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Statement of the Shadow Financial Regulatory Committee on  
**Releasing Data: Promoting Efficiency or Fairness?**

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On a number of occasions, important market data have been released to subscribers to a particular service ahead of providing that data to the general public. In several contexts, the subscribers have even obtained data from the government and other public institutions, such as from the SEC's Edgar system for release of form 4 filings or from the survey of consumers conducted by the University of Michigan. Because of the perceived inequity, such data releases have received considerable attention.

In the cases of mandatory public disclosures and non-profit surveys conducted in the public interest, the Shadow Financial Regulatory Committee favors a mechanism which makes the disclosed information available to all traders at the same time. The case for equal disclosure is based on the grounds of economic efficiency.

Early data release can be problematic. Traders pay for an early peek at data so that they can pick off resting limit orders before the market moves in response to the announcements. To many, this may seem unfair. More importantly, by unnecessarily increasing the transaction costs of market participants whose orders are picked off, the efficiency with which markets function is reduced.

It is a mistake, however, to assume that trading on the early data release by subscribers is always insider trading. From a legal perspective, insider trading violations require a breach of duty to the source of the information. This duty is likely present when public firms have material non-public information they are about to disclose to regulators. It is likely absent when traders seek to sell or profit from trading on costly research they have conducted at their own expense. For data access sold by subscription, the opportunity to be a subscriber is generally available to all market participants, and typically this

opportunity is known by relevant users. Early-release payments received by private data subscribers increase the value of the data and encourage production of information that would not otherwise be provided. This promotes economic efficiency by making prices more informative signals which guide economic activity.

The economics of data produced by the government or other public utilities is different from the economics of data produced by private firms purely for profit motives. Data produced in response to government-mandated disclosure or data produced by non-profit organizations like the University of Michigan, acting in the capacity like a public utility and not for a profit motive, are likely to be produced even if payments for an early peek are not received. Delaying release of such data for less than one minute is unlikely to have a substantial effect on resources allocated by firms using prices as signals to guide investment decisions. Costly data produced by private firms, responding to incentives markets provide to trade profitably on such information, is different. If economic incentives to produce such information are not provided, such data may never be produced.

In the case of data released for other than profit motives, we favor—for reasons on economic efficiency—making announcements public in a manner such that all traders can trade on the information at the same time. One practical way to make the information available to all traders at the same time is to close the market briefly, for a period of time say between five seconds and one minute, during which time traders can all look at the information and adjust their bids and offers in the market. When the market reopens with a single-price auction after such a brief closure, competition among numerous speculative traders using computer technology will drive prices to levels that reflect the new information. Traders whose resting limit orders were put on hold briefly will not be picked off. Instead, they will benefit from competition among traders who receive the new information at the same time. In addition to making the perception of the markets fairer, this would also make speculative markets function more efficiently by lowering the trading costs of traders whose resting limit orders were protected by the brief market closure.

To implement this proposal, the listing exchange for a public company or a government agency such as the SEC itself can maintain a website on which all public announcements are scheduled. All trading venues would monitor this website and conduct short trading pauses when public announcements are scheduled to occur. If a trading venue failed to conduct such a trading pause and instead allowed customer orders to be picked off by traders obtaining the information in advance, the trading venue would be obligated to compensate the investors for the losses they suffered by giving prices consistent with the market a minute or so later if such prices were more favorable to the customers.

It might be argued that such trading halts are unnecessary because customers can cancel their own orders if they do not want to incur the risks of being picked off. But such an approach imposes an unnecessarily high cost on customers. It requires thousands of customers to monitor the website containing announcement times, perhaps manually, then cancel their orders and place them again later. A much cheaper approach is to allow customers the option of trading during a trading halt by affirmatively stating that they do not want order execution to be delayed during the time intervals when order execution would otherwise be paused. Most customers, however, would probably choose to benefit

from the default order-handling choice of letting their resting limit orders be put on hold during the brief trading pause.

In the case of mandatory public disclosures or disclosures of surveys conducted in the public interest for non-profit motives, making access to the information available to all traders at the same time allows the information to be incorporated into prices via information releases, making prices more accurate estimates of underlying value. More importantly, since it does so without reducing market liquidity, market liquidity will increase as a result of trading pauses during which information is made available to all simultaneously.

The combination of more liquid markets and more accurate prices is a win-win combination for the investing public.

