

April 18, 2017

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

Re: **Notice of Filing and Immediate Effectiveness of the Twenty Second Charges Amendment to the Second Restatement of the CTA Plan and the Thirteenth Charges Amendment to the Restated CQ Plan (Release No. 34-80300; File No. SR-CTA/CQ-2017-02)**

Dear Mr. Fields,

Bloomberg L.P. ("BLP") appreciates the opportunity to comment on the above-captioned Notice of Filing and Immediate Effectiveness of the Twenty-Second Charges Amendment to the Second Restatement of the CTA Plan and the Thirteenth Charges Amendment to the Restated Consolidated Quotation Plan ("Proposed Amendments"). On March 2, 2017, the Consolidated Tape Association ("CTA") Plan participants ("Participants") filed with the Securities and Exchange Commission ("Commission") the Proposed Amendments.¹ As discussed more fully herein, the Proposed Amendments purportedly seek to amend the CTA and Consolidated Quotation Plans' (collectively, the "Plan") fee schedule as well as the non-display use policy to clarify the applicability on the non-display fee and the access fee.

BLP, the global business and financial information and news leader, gives influential decision makers a critical edge by connecting them to a dynamic network of information, people and ideas. The company's strength - data, analytics, and news produced by 2,600 journalists and analysts in more than 120 countries - is at the core of the Bloomberg Professional Service, which provides real time financial information to more than 325,000 subscribers globally. The comments on the Proposed Amendments set forth herein are based on BLP's deep expertise in providing market data information, analytics, and news to its customers, including broker-dealers, hedge funds, and a wide array of professional investors and consumers of market data.

Summary

For the following reasons, the Proposed Amendments deserve evaluation by the Commission and should ultimately be denied. First, the Proposed Amendments constitute a denial of access under Sections 11A and 19(d) of the Securities Exchange Act of 1934. The Proposed Amendments make substantive changes to defined terms of the CTA Plan that will result in substantial fee increases for hundreds of BLP customers who receive top of book market data. For example, to

¹ Securities Exchange Act Release No. 34-80300 (March 23, 2017), 82 FR 15404 (March 28, 2017).

receive quotation and last sale price information for Network A securities, a firm would pay between \$19 and \$45 per professional device, depending on the number of devices covered by the subscription. The Proposed Amendments would essentially impose two new fees on the firm in the above example, an Access Fee and a Non-Display Use Fee, which would increase the firm's costs by \$6,000 per month for Network A securities, and \$3,000 per month for Network B securities.² Second, the Proposed Amendments represent an attempt by the Participants to materially change the terms of the CTA Plan's fee schedule and use policy without adhering to the process required under Regulation NMS Rule 608. At a minimum, a change in a material term of the CTA Plan such as this should have been subject to public notice and comment and review by the Commission prior to becoming effective. The CTA identified the Proposed Amendments as a "no-fee change amendment" on its website. However, the Commission's release noted that the CTA designated the Proposed Amendments "as establishing or changing fees" and thus effective upon filing under Rule 608. In light of the CTA's contradictory statements and the nature of the material changes contained in the Proposed Amendments, the Proposed Amendments should have, at a minimum, been submitted for public comment and subject to Commission approval prior to effectiveness. Third, the *interpretation* of the Proposed Amendments, the real key to the size of the fee increases, was conducted through an opaque private letter process that deprived market participants of material information regarding these fee increases and permitted little opportunity for market participant notice and opportunity to comment, or for the Commission to exercise meaningful oversight -- in violation of the Administrative Procedures Act. Instead of a public and transparent process, BLP received a private letter from the CTA Plan's administrator containing a factually incorrect and conceptually novel interpretation of the Proposed Amendments that would result in a massive price increase borne by BLP customers.

The central issue is that the CTA will begin charging BLP customers separately for the use of BLP's Server Application Program Interface product ("SAPI"). The CTA Plan administrator, the New York Stock Exchange ("NYSE"), sent BLP a letter providing notice that, according to NYSE, SAPI does not make data visibly available to the data recipient, and thus use of SAPI by BLP customers will be considered "Non-Display Use." Under the CTA Plan, Non-Display Use carries significantly higher fees, which are described in greater detail below. BLP has taken extraordinary measures, and documented these measures for NYSE over an extended period of time, to ensure that applications running on SAPI servers are used *only* by Bloomberg Anywhere end users who are logged into the Bloomberg Professional service and are already entitled by BLP (and have paid for the right) to access and use the relevant data in support of display usage (including creation and use of derived data). NYSE's contention that SAPI constitutes a Non-Display Use is frivolous and targeted to extract higher rents from BLP's customers. In addition to the objections noted above, there are significant public policy considerations created by the manner in which these fees were increased and the amount increased.

