



MODERN MARKETS
INITIATIVE

October 18, 2018

Via Electronic Mail (rule-comments@sec.gov)

Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549 - 1090

Re: Comments for Consideration In Advance of the SEC's Roundtable on Market Data and Market Access (Oct. 25-26, 2018); Support for Expedited Review of Data Fee Components of Trading; Policy Solution "One Feed, One Speed"

Dear Mr. Fields:

Modern Markets Initiative ("MMI"), the education and advocacy association devoted to the role of technological innovation in creating the world's best markets, is grateful for the opportunity to offer comments for consideration before the U.S. Securities and Exchange Commission (the "SEC" or "Commission") Division of Trading and Markets "Roundtable on Market Data and Market Access" (the "Roundtable") scheduled for October 25 and 26, 2018. MMI stands in support of an expedited review by the SEC of the collection, distribution, and sale of market data and related products and services, as well as the consideration of policy alternatives such as the "one feed, one speed" approach further discussed below.

MMI notes that the Roundtable is an important first step in conducting such a review. MMI further notes that the Roundtable comes following the release of the SEC's opinion in the Matter of the Application of SIFMA (Admin. Proc. File No. 3-15350, October 16, 2018), providing further context for an ongoing review of data fee components of trading. In particular, as discussed below, a review of policy alternatives of market data and related products should look at the impact of rising data fees on smaller innovator firms, and whether the current framework raises questions about level of competition and potential barriers to entry into the industry.

I. SUMMARY

MMI appreciates the valuable role that the nation's equities exchanges play in the national market system, including the numerous benefits provided by lit exchanges -- namely, transparency and efficient trade execution -- and in providing investor confidence in our markets. Over the past decade, the overall the cost of trading has been reduced. Technology

such as automated trading and electronification of market intermediaries, such as high frequency trading (HFT), has played a vital role in democratizing our markets, making trading cheaper and more efficient. The automation of trading has largely shrunk the cost of trading, yielding savings to the investing public through narrower spreads and more efficient trade execution. This has benefited pension funds, university endowments, 401k holders, and all investors, small and large.

However, despite this overall positive trend of price improvement, there is a demonstrable risk at hand that could erode some of the progress made in lowering costs. Rising exchange data fees are a hidden cost component of trading that have risen dramatically over the past decade and outpace the cost to render the service.

MMI stands in support of the growing body of industry participants - ranging from brokers, trading firms, trade associations, and asset managers of pension funds and 401k accounts – that have called on the SEC to review the collection, distribution, and sale of market data and related products and services, and to look at policy alternatives.¹

Indeed, acknowledging the growing body of industry concern over the rising cost of market data and related products and services, the U.S. Treasury included language in its October 2017 Equity Market Structure report advising that the SEC review the issue of rising fees.² In that report, the U.S. Treasury noted that the rising fees should be scrutinized by the SEC including a three-prong analysis:

- Whether exchange data fees impose an undue “burden or competition”³
- Whether exchange data fees are “unfairly discriminatory” and whether they protect the public interest⁴
- Whether exchange data fees are an “equitable allocation” of “reasonable” fees among persons who use the data⁵

¹ MMI supports the Petitions filed by previous industry participants calling for the SEC to review rising exchange fees, including: The Vanguard Group, TD Ameritrade, Inc., Citigroup Global Markets Inc., T. Rowe Price Associates, Inc., UBS Securities LLC, SIFMA, Healthy Markets, Citadel Securities, Clearpool Group, Inc., Bloomberg LP, E*TRADE Financial Corporation Fidelity Investments, Hudson River Trading LLC, IEX, IMC, Interactive Brokers Group, ITG, MFS Investment Management, Morgan Stanley & Co. LLC, RBC Capital Markets, The Charles Schwab Corporation Scottrade, Inc., Sun Trading LLC, Susquehanna International Group, LLP, Tower Research Capital, UBS Securities LLC, The., Virtu Financial, Inc., Managed Funds Association (letter dated August 22, 2018 to SEC); and FIA-PTG letter dated September 17, 2018 to the SEC); Wolverine Trading (See <https://www.sec.gov/rules/petitions/2017/petn4-716.pdf>).

