December 14, 2017

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

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. SR-CTA/CQ-2017-04

Dear Mr. Fields:

The Participants submit this letter in response to comment letters received by the Securities and Exchange Commission (the "SEC" or the "Commission") in connection with the above-referenced filing (the "Amendment"), which proposed clarifications to the fee schedules of the Consolidated Tape Association ("CTA") Plan and the Consolidated Quotation ("CQ") Plan (collectively, the "Plans"). The Amendment would clarify the applicability of the device fees, the Non-Display Use fees, and the access fee.

We appreciate this opportunity to address the issues raised by commenters to the SEC. We believe that comment letters requesting that the SEC abrogate the Amendment are based on a complete misunderstanding and mischaracterization of the filing. In particular, those commenters are attempting to misuse the comment process for the Amendment to interpose untimely objections to established fees that have been in place since 2014 pursuant to an effective rule change under Rule 608 of Regulation NMS ("2014 Fee Amendments").[1]

At its core, the Amendment is designed to clarify a simple concept: if a professional customer receives data and uses it in a non-display manner, such customer should be subject to non-display use fees. Despite what some commenters have stated, the Amendment is meant to address a competitive disparity between vendors whereby some vendors are receiving data and providing non-display functionality to their professional customers while charging lower fees despite providing the same non-display functionality as vendors charging the correct fees. It is this competitive disparity that will be rectified by the Amendment. If in fact a vendor's particular data product does not raise these competitive issues—because the data product does not provide the type of functionality that the Amendment is meant to address—then the Amendment will not apply to that product. But to try to use the comment process and abrogation procedure to rehash objections to non-display use fees implemented in 2014 only serves to maintain an unfair competitive landscape.

[1] See Securities Exchange Act Release No. 73278 (October 1, 2014), 79 FR 60536 (October 7, 2014) ("2014 Fee Amendments").

The purpose of the Amendment is to level the competitive landscape for competing market data vendors.

Despite the mischaracterizations by SIFMA,[2] Bloomberg,[3] and other commenters apparently solicited by Bloomberg,[4] the Amendment is not designed to impose "massive fee increases" on market data subscribers, but instead to ensure that competing vendors operate on a level playing field. There is a very real concern that certain vendors are exploiting what they believe to be an ambiguity in the current fee schedule in order to provide their professional customers with a data product that has a higher level of functionality at lower costs as compared to products provided by other vendors. The Amendment is intended to ensure that the fee structure implemented in 2014 is fairly applied across all vendors, regardless of the product used to deliver the data, according to the function the product performs. This is why the Amendment was focused on creating functional definitions to determine when the device, non-display use, and access fees were applicable. With the wide variety of data products made available to professional customers, the Participants wanted to create a functional definition that could be equally and fairly applied across the entire industry and was not subject to manipulation.

Importantly, a competing market data vendor supports the Amendment for precisely these reasons. Thomson Reuters stated that "this clarification will create more of a level playing field for vendors to compete and will allow clients to pick products knowing that exchange fees for comparable services won't differ depending on provider."[5] If Bloomberg and SIFMA were correct that the Amendment is a "massive fee increase," a competing market data vendor would not support the filing. But as Thomson Reuters correctly recognizes, "[t]his amendment doesn't contemplate the level of fees but instead clarifies the manner in which these fees should be applied."

The "fee increases" that SIFMA and Bloomberg focus on were adopted as part of the 2014 Fee Amendments. The 2014 Fee Amendments were adopted only after extensive discussions with the industry and the Commission. It is inappropriate to attempt to re-hash objections to those fees in connection with the Amendment since the Amendment is designed to simply ensure that those fees are applied fairly across the industry and effects no changes to the fees themselves. What the fees are is not at issue in this rule filing process, how they are applied is, and SIFMA and Bloomberg's objections, if credited, would only serve to maintain the current uneven competitive landscape while having no effect on the fees adopted as part of 2014 Fee Amendments.