² The CTA sets forth three categories of Non-Display Use. For both Network A and Network B securities, any combination of the three categories of Non-Display Use may apply to a single firm. These estimates are intended to conservatively calculate fees, assuming that only one category of Non-Display Use is applicable to the recipient. Non-Display Fees may be significantly higher than these estimates if more than one category of Non-Display Use applies.

The 2014 Introduction of the Non-Display Fee

Prior to October 2014, the CTA Plan did not charge a different fee for display use as opposed to non-display use. A professional subscriber would pay between \$20 per device and \$50 per device for quotation and last sale price information for Network A securities, depending on the number of devices covered by the subscription, and \$24 per device for the same information for Network B securities. In October 2014, the Participants established fees for "non-display" uses of data. In justifying this new fee structure, the Participants noted, in part, that certain firms had begun relying on trading algorithms based on the data without widespread data access by employees, and "these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses."³ Recognizing that non-display use of data was critical to the businesses of market participants, the CTA began charging significantly higher rates for the "non-display use" of data. Under the 2014 plan, non-display use was defined as "accessing, processing or consuming real-time Network A or Network B quotation information or last sale price information, whether delivered via direct and/or redistributor data feeds, for a purpose other than in support of a data recipient's display or further internal or external redistribution."⁴ NYSE's definition clearly and appropriately notes that Non-Display Use does not apply to the creation and use of derived data, which remains the prevailing rule.

The 2014 CTA Plan established monthly non-display use fees to be applied to each entity as follows:

Network	Output Feed	Non-Display Use Fee (monthly)⁵
Network A	Last Sale Price Information	\$2,000
	Quotation Information	\$2,000
Network B	Last Sale Price Information	\$1,000
	Quotation Information	\$1,000

The 2016 Proposed Amendments

On December 1, 2016, the CTA publicly posted three documents to the CTA Plan's website, the CTA Network A Pricing Schedule, the CTA Network B Pricing Schedule, and the CTA Market Data Non-Display Policy. The CTA also published an accompanying description which noted that the CTA had filed a "no-fee change amendment to the Pricing Schedules and the Non-Display Policy." The Pricing Schedules and Non-Display Policy contained substantive changes to the definitions of Non-Display Use and Access Fees.⁶

³ Exchange Act Release No. 34-73278 (October 1, 2014), 79 FR 60536 (October 7, 2014).

⁴ Id.

⁵ There are three categories of non-display uses of market data. Data recipients can be charged separately for each of the three categories of non-display uses.

⁶ Although these documents were published on the CTA website on December 1, 2016, it is unclear what, if anything, was filed with the Commission at this time. The Commission's March 23, 2017 release notes that the CTA filed the Proposed Amendments on March 2, 2017, over three months after the December 1 publication.

On March 23, 2017, the Commission published the Notice of Filing and Immediate Effectiveness of the Proposed Amendments, which had been advertised as a "clarification." According to the Notice, the CTA designated the Proposed Amendments "as establishing or changing fees" and submitted the Proposed Amendments for immediate effectiveness pursuant to Rule 608(b)(3)(i).⁷

Non-Display Use Fees

The Proposed Amendments changed the definition of Non-Display Use in footnote eight of the Plan's fee schedules to state that any use of data that does not make data visibly available to a data recipient on a device is a Non-Display Use. Footnote two of the Plan's fee schedules was also amended "to state that the device fee will only be applicable where the data is visibly available to the data recipient; any other data use on a device will be considered Non-Display Use." Consequently, for data that is visibly available (including creation and use of derived data), the lower device fee will continue to be applicable and not the Non-Display Use fee.

Access Fees

In addition to the Non-Display Use Fee, the Proposed Amendments stated that the Access Fee will apply if the recipient uses the data for non-display or "the data recipient receives the data in such a manner that the data can be manipulated and disseminated to one or more devices, display or otherwise, regardless of encryption or instructions from the redistribution vendor regarding who has authorized access to the data." According to the fee schedules, the corresponding Access Fees are:

Access Fees			
Network	Output Feed	Direct Fees (monthly)	Indirect Fees (monthly)
Network A	Last Sale	\$1,250	\$750
	Bid-Ask	\$1,750	\$1,250
Network B	Last Sale	\$750	\$400
	Bid-Ask	\$1,250	\$600

The CTA notes that the "access fee is designed to address that the manner by which a data recipient uses the data drives which fees apply."