² <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>. Applying standards set forth in 15 U.S. Code § 78f, the Securities and Exchange Act of 1934.

³ 15 U.S. Code § 78f -[Section 6\(b\)\(8\)](#)(the fees must not impose any burden on competition)

⁴ *Id*, [Section 6\(b\)\(5\)](#) (the fees must not permit “unfair discrimination”)

⁵*Id*, [Section 6\(b\)\(4\)](#) (fees must be reasonable in relation to the costs of providing the service for which such fees are charged,” must not impose “any burden on competition not necessary”).

MMI supports an expedited review conducted by the SEC of the current regulatory framework to include the above three-pronged analysis, as well as broader review including those listed in the matrix below, to ensure that investors are protected from unreasonable fees and discriminatory pricing, and that the framework promotes competition and does not impose potential barriers to entry into the industry.

Further, MMI believes there are potential policy solutions, such as “one feed, one speed,” discussed further below, that could be instructive for the SEC to consider in its prospective review of the issue.

II. DISCUSSION: DATA FEE CLASSIFICATION AND METRICS

To assist the SEC in identifying elements for prospective review, the following is matrix identifying various types of classifications of data fees, as well as illustrative metrics and examples of recent increases in types of fees. MMI notes, where relevant, estimated data on increases in fees, as well as discrepancies between the change in rising fees charged and the estimated capital outlays.

INDUSTRY MATRIX: TYPES OF MARKET DATA FEES, CHANGING COST, CAPITAL OUTLAYS

No.	Classification	Definition, Metrics, Examples
1.	Latency based productization	<p>Latency based productization– This term refers to products produced by exchanges that are a slightly faster version of their feed (on the order of a handful of microseconds improvement) at a very significant cost increase over the legacy version.</p> <p>Increase of 275% to 340% over 6 years: MMI estimates that some but not all forms of “latency based productization” have risen three-fold over the past six years. Examples of types of latency based productization includes port fees, direct access, distributor fees, direct access, among other types of fees.</p> <p>Capital Outlay: MMI estimates that the capital outlay by the exchanges to provide the hardware for cables, ports, hardware, associated with the technology has not warranted such an increase in cost. For example, the cost of manufacturing a port cable is estimated to be a lower initial capital outlay – e.g. \$10 for a port cable, has stayed flat, whereas the revenue for each port cable is estimated at \$2500/month.</p>

		<p>Examples:</p> <ul style="list-style-type: none"> • Nasdaq: FPGA offering (at about \$25,000 per month access fee, plus \$2,500 per month port fees). • NYSE: Features various integrated suite of feeds (at about \$17,500 per month for NYSE Integrated vs legacy Openbook Ultra and an increase of \$5,000 per month for NYSE American over the Openbook suite).
2.	Market data adjacent fees	<p>Market data adjacent fees – This term refers to other types of fees such as port fees, telco fees, and hardware fees.</p> <p>Examples for such fees include:</p> <ul style="list-style-type: none"> • Market data port fees • Telco specific fees • Blanket access • Administrative fees <p>Examples of Data on Increases: MMI notes examples of types of access fees that have risen dramatically:</p> <ul style="list-style-type: none"> • 150% increase in “Access Fees” over past four years (e.g. increased from \$1000/month in 2014 to \$2500/month in 2018 for NYSE OpenBook/NYSE Integrated) • 50% increase in “Professional User Fees” Over past four years <p>Capital Outlay: MMI notes prior analysis by industry participants on the discrepancy between capital outlays for services rendered verses increases in fees charged by exchanges for such services:</p> <ul style="list-style-type: none"> • A one time capital outlay of \$20,000 was estimated to yield \$11.5 million per year, according to prior industry study.⁶ Although employee salaries and technology costs are present for exchanges, it is worth the SEC reviewing whether such a discrepancy

