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KIMBERLY UNGER, ESQ.
Executive Director

April 10, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Release No. 34-69157; File No. SR-CTA/CQ-2013-01

Dear Ms. Murphy:

The Security Traders Association of New York, Inc.¹ ("STANY") appreciates the opportunity to respond to the Securities and Exchange Commission's (the "SEC" or the "Commission") request for comments with respect to the Consolidated Tape Association's (CTA) Notice of Filing and Immediate Effectiveness of the Sixteenth Charges Amendment to the Second Restatement of the CTA Plan and Eighth Charges Amendment to the Restated CQ Plan.

STANY strongly opposes the Amendments published with immediate effectiveness on March 22nd and requests that the Commission summarily abrogate the Amendments and require that the Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608. While couched by the Plan participants as a fee change, STANY believes that the Amendments represent significant structural changes to the way in which market data fees are calculated and merit additional time for comment and review.

The stated purpose of the Sixteenth Charges Amendment to the CTA Plan and Eighth Charges Amendment to the CQ Plan (collectively, the "Amendments"), is to simplify the Plans' existing market data fee schedules by compressing the current 14-tier Network A device rate schedule into four tiers, by consolidating the Plans' eight fee schedules into one, and by realigning the Plans' charges more closely with the services the Plans provide, without materially changing the revenues the current fee schedules generate. The Participants' stated "goal is to achieve greater simplicity and a reduction of administrative burdens."

STANY appreciates the Participants' desire to review and modernize the 14-tier fee structure for Network A professional subscribers that has been in place for more than 25 years. We also can recognize the validity of the Participants' stated goal of revising fees to make them more consistent with usage. However, we are

¹ STANY is the voice of the trader in the New York metropolitan area and represents approximately 1,000 individuals who are engaged in the trading of securities. As such, we are uniquely qualified to discuss proposed rules and regulations affecting trading. STANY is the largest affiliate of the Security Traders Association ("STA"), a multinational professional association that is committed to being a leading advocate of policies and programs that foster investor trust, professional ethics and marketplace integrity and that support education of market participants, capital formation and marketplace innovation.

Neither STA, nor STANY, represent a single business or business model, but rather provide a forum for traders representing institutions, broker-dealers, ECNs, ATs and floor brokers to share their unique perspectives on issues facing the securities markets. Our members work together to promote their shared interest in efficient, liquid markets, and their concern for investor protection. We believe that strong and efficient markets require an appropriate balance between effective regulation and innovation and competition.

concerned that the Amendments contemplate significant increases in fees to those firms that most actively generate and use market data without proof that the fees are justified and without consultation with the end-users.

Likewise, STANY takes exception to the characterization of the Amendments by the Participants as merely establishing or changing a fee or other charge which under Rule 608(b)(3)(i) of Regulation NMS would become effective upon filing with the Commission. On the contrary, the Amendments contemplate significant structural changes in the method of calculation of fees which we believe necessitates a notice and comment period longer than the 21 days provided. The Participants themselves acknowledge the extraordinary nature of the structural changes, [t]he Participants filed the last significant fee structure change in 1986.”² (Emphasis added) The 21 day comment period with immediate effectiveness is entirely too short, especially as the Amendments represent not only a price increase for many end users, but also a significant structural change- the first in more than 25 years.

The Amendments were announced with extremely limited notice given the substantial cost and policy changes proposed. Moreover, we believe that the Plan participants fail to understand or give due credit to the complexity of implementing certain aspects of these new policies. We are concerned that vendors and end-users may not have enough time to apply the relevant changes to their data administration systems. We are also concerned that absent additional information and empirical data end users as well as members of the public who have been invited to comment on the changes are not in an adequate position to judge the need for and potential impact of the proposed changes.

We question whether the Participants’ stated goal --to achieve greater simplicity and a reduction of administrative burdens -- is simply an excuse to increase fees on already stressed market participants. With the continuing decline in trading volume, increases in data fees are not only unjustified but unreasonable. We do not believe that simplification is an adequate justification for fee increases. Moreover, we are concerned that these increases are part of a growing trend of increasing market data costs without any corresponding business benefit or correlation to the rising operational cost of delivering services.

Professional Subscriber Charges

Network A

While the 6.67 percent increase in Network A fees for top tier users may seem small on a per-device basis, firms in the top tier would see costs for this data alone increase by \$12,500 per month. Other than the stated desire to simplify the fee structure, no justifications for fee increases of this nature have been articulated.

The Participants have stated that it is their belief that the numerous fee changes in the Amendments will not materially change the market data revenue generated under the Plans. In order to judge the impact of the proposed structural changes and to determine whether these changes will, in fact, not materially alter revenues generated, the Commission should require the Participants to provide information to end users and the public on the number of firms in each of the current tiers, the estimated revenues changes from each of the numerous fee changes and the cumulative effects of the changes proposed. How many firms fall within each present tier, what is the revenue generated by each tier? Without this information it is impossible to determine whether the proposed changes are in fact for the stated purpose of simplification or are a way in which to both shift and increase the revenue burden to mid and large firms. The increase to one firm in the top tier would make up for the decline in fees paid by 161 firms with one data feed and 471 firms with two data feeds.