Server Application Program Interface

SAPI is an extension of the Bloomberg Professional Service and is available only to Bloomberg Anywhere users who are biometrically authenticated by BLP and are already entitled by BLP (and have paid for the right) to access and use the relevant data in support of display usage (including creation and use of derived data). SAPI subscribers are permitted to view and download market data from BLP onto authorized servers and run server-based applications on the market data. SAPI technology ensures that server-based applications can be used only to enable outputs of such applications in a *display to users whose device or user ID has been entitled by BLP*. Given the logical emphasis on security and encryption, an emphasis that has

⁷ It is worth noting that this claim appears to be directly at odds with the Participants' December 1, 2016 statement that the Participants had filed a "no-fee change amendment."

prompted extraordinary efforts on BLP's part, it is irrational that NYSE should unilaterally proclaim that encryption is irrelevant to the determination of and/or whether the Access Fee should be triggered. BLP has provided NYSE with a full description of SAPI as far back as 2004.

The March 27 NYSE SAPI Letter

On March 27, 2017, the New York Stock Exchange ("NYSE"), on behalf of the CTA, provided BLP with a letter informing BLP that SAPI would be considered a Non-Display Use and subject data recipients to the applicable Access Fees.⁸ This letter was not posted to the CTA Plan web site, and it is unclear if other firms were provided with similar notices. The letter noted in relevant part, that:

Based on your description of Bloomberg's Service API functionality ("SAPI"), it does not qualify as a Professional/Internal Device under the Schedule. You describe SAPI as allowing firms to "run server-based applications" and "make real-time data available internally" to users' devices. Both of these uses imply that SAPI does not make data visibly available to the data recipient; rather, SAPI is an extranet service⁹ that provides access to a data feed. Therefore, pursuant to the Schedule, as clarified consistent with the CTA Fee Clarification filed with the SEC, we consider use of SAPI to be Non-Display Use and subject data recipients to the applicable access fees. Any prior communications regarding SAPI are superseded by the fee clarification.

NYSE arbitrarily reached the conclusion that SAPI is Non-Display despite the overwhelming evidence that SAPI only makes the data available to the subscribers who are entitled to receive the data for display purposes, and BLP has implemented the extensive safeguards and entitlements noted above.

NYSE then determined that, in addition to the Non-Display Use Fees, the Access Fees will also apply to customers who take SAPI because the new definition of Access Fees under the Proposed Amendments includes any Non-Display Use.

For the following reasons, BLP respectfully requests that the Commission deny the Proposed Amendments.

Top of Book Data Fee Increase

The Proposed Amendments constitute a denial of access under Sections 11A and 19(d) of the Securities Exchange Act of 1934. The Proposed Amendments make substantive changes to defined terms of the CTA Plan that will result in fee increases for top of book market data. Firms

⁸ See Exhibit A.

⁹ In the context of the CTA Plan we have been unable to ascertain what an "extranet service" is. In fact, a number of critical terms in this discussion have no definition. One would presume this enables the Participants to have total flexibility in defining terms to suit the needs of the moment, despite the far reaching consequences to investors and the markets.

currently pay between \$19 and \$45 per professional device per month for quotation and last sale information for Network A securities and \$23 per professional device per month for quotation and last sale information for Network B securities. Under the NYSE letter interpretation, firms who take SAPI will pay an additional \$6,000 per month in Non-Display Use Fees and Access Fee for Network A securities and an additional \$3,000 per month for Network B securities. Small and mid-size customers will be disproportionately impacted by these fee increases. For a firm that previously paid to receive quotation and last sale information for Network A and Network B securities on 10 professional devices, these new fees would amount to approximately a 2,000% increase in costs.

Section 6(b)(4) of the Exchange Act of 1934 requires that the "rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other person using its facilities." Furthermore, top of book data is a special category of market data where it is even more important to constrain the application of fees. In fact, in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) and *NetCoalition v. SEC*, 715 F.3d 342 (D.C. Cir. 2013), the Court noted that core data must be cost-based -- appropriately, this is an unyielding standard. The Court specifically noted the "mandatory nature of the regime" and understood the role of the exchanges as sole source providers of the data. As such, the Court endorsed a cost-based approach, rather than a market-based approach. It is totally inconceivable that a 2,000% increase in costs is in line with exchange costs. Regardless, the exchanges have presented no evidence to support the cost-based need for such extortionate fees.