⁶ Wolverine Trading LLC letter to the SEC “RE: Release No. 34-79316; File No. SR-NYSE- 2016-45” (December 23, 2016) (noting, “From a practical standpoint, a typical network switch has approximately 48 10G ports and sells for approximately \$20,000. The exchange charges a MONTHLY port charge of \$20,000, and with 48 sold ports, generates \$11.5 million per year in revenue for a one time capital outlay of \$20,000. Even factoring in additional network equipment costs and employee salaries required to implement the entire network, we conclude that the port fees are beyond any possible interpretation of ‘reasonable.’”) See <https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-1447140-130076.pdf>.

		satisfies exchanges' legal requirements for "reasonableness" and competitiveness.
No. 3	Telco and colocation fees	<p>Telco and colocation – This term refers to fees charged for colocation by the exchanges or other proximity for trading.</p> <p>Examples:</p> <ul style="list-style-type: none"> - cross connects: For the most latency optimized version of cross-connects, it has been reported to MMI that these can run at about \$20K a month for NYSE and \$15K a month for NASDAQ.
No. 4	Onerous Exchange Policies	<p>NYSE and CBOE/BATS have a "potential access" standard with regard to their data for screen-based usage. Effectively this means that they are charging not based on usage, but rather on the ability to have had used the data during a particular month. For example, if a user was entitled to NYSE Integrated for an entire year, but never used it, that user would have to pay \$840 (\$70/mo). We would urge NYSE and CBOE/BATS to adopt Nasdaq's standard of reporting based on actual usage, where in the same case the user's fee liability would be zero.</p> <p>NYSE has a delayed data standard that is significantly off market. Globally most exchanges provide their data free of a user charge after a delay period ranging from 15-30minutes. However, NYSE has changed their policy for their proprietary feeds and treats the data as fee liable until midnight. This adds significant per user costs for any research team that would want to utilize data after the market has closed.</p>

III. POLICY SOLUTION: "One Feed, One Speed"

MMI invites the SEC to review potential policy solutions to rising data fees of exchanges, including a "One Feed, One Speed" solution previously discussed by Adam Nunes, Hudson River Trading.⁷ MMI supports a review by the SEC of the potential benefit of offering a single uniform feed to customers on impartial terms to all users, whereby exchanges would offer the same, or effectively the same, feed on impartial terms to all users. MMI believes that such a uniform approach furthers principles of transparency and fairness, and would level the playing field for

⁷ Nunes, Adam (Dec. 22, 2015), "MMI Member Guest Editorial: Speed up the SIP" at <https://modernmarketsinitiative.org/12/2015/mmi-member-guest-editorial-speed-up-the-sip/>.

industry participants, reduce the complexity of the current system, and lower the cost to industry participants in complying with fee systems.

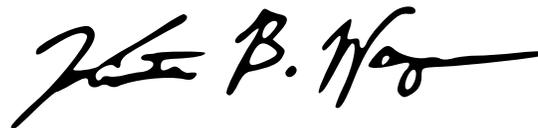
MMI notes that the current system, whereby exchanges offer different terms for feeds to different users, should be examined for questions of transparency, fairness, reasonableness, and competition. To the extent there are discrepancies in pricing and lack of a single uniform pricing structure assessed on industry, this deserves scrutiny by the SEC. MMI notes that some types of feeds are meaningfully different and are worth evaluating separately (for example, a last sale feed), whereas other types of data fees appear to raise issues with respect to fairness and allocation of fees (for example, FPGA ITCH).

In addition, MMI supports improving the public SIP to ensure that the investing public has confidence in the markets and access to fast information. Over the past decade, various industry participants including BlackRock, SIFMA, among others, have written letters to the SEC supporting improvements in the SIP to reduce the latency between the SIP and private feeds to market acceptable standards.⁸

IV. CONCLUSION

MMI stands in support of an expedited review by the SEC of the collection, distribution, and sale of market data and related products and services. MMI and its members are available to be a further resource to the SEC as it looks at this issue. Additional information can be found on our website at modernmarkets.org. Thank you for your consideration.

Very truly yours,



Kirsten Wegner
Chief Executive Officer
Modern Markets Initiative

CC: The Honorable Jay Clayton, Chairman
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
Mr. Brett Redfearn, Director, Division of Trading and Markets
Mr. David Shillman, Associate Director, Division of Trading and Markets

⁸ *Id.*