April 19, 2018

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

Re: CTA Release No. 34-82937, File No. SR-CTA/CQ-2018-01, 83 Fed. Reg. 13539
UTP Release No. 34-82938, File No. S7-24-89, 83 Fed. Reg. 13542

Dear Mr. Fields,

SIFMA[1] submits this letter in response to the questions posed by the Securities and Exchange Commission in connection with the March 29, 2018 notices of the amendments to the Consolidated Tape Association ("CTA") and Unlisted Trading Privileges ("UTP") plans. The CTA and UTP plan amendments described in these filings would nearly double the core-data enterprise cap for nonprofessional subscribers – from $648,000 to $1,260,000 each month for both Network A and C securities. CTA would increase the Network B cap from $520,000 to $648,000. The amendments would also decrease per-query fees for broker-dealers whose subscriber bases qualify for the enterprise cap. The amendments purport to reflect "data showing the current benefit of the Enterprise Cap and the number of queries" that allowed the Plans "to calibrate the [changes] in order to make the changes … revenue neutral."[2]

This response takes no position on the ultimate lawfulness or advisability of these specific fee changes. Rather, it responds to the Commission's request for comment on six questions regarding the Plans' proposals. Given the lack of supporting data or explanation in the releases, SIFMA understands the Commission's eagerness to receive additional data and comment from affected participants. Respectfully, however, market participants find themselves at a similar disadvantage: only the exchanges control the cost and customer data that is dispositive for this and other fee increases under the Securities and Exchange Act of 1934 ("Act") and the Commission's orders.

The Plans' failure to disclose this information precludes either customers or the Commission from meaningfully evaluating whether these fees are fair, reasonable, and nondiscriminatory under the Act.

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[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] 83 Fed. Reg. at 13541, 13542.

Accordingly, the Commission must request, and the exchanges must disclose the relevant cost, revenue, and customer data to satisfy Congress' mandate.

1) Is the anticipated impact on revenue to the Plans consistent with the Participants' representations?

Market participants lack the ability to assess the revenue impact on the Plans. For this and other fee changes, we lack the data to judge the Participants' representations that the changes are revenue neutral. In any event, revenue neutrality is not the proper criterion for the amendments' lawfulness under the Exchange Act, which the Commission has consistently interpreted as focusing on the exchanges' costs.[3] We are unaware of any authority, and the Plans cite none, treating revenue-neutrality as a dispositive or even relevant factor in assessing the lawfulness of consolidated core data not subject to competitive forces.

2) Is the anticipated impact on costs to consumers of market data, including broker-dealers and their non-professional customers, consistent with the Participants' representations?

The Plans represent that they have data calibrating the impact of the fee changes. That data is not disclosed in the public filings, however, and it remains unclear whether these representations refer to the impact on individual non-professional subscribers, on the affected broker-dealers that serve them, or on the market. Market participants (but not the exchanges) typically lack the type of aggregate data the Commission seeks. The exchanges have not demonstrated or explained the cost impact on customers, other than to say the changes are intended to be revenue-neutral.

3) Is there supporting data to illustrate that the proposed changes are "revenue neutral" as asserted by the Participants?

Market participants are not privy to any such supporting data. The data, as expressly stated by the Plans, is available to the exchanges, and the exchanges bear the burden of proving their fees remain fair, reasonable, and consistent with the public interest. Yet the exchanges' data is not included in the releases or any other public disclosures sufficient to satisfy Commission or judicial review.

4) Could the fee changes have a disproportionate impact on particular data recipients?

It is possible that the fee changes could disproportionately harm certain nonprofessional data recipients. The releases state that the changes are anticipated to be revenue-neutral in the aggregate, but do not describe the impact on individual subscribers who bear the costs of the core data fees or per-query fees. In addition, the impact on the small number of affected institutions, their customers, and other institutions and customers not subject to the enterprise cap remains unknown.