Fee Increases Impede Capital Formation

The Proposed Amendments impose significant fee increases on BLP's customers and will disproportionately impact small and mid-size customers. President Trump, SEC Acting Chairman Piwowar and Chairman-Designate Clayton have emphasized the importance of broadening access to capital markets and increasing financing for small and medium-size businesses. The fees associated with these Proposed Amendments run counter to these goals. The statute requires that market data should be readily available at a price that is fair and reasonable, represents an equitable allocation of fees, and be nondiscriminatory.¹⁰ Heretofore, all sides of the extensive market data debate have agreed that top of book market data should, at the absolute minimum, be held to this standard. It is impossible to see how an increase in the cost of top of book market data of approximately 2,000% is in keeping with this standard. These fees are significant, and the impact of these fees will not be limited in scope or theoretical. These will have real world impact, particularly on small and medium-sized businesses. Given the importance of this information to small and medium-sized businesses, and the marketplace generally, it would be unconscionable to allow a fee increase of this magnitude to stand.

Improper Procedure to Amend the CTA Plan

The Proposed Amendments represent an attempt by the Participants to materially change the terms of the CTA Plan's fee schedule and use policy without adhering to the process required

¹⁰ Section 11A(c)(1)(C) of the Exchange Act provides that fees must be "fair and reasonable" and not "unreasonably discriminatory" while Section 6(b)(4) provides that an exchange must "provide for the equitable allocation of reasonable dues, fees, and other charges among . . . persons using its facilities."

under Regulation NMS Rule 608.

The CTA designated the Proposed Amendments as "establishing or changing fees," thus permitting the amendments to become effective upon filing pursuant to Rule 608(b)(3)(i). As a result, the Proposed Amendments were not subject to a public notice and comment period or Commission approval prior to becoming effective - with market participants, the true parties impacted by exchanges' clandestine approach, receiving no notice whatsoever.

BLP notes that, although the CTA has designated the Proposed Amendments to be a fee change for the purposes of filing with the Commission, the CTA has previously noted on its website that this is a "no-fee change amendment." The CTA cannot have it both ways. To the extent the CTA has previously provided information on the substance and application of the Proposed Amendments, the CTA has claimed publicly these are not fee changes. If this is in fact true, the Proposed Amendments are not eligible for filing and immediate effectiveness under Rule 608(b)(3)(i).¹¹ If these are fee changes, and the CTA intends that they be treated as such, the CTA's previous public comments are at odds with their current position.

The Participants offer the explanation that the Proposed Amendments are merely a "clarification" of an "ambiguity" of the fee schedule and use policy. Rather than clarify an ambiguity, the Proposed Amendments entirely redefine "Non-Display Use" to include data usage that is clearly display only, and had been treated as display use dating back to at least 2004. At a minimum, a change in a material term of the CTA Plan such as this should have been subject to public notice and comment and review by the Commission prior to becoming effective.

Furthermore, it is also worth noting the contract with the Participants is typical of one provided by a sole source provider. The contract grants NYSE, acting on behalf of the Participants, the ability to unilaterally amend fees and policies. The only "remedy" is to face termination if there is an objection to *any* unilateral amendment -- leaving those who are forced to contract with the exchanges absolutely no negotiating power or recourse. The SROs take advantage of their leverage contractually as sole source provider of this core data, with market participants required by law and regulation to purchase this data.

Discriminatory Application

The Proposed Amendments were incorporated into the CTA Plan and conveyed to market participants in an opaque and discriminatory manner. Since the substantive meaning and interpretation of the Proposed Amendments have been conveyed to market participants through these non-public letters, BLP cannot evaluate whether these fees are being broadly applied to all other participants in the market in the same manner. Whether applied broadly or selectively, these fees would constitute a denial of access under section 11A and 19(d). The fees are being applied in a discriminatory fashion by arbitrarily and disproportionately impacting SAPI. This underscores how the Proposed Amendments have been implemented without transparency.

¹¹ Under Rule 608(b)(3)(i), a proposed amendment may be put into effect upon filing with the Commission if designated as "Establishing or changing a fee or other charge collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment..."

NYSE is simply mischaracterizing SAPI's display features in concluding that it constitutes Non-Display Use. NYSE ignores that SAPI technology ensures that server-based applications can be used only to enable outputs of such applications in a *display* to users whose device or user ID has been entitled by BLP.

BLP also notes that characterizing the Proposed Amendments as a "clarification" of the existing definition of Non-Display Use is an entirely inaccurate interpretation of what is really occurring. Prior to the Proposal, NYSE considered SAPI to be a Display Use of market data. Without any change to the SAPI product, upon releasing the Proposed Amendments, NYSE began characterizing SAPI as a Non-Display Use of market data. This was not a clarification in any sense of the word. NYSE manipulated its definition and interpretation of Non-Display Use to include SAPI. Attempting to target a product in this manner is unreasonably discriminatory and constitutes a violation of the Exchange Act.