² Release No. 34-69157; File No. SR-CTA/CQ-2013-01, p.3

Likewise, we disagree that the plan changes will have no anticompetitive impact. Contrary to the assertion in the Amendments, we believe that the proposed fees will impose a burden on competition. Our members are concerned that their total monthly data costs will increase significantly, and while certain fees may decline for small users, we believe that overall fees will mount. We have spoken to smaller industry participants who are extremely concerned with the rising market data fees and consider additional costs to be a severe burden. Firms seeking to enter the industry are likely to see these new fees as increased barrier to entry.

We are also concerned that the Participants have not provided adequate justification for their proposed increased in access fees. The Participants propose significant increases in Network A and Network B access fee stating that they “ believe that increases in these fees are fair and reasonable because today’s data feeds provide significant incremental value in comparison to the data feeds that the Participants provided when they first set the access fees.”³ We believe that this argument misses the point and doubt that such an increased cost to subscribers is appropriate when the actual expenses associated with providing market data continue to fall with technological advances.

Enterprise Maximums

The Amendments propose to revise the metric by which the Participants calculate the annual increase in the Enterprise Maximum. Currently, the monthly broker-dealer enterprise maximums are set at \$660,000 per month for Network A and \$500,000 per month for Network B. The Plans currently provide that broker-dealer Enterprise Maximums increase each calendar year by an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent.

The Participants have not increased the Network A broker-dealer enterprise maximum for more than five years. They have not increased the Network B broker-dealer enterprise maximum since its adoption in 1999. The Participants now propose a four percent increase at this time with the monthly broker-dealer enterprise maximums increasing from \$660,000 to \$684,000 per month for Network A and from \$500,000 to \$520,000 per month for Network B. Although enterprise maximums have not increased in the past, we believe that in the face of falling volumes an increase at this time is inappropriate.

As difficult as it may be to justify an increase in fees at this time, STANY is equally concerned with the proposed changes to the method of calculation of future increases. The Amendment proposes changing the way in which the Enterprise Maximums are calculated from one based on increases in volume to one tied to inflation and the cost of living increases. Under the proposal, the Participants may increase the broker-dealer enterprise maximums for Network A and Network B by the affirmative vote of not less than two-thirds of the Participants, provided, however, that they may not increase either network’s enterprise maximum by more than four percent for any calendar year.

The Participants have proposed a maximum annual increase of 4% which appears to be a 1% decrease in the fees. However, rather than using volume increases as the basis for an annual adjustment, the Amendments contemplate annual increases regardless of whether volume increases or declines.

Enterprise Maximums have been tied to an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year. We are concerned that the change gives the Participants the opportunity to increase monthly Network A and B fees without correlation to volume increases. We certainly would not oppose a decline in the maximum annual permissible increase from 5% to 4% but believe that any future changes should be based on year over year volume increases as opposed to the agreement among Plan Participants.

³ Ibid p.11

Access Fees

The Participants propose significant increases in Network A and Network B access fees stating that they “believe that increases in these fees are fair and reasonable because today’s data feeds provide significant incremental value in comparison to the data feeds that the Participants provided when they first set the access fees.”⁴ While we appreciate that the information provided today may be of a higher quality than in the past, a focus on the usefulness of the information is subjective and misplaced. The same technological advances that serve to improve the quality of market data also reduce the costs associated with providing that data. We do not believe that it is appropriate to increased costs to subscribers when the actual expenses associated with providing market data continue to fall.

Conclusion

STANY respectfully requests that the Commission summarily abrogate both the Amendments and require that the Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608. In its review of the appropriateness and fairness of the proposed changes, we ask that the Commission require the CTA and UTP Participants to provide additional information about the need for and impact of the proposed changes. We believe that a comprehensive review of fees is necessary and believe that the review should be done with transparency. An already fee laden environment will become increasingly more so if proposed changes like these go through without adequate review, without consultation with end users and in the absence of hard data.

To allow such sweeping and significant fee and structural changes to be implemented without substantial review would not be in the best interest of the public or the markets. Certain fees will be passed on to the public, other fees will hamper competition and may drive smaller market participants out of business or impact the way in which they provide services to investors.

We suggest that there may be other measures that the Participants could take to generate revenue that would be less detrimental to competition and have less of a significant impact on users of market data⁵. Moreover, we believe that the scope of fee and structural changes in the Amendments warrant review with full disclosure and transparency so that the Commission, end-users and the public can evaluate and understand the financial impact of the changes.

STANY is available to assist and consult with the Commission in any way that it deems helpful. Please do not hesitate to call or e-mail us at 212.344.0410 or kimu@stany.org with any questions about the comments and opinions in this letter.

Respectfully submitted,



Kimberly Unger, Esq.
CEO and Executive Director

⁴ Ibid p.11

⁵ By way of example, there is a component of the UTP fee which is sent to FINRA for the value of the BB Level 2. Currently FINRA receives 6.25% of the \$20 charge for UTP data. This may have made sense 10 years ago when the BB had tens of thousands of quotes. Currently there are only approximately 1700 quotes on the BB which only contributes to the NBBO in roughly 50 quotes per month. Plan Participants may affect the same net revenue increase if they were to cut the 6.25% share to FINRA. Since the value of this data is limited, we anticipate that the impact on end-users would be minimal.