Further, the Participants have no pre-conceived expectation about the change in fees *collected*, if any, that may result from the Amendment. It could be the case that fees collected do

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[2] *See* Letter from Melissa MacGregor, SIFMA (Dec. 11, 2017) ("SIFMA Letter").

[3] *See* Letter from Greg Babyak, Bloomberg (Dec. 11, 2017) ("Bloomberg Letter").

[4] *See* Letter from ACR Alpine Capital Research, LLC, et al. (Dec. 11, 2017), Letter from Reik Reed, Baird Equity Asset Management (Dec. 11, 2017).

[5] *See* Letter from David Craig, Thomson Reuters (Nov. 28, 2017) ("Thomson Reuters Letter").

not change at all. If a vendor's product in fact does not enable non-display functionality, then the non-display use and access fees will not be applicable to that product if it is provided to a professional and the amendment will result in no additional fees being collected from that data recipient. Moreover, as previously stated to the Commission, it may be the case that a particular data product is providing a level of functionality that its users simply do not need. Therefore, even if a data product should be subject to the non-display use and the access fees, professional customers may realize that they should switch to a different data product that provides a lower level of functionality, thereby avoiding any potential additional fees.

The Amendment does not discriminate against any particular vendor, but instead ensures that vendors operate within a fair, competitive environment.

It is a mischaracterization of the Amendment to state that it is designed to discriminate against any particular vendor when the reality is that the Amendment is designed to ensure similar treatment of vendors providing similar data products. In its comment letter to the Commission, Bloomberg asserts that the Amendment violates the law by "[u]nfairly discriminating against a single vendor, product, and set of customers by imposing a targeted fee increase . . . ." But the text of the Amendment does not target any specific vendor or product, it focuses on the functionality provided by all data products offered by all vendors to determine whether any of those data products should or should not be subject to the non-display use and access fees, and the outcome of that depends solely on each data product's functionality.

By using definitions focused on functionality rather than an arbitrary feature, such as transmission method, the Amendment ensures the equal treatment of similarly situated data products. If, under the Amendment, a particular vendor's data product costs more than another vendor's data product, it will be because of the functional differences in what the data product offers to its professional customers. Abrogating the Amendment, on the other hand, would only serve to perpetuate an improper, unfair, and discriminatory interpretation of the non-display use and access fees.

Whether or not any particular data product is subject to the non-display use fees is a factual question that will be resolved separately from the implementation of the fees.

A large portion of Bloomberg's comment letter is dedicated to arguing that its Server Application Program Interface ("SAPI") product is not a non-display program but instead should be considered as enabling a display use only. Whether that is so or not is a factual question unrelated to the merits of the Amendment.[6] Previous statements regarding the applicability of the Amendment to Bloomberg's SAPI product have been based on the Participants'

[6] In defense of its position that SAPI is a display-only product, Bloomberg relies on the fact that its SAPI product was developed and approved for use in 2004 and was approved by the CTA Administrator as a "display service" in 2004, long before the industry developed the non-display use concept and defined it. The 2014 Fee Amendment was adopted in 2014, ten years later, after extensive consultation with the industry. Any discussions prior to 2014 therefore are immaterial.

understanding of the Bloomberg SAPI product and the description that Bloomberg provided on how the SAPI product works. In addition, the CTA Administrator had been advised by a Bloomberg customer that it was cancelling a datafeed because the Bloomberg SAPI product would provide it with the same functionality at lower cost. As a result, the CTA Administrator reached out to Bloomberg for additional information regarding customer use of the Bloomberg SAPI product, but did not receive sufficient information to assess whether the SAPI allows for non-display use. If the Bloomberg SAPI product enables only display uses, then the Bloomberg SAPI product would not be subject to the non-display use and access fees. Again, the Amendment is not designed to target any specific data product, but instead to focus on the functionality provided by a data product. If a data product does not allow for the use of data at issue, then the Amendment would not be applicable.