Unfair Burden on Competition

The Proposed Amendments put BLP at a severe competitive disadvantage by way of the reporting obligations the CTA is attempting to impose. BLP is being asked to disclose all of its customers to the Exchanges, including the specific method by which they consume the data. Specifically, BLP received an email from NYSE with the following directive containing an inappropriate 30-day deadline: "The vendor, Bloomberg in this case, should enter a datafeed request for each customer and report each customer as a datafeed once NYSE approves the datafeed request." On the one hand, the Exchanges are claiming the rights and privileges of a self-regulatory organization in order to obtain such confidential information under the guise of the SRO cloak. On the other, the exchanges often themselves claim they too are vendors, when advantageous to their bottom line -- and directly compete with BLP. In fact, BLP notes that NYSE's parent company, Intercontinental Exchange, Inc., recently purchased Interactive Data Holdings Corp and has been expanding its offering of data services. It is an abuse of the Exchanges' authority as a self-regulatory organization to impose a fee structure designed to diminish a competitor's business and use its new policies to extract confidential client lists that could be used for commercial for-profit gain. The Commission should not permit the Exchanges to utilize their SRO status for such anti-competitive purposes.

Conclusion

Broker dealers are required to provide the Plan with market data -- immediately and without compensation -- in order to ensure that the public will have access to a consolidated market data stream. Imposing fee increases of upwards of 2,000% for this most basic and essential of data will have an enormously detrimental impact on capital formation, particularly stifling the growth and innovation of small and medium-sized businesses. On grounds of both substance and process, these Proposed Amendments should be denied.

We appreciate the opportunity to provide BLP's views to the Commission on these important issues. If you have any questions or would like to discuss this matter further, please do not hesitate to contact me at [REDACTED] or [REDACTED].

Respectfully submitted,

A handwritten signature in black ink, reading "Greg R. Babyak". The signature is written in a cursive, slightly slanted style.

By: Greg Babyak
Head, Global Regulatory and Policy Group, Bloomberg LP

Exhibit A



Margaret Sullivan
Director

New York Stock Exchange
11 Wall Street
NYC, NY 10005
212-658-5553
Margaret.Sullivan@NYSE.com

March 27, 2017

Mr. Gadi Goldress
Bloomberg LP
120 Park Ave.
New York, NY 10165

Dear Gadi:

Please be advised that the Consolidated Tape Association ("CTA") filed with the Securities and Exchange Commission an immediately effective amendment to both the CTA Plan and Consolidated Quotation ("CQ") Plan that clarifies certain fees relating to Display and Non-Display Use and when access fees are applicable (the "CTA Fee Clarification") (see Securities Exchange Act Release No. 80300 (March 23, 2017) (File No. SR-CTA/CQ-2017-02)). The amended Fee schedule is available here: [CTA Network A Pricing/Rate Schedule](#); [CTA Network B Pricing/Rate Schedule](#)

As described in greater detail in the CTA Fee Clarification, footnote 2 of the CTA Schedule of Market Data Charges (the "Schedule") provides that "display data use subject to the Network A and Network B Subscriber charges shall mean only data that is visibly available to the data recipient; any other data use on a Device shall be considered Non-Display Use." In addition, footnote 8 of the Schedule specifies that "any use of the Data that is not designed to make the Data visibly available to the Data recipient on a device is a Non-Display Use." Finally, footnote 10 of the Schedule now provides that the "access fee applies if (i) the data recipient uses the data for non-display; or (ii) the data recipient receives the data in such a manner that the data can be manipulated and disseminated to one or more devices, display or otherwise, regardless of encryption or instructions from the redistribution vendor regarding who has authorized access to the data." The CTA Fee Clarifications, as filed, are applicable to all data recipients and supersede any prior understandings of the operation of the Schedule.

Based on your description of Bloomberg's Service API functionality ("SAPI"), it does not qualify as a Professional/Internal Device under the Schedule. You describe SAPI as allowing firms to "run server-based applications" and "make real-time data available internally" to users' devices. Both of these uses imply that SAPI does not make data visibly available to the data recipient; rather, SAPI is an extranet service that provides access to a data feed. Therefore, pursuant to the Schedule, as clarified consistent with the CTA Fee Clarification filed with the SEC, we consider use of SAPI to be Non-Display Use and subject data recipients to the applicable access fees. Any prior communications regarding SAPI are superseded by the fee clarification.

Sincerely,

A handwritten signature in black ink that reads "Margaret M. Sullivan". The signature is written in a cursive, flowing style.