

Dear Mr. Fields,

I would like to ask for the opportunity to comment on the Amendment being proposed and would appreciate your consideration.

I am a systems administrator, managing my own retirement portfolio via my brokerage account at Interactive Brokers. I use modern tools to assist in the evaluation of investment decisions (computers), and again use these tools in conjunction with the API of my brokerage firm to assist in position monitoring and the automatic placement of orders to re-balance my portfolio. The source of the data is from Interactive Brokers and also the DTN IQ Feed of which I am a client. I am not an anomaly in the spectrum of market participants, there are many small investors using modern tools to participate in the markets. (1)

Reading the language of the current Amendment, and consequently, the language of policies already in effect, it is clear that myself and others like me would fall under the banner of "non-display" users. I am not going to argue the egregiousness of the fees or the impacts these fees will have on small investors and the businesses supporting them. I believe these to be obvious. Instead I would like to bring attention to the commission a glaring exemption in the current non-display policy that allows for unequal distribution of market data fees benefiting large organizations and, as a consequence, penalizing small organizations and individual investors.

In addition to the demonstration of unequal exemptions, I would also like to bring to the attention of the commission, that the language used by the CTA to justify the costs of non-display data were clearly directed towards institutional market participants, and nowhere in these justifications do they take into consideration non-institutional participants. However, as shown by Bloomberg and other commenters to this amendment, the CTA intends to, and has already begun to target non-institutional investors for non-display data fees.

Quickly, before commencing, I would like to elucidate my understanding of what the purpose of the CTA (and other SIPs) are and what their mandate is:

A centralized, neutral processor of market data, permitted to charge reasonable and non-discriminatory rates for this data in order to allow fair and equitable access to ALL market participants, including both institutional and individual investor.

Summary of the exemption in the non-display use policy:

There is discriminatory language in the non-display policy that allows for market participants at large organizations to be exempt from paying non-display fees. The exemption allows for a potent method to subsidize the fees for market participants at these organizations and allows for an inequitable distribution of fees to individuals and small organizations.

Exemption:

Organizations may be considered the sole Subscriber for non-display CTA data. If each market participant within the organization is an employee or owner, they do not have to become Subscribers to the non-display data, and therefore incur no non-display fee at the individual level. As a result, non-display data fees, for organizations that meet this criteria, incur a single fee, allowing them to internally distribute this data to as many employees as they desire. (2)

Effects:

As a result of applying this exemption, large organizations who internally distribute this non-display data to large employee bases have a disproportionately lower cost **per market data user**. This results in small organizations, and especially individual investors, having disproportionately higher fees for the same market data.

It also, by definition, disallows retail brokers and data vendors from using these exemptions for their individual investor clients due to "clients" not falling under the employee/owner exemption.

Example:

A large organization with 100 employees who makes use of CTA non-display data pays \$9,000 per month (data + access fee). The per user market participant cost is \$9,000/100 or \$90 per market data user.

An individual retail non-professional who makes use of non-display data via his retail broker will also pay \$9,000 per month. The per market data user cost is \$9,000 per month, a 100 fold difference to the relative market data user fee of the large organization using the employee exemption.

If the goal of the CTA is to provide fair and equitable access and non-discriminatory pricing for **all market participants**, then this exemption is a glaring discriminatory and inequitable distortion of this goal.

Summary of the language used to justify non-display pricing:

The language used to justify non-display pricing is solely targeted to institutional users. There is no mention or regard for how individual investors might be using this data, and how and why justification of this pricing should apply to them as well.

Examples of price justification solely for commercial use quoted from the Amendment:

*With the proliferation of automated and algorithmic trading, non-display devices consume large amounts of data and are critical to **a firm's businesses**.*

*The black boxes and application programming interfaces utilized **by these firms** process data far more quickly, and as a result, the relative value between non-display and display data usage is pronounced.*

Effect:

By the CTA framing the argument from within the context of solely a firm based commercial one, they completely ignore that there are other market participants who might make use of this data for their own investment accounts. There is, in fact, no mention of individual investors use of non-display data. Therefore, these statements are inaccurate characterizations of ALL market participants, and as a result lead to disproportionate inequity in the charging of fees to participants who these justifications do not apply.

Example of inaccuracies:

- A retail investor using non-display data from a data vendor like DTN, who may only monitor 25 symbols for his automated portfolio purchases. This is not "*consuming large amounts of data*". However even if *he were* to consume a large amount of data, this additional transmission cost is borne by DTN, (who is already paying the non-display fees) and has no cost relevance to the CTA. A retail investor is not going to be receiving data directly from the CTA.

- Individual investors are rarely organized as "firms", and yet, they also use non-display data to assist them in processing data and placing orders. These statements infer that the efficiencies gained by automation are only available to "firms", and if individual investors would like to use modern tools to assist them in analyzing data and placing orders, then they must subsequently pay institutional prices.

- I personally know individual investors whose programs do not process data "far more quickly". In fact, most struggle with the automation aspects. What the automation provides however is a means to avoid tedium and mistakes. They are not competing on speed. They are not even competing.

Requests for Amendment modifications and conclusion

Based on the language of the Amendment, and of the current policies, it is clear that individual investors were absolutely not considered as viable users of non-display data. Therefore, no provisions were made for them, and most distressingly it appears that the CTA is actively pursuing them for these fees. This is blatantly discriminatory and an abuse of their power.

In addition, the employee exemption for organizations creates large discrepancies in per user market data costs. The CTA is always careful to use the language, "fair and equitable *for all customers*". However, the CTA was not created for "*customers*", it was created *for all market participants*. Therefore this preferential customer treatment is blatantly discriminatory and very unfair.

In my view, there is only 1 of 2 modifications below that could be made to this Amendment that would adhere to the goals of a SIP and provide actual fair and equitable access to non-display data *for all market participants*:

1) ***Disallow any exemptions and preferential treatment.*** All employees and users pay for non-display data if they use it. This would greatly increase the number of users, and therefore *should* bring down the price. This new price should take into consideration ALL users, *including individual investors*, and the new price justifications should be provided for them as well.

2) **Create an exemption for non-professionals.** If exemptions are going to be made for the employees of large organizations, then they should be made for the individual non-professional as well. This would allow retail brokers and data providers to continue to provision the same services as they currently do, and work within a time tested exemption policy using the "non-professional subscriber form".(3) This would also be the easiest to implement and the most clear communication from the commission that non-display data use and therefore the use of modern tools is not just available to large firms, but to ALL who want to participate in our markets.

If anyone at the commission would like to contact me and discuss the above or have questions about how I use non-display data as an individual investor, please feel free to contact me at [REDACTED] or [REDACTED]

Sincerely,

David Jenkins, Individual Non-professional Investor

Footnotes:

(1) <https://www.bogleheads.org/forum/viewtopic.php?t=174129>,
<http://qoppac.blogspot.cl/2017/04/investment-and-trading-performance-year.html>,
<https://www.elitetrader.com/et/threads/automatic-trading-with-ib-tws.29917/>

(2)
<https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/Policy%20-%20Employee%20Status%20Qualification.pdf>

(3)
<https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/Policy%20-%20Non-Professional%20Subscribers%20-%20CTA.pdf>