It is telling that some commenters have sought to defend the Bloomberg SAPI product and assert that their fees will increase substantially as a result of the Amendment.[7] If in fact the Bloomberg SAPI product were truly a display-only product, there would be no reason for any Bloomberg customers to worry about their fees increasing. A reasonable inference is that the alternative products that compete with the functionality provided by the Bloomberg SAPI product are in fact non-display products and that the price Bloomberg has been charging for the SAPI product, if provided to professionals, is in fact artificially depressed, to the competitive disadvantage of other vendors. Viewed from that perspective, the supposed "massive fee increase" decried by these commenters is actually a concession of an improper discount that users of the Bloomberg SAPI product have been able to take advantage of as a result of Bloomberg's exploitation of a perceived ambiguity in the fee schedules. Therefore, the outcry by these commenters regarding the Amendment may very well be a byproduct of the unfair competitive landscape that the Amendment is designed to address.

Abrogating the Amendment would only perpetuate the unfair competitive imbalance and would have no effect on the 2014 Fee Amendments.

SIFMA attacks the Amendment on the basis of a wide range of broad policy reasons, claiming that the Amendment would harm investors, fail to maintain fair, orderly, and efficient markets, and impede capital formation. But SIFMA's expansive attack on the NMS plan governance structure[8] and market data fees fails to even recognize the key purpose of the Amendment: to resolve the competitive imbalance resulting from certain vendors' mischaracterization of their data products. The Amendment is narrowly focused on leveling the

[7] It would appear that the use of similar language by the various commenters is a result of Bloomberg soliciting letters from its customers. Therefore, those letters are premised on the same mischaracterization of the Amendment as singling out Bloomberg, rather than an attempt to level the competitive landscape.

[8] SIFMA claims that the scope, objectives, and potential impact of the Amendment were not discussed with the Advisory Committee, citing to the General Session summary posted on the Plan's website for support. The General Session summary cited by SIFMA, however, was identified as being just that, a summary, and did not purport to reflect the extent of all discussions among the Participants and the Advisory Committee. The Amendment indeed was extensively discussed with the Advisory Committee at multiple meetings of the Plan's Operating Committee. The Amendment was discussed most recently at the May 25, 2017 meeting following the withdrawal of the previous filing; the advisors inquired at that time when the revised rule filing for the Amendment would be made, recognizing the necessity of treating vendors equally.

playing field between those vendors properly characterizing their products' functionality and other vendors who are attempting to obtain an unfair advantage by offering their professional customers lower fees despite providing the same functionality.

Abrogating the Amendment would not affect the establishment of non-display use fees since those fees were adopted by and extensively discussed in the 2014 Fee Amendments that were filed with the Commission. Instead, abrogating the Amendment would provide certain vendors with continued grounds for arguing the use of their data products are not subject to non-display use or access fees.[9] Such a result would allow certain vendors to maintain their improper competitive advantage over other vendors that are already properly characterizing their products' functionality.

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For the reasons discussed above, we believe that the Commission should allow the Amendment to remain effective. To do otherwise would maintain the uneven playing field vendors have arrogated for themselves to the economic disadvantage of those vendors who have implemented (and continue to implement) the 2014 Fee Amendments correctly.

Sincerely,

Emily Kasparov
Chair
Plans' Operating Committee

Cc: John C. Roeser, Associate Director, Division of Trading and Markets
Katherine A. England, Assistant Director, Division of Trading and Markets
CQ/CTA Participants

[9] The Participants believe that the Bloomberg SAPI and similar data products would be subject to the non-display use and the access fee even if the Amendment was abrogated, assuming those products enable non-display functionality. The Amendment was simply designed to eliminate any perceived ambiguity that vendors may be exploiting to gain an unfair advantage over vendors who have properly applied the 2014 Fee Amendments since their inception.