[3] *See, e.g.*, *NetCoalition v. SEC*, 615 F.3d 525, 536 (D.C. Cir. 2010); *Bunker Ramo Corp.*, Release No. 15372, 1978 WL 171128, at *1-2 (Nov. 29, 1978); *Institutional Networks Corp.*, Release No. 20874, 1984 WL 472209, at *4–5 (Apr. 17, 1984); Regulation of Market Information Fees and Revenues, 64 Fed. Reg. 70613, 70619 (Dec. 17, 1999); Concept Release Concerning Self-Regulation, 69 Fed. Reg. 71256, 71273 (Dec. 8, 2004); Regulation NMS, 70 Fed. Reg. 37496, 37504 (June 29, 2005); ArcaBook Order, 73 Fed. Reg. 74770, 74779-80, 74786 (Dec. 9, 2008).

5) **What, if any, supporting data could inform whether the changes would maintain the status quo and therefore do not impose any burden on competition that is not necessary or appropriate as asserted by the Participants?**

We respectfully disagree with the premise that the status quo of market-data fees does not unreasonably burden competition and does not offend the Exchange Act. As recognized by many governmental agencies, third-party groups, market participants, and even exchanges, the current governance structure for NMS plans is broken.[4] Demutualized, for-profit exchanges lack any competitive incentive to restrain market-data fees and any effective institutional or regulatory check on increasing those fees. Absent data demonstrating a reasonable relationship between core-data revenues and the costs of collecting and disseminating this data – which exchanges have failed to disclose to date – it is doubtful whether the status quo is consistent with the Exchange Act.

6) **Whether the impact of potential industry consolidation on the revenue of the Plans is consistent with the representations of the Participants?**

Again, neither market participants nor (presumably) the Commission can assess the consistency of the Plans' representations with the underlying data absent the disclosure of that data by the exchanges. Only the exchanges can demonstrate whether and why consolidation and technological change have or have not caused their costs to decline in accordance with the industry more broadly.

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[4] *See, e.g.*, U.S. Dep't of the Treasury, A Financial System that Creates Economic Opportunities: Capital Markets 63-64 (2017), https://bit.ly/2fPPMR3 (recommending that the Commission "recognize that markets for SIP and proprietary data feeds are not fully competitive" and take the absence of competition into account "when determining whether to approve SRO rule changes that set data fees"); John Ramsay, *This Is No Way to Run the U.S. Stock Market* (Mar. 20, 2018), https://bloom.bg/2FWGW3F (for-profit exchanges "have little incentive to reduce fees," "have no reason to want the public data to improve in ways that undercut [their] business" selling proprietary market data, and "don't have much incentive to build a system that the SEC can use to monitor their conduct more effectively"); Rulemaking Petition Concerning Market Data Fees, File No. 4-716 (Dec. 7, 2017) (statement by 24 leading institutions that "Exchanges exercise complete control over key aspects of NMS plan governance, including setting fees, and this governance structure exacerbates conflicts of interest and allows exchanges to promulgate rules unilaterally to the detriment of broker-dealers and buyside representatives"); Larry Tabb, The Market Data Deathmatch: The Increasingly Brutal Fight over Equity Market Data Costs, (Jan. 26, 2016), https://bit.ly/2Hdhurj (exchanges' data-fee revenues from 2011 to 2016 increased 62% due to "large fee increases" and warning that, "[i]f costs are not reined in, it will almost certainly harm our markets," "leaving investors with a less liquid and effective market").

SIFMA remains grateful for the Commission's interest in these important questions regarding the competitive burdens of increases in fees for consolidated core market data. The only parties capable of effectively demonstrating compliance with the Exchange Act, however, are the exchanges themselves. Once the Plans provide the missing data, we would be pleased to comment on these important questions. Until then, it is not possible to conclude whether the proposed fee changes are consistent with the requirements of the Exchange Act.

Respectfully,

Melissa MacGregor
Managing Director & Associate General Counsel

Cc: Brett Redfearn, Director, Division of Trading & Markets