidate, within 10 business days of the date the Administrators distribute application materials.
 - c. After 10 business days, the Operating Committee in Executive Session shall review the applications received, including any comments or recommendations submitted by the Advisory Committee or its members, and shall employ the following method of preferential voting to select a candidate for the open position:
 - i. Each Participant entitled to vote shall rank its first, second, and third choice candidates for the position and submit those choices to the Administrators.

- ii. The Administrators shall count the number of first-choice votes. If one candidate receives a majority of votes, that candidate shall be the selection of the Operating Committee in Executive Session.
 - iii. If no candidate receives a majority of votes, the Administrators shall remove the candidate with the fewest number of first-choice votes from consideration, as well as any candidate that received no votes, and assign the next-choice votes of any Participant that had voted for the eliminated candidate to that Participant's next preference. If one candidate receives a majority of votes, that candidate shall be the selection of the Operating Committee in Executive Session.
 - iv. If no candidate receives a majority of votes in the second count, the Administrators shall remove the candidate with the fewest number of votes, and assign the next-choice votes of any Participant that voted for the eliminated candidate to that Participant's next preference. If one candidate receives a majority of votes, that candidate shall be the selection of the Operating Committee in Executive Session.
 - v. If no candidate receives a majority of votes in the third count, the Administrators shall report to the Chairperson of the Operating Committee that no candidate was selected. The Chairperson of the Operating Committee may reconvene the Executive Session for further discussions, and the Operating Committee in Executive Session may choose to either: (i) provide each Participant with another opportunity to rank its first, second, and third choice candidates for the position and submit those choices to the Administrators and count votes in the manner described above; or (ii) restart the selection process by soliciting new candidates.
- d. The Operating Committee in Executive Session shall provide the name of the selected candidate to the Advisory Committee. The Advisory Committee shall, within 10 business days of receiving the name of the selected candidate, advise the Operating Committee in Executive Session whether it supports, opposes, or takes no position on that candidate, together with the basis for that

determination. The Advisory Committee may also, at its discretion, submit the views of any Advisory Committee member that dissents from the Advisory Committee recommendation.

- e. Upon expiration of the 10 day period, the Operating Committee in Executive Session may decide to reconsider its original selection, based upon comment received from the Advisory Committee. If the Operating Committee in Executive Session decides by majority vote to reconsider its original selection, the Operating Committee in Executive Session may choose to: (i) engage in another round or preferential voting, or (ii) restart the selection process by soliciting new candidates.
- f. All communications, written and oral, pursuant to subsection (3)(b)(ii) of this policy between the Operating Committee in Executive Session and the Advisory Committee, and within the Advisory Committee or the Operating Committee concerning any candidate, and any other candidate-specific materials presented to the Advisory Committee or the Operating Committee during the search and selection process, shall be deemed to be Confidential Information within the meaning of the UTP Confidentiality Policy, the CTA Confidentiality Policy, and the CQ Confidentiality Policy (collectively, the “Confidential Information Policy”).
- g. All communications, written and oral, pursuant to subsection (3)(b)(ii) of this policy within the Operating Committee in Executive Session, and any vote in Executive Session, shall be deemed to be Highly Confidential Information within the meaning of the Confidential Information Policy

iii. Selection of Participant-Selected Members

- 1. In selecting a Participant-selected member of the Advisory Committee, a Participant will take into account that:
 - a. in addition to the categories specified in the Plans, it is in the best interest of the Plans to also include representatives from the following categories to be members of the Advisory Committee: (i) an issuer, and (ii) the institutional buy-side; and

- b. it would benefit the Plan for the Advisory Committee to include members that have expertise in particular areas – such as trading, market data, technology, compliance, operations, networking, and investor relations – and that those areas may change over time.

4. Terms of Members' Service on the Advisory Committee

- a. The Plans specify that “[m]embers of the Advisory Committee shall be selected for two-year terms.” (CTA Plan, Art. III, section (e)(ii); UTP Plan, Art. IV, section E(b)).
- b. The Operating Committee and the Participants additionally agree to the following:
 - i. After completion of a two-year term, the outgoing member of the Advisory Committee whose term is ending may be considered and selected again, but others candidates must also be considered.
 - ii. Each Advisory Committee member will provide disclosures as provided under the conflicts-of-interest disclosure policy. Such disclosures must be made to both the Operating Committee and Advisory Committee as part of the consideration of an individual’s candidacy to join the Advisory Committee.
 - iii. Resignation of Advisory Committee Members
 - 1. A member of the Advisory Committee selected by the Operating Committee may resign by written notice to the Chairperson of the Operating Committee. A member of the Advisory Committee selected by the Participant may resign by written notice to the Participant or Chairperson. If the member resigns to the Participant, that Participant shall notify the Operating Committee as soon as possible.
 - 2. Any Operating Committee-Selected member of the Advisory Committee who resigns from the Advisory Committee before the expiration of his or her term may be replaced at any time by the Operating Committee with a new member representing that category under the procedures described above.
 - 3. Any Participant-Selected member of the Advisory Committee who resigns from the Advisory Committee before the expiration of his or her term may be replaced by that Participant at any time by written notice to the Chairperson of the operating committee. The Participant may also elect not to select a replacement.