

December 17, 2021

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: CTA/CQ/UTP Plan Fee Amendments, Securities Exchange Act Release Nos. 34-93625 (SRCTA/CQ-2021-03); 34-93618 (S7-24-89)

Dear Ms. Countryman:

BMO Capital Markets¹ welcomes the opportunity to provide comments to the Securities and Exchange Commission (“Commission”) with respect to the above-referenced National Market System (“NMS”) Plan Fee Amendments (“Fee Proposals”) filed by the Consolidated Tape Association (“CTA”), Consolidated Quotation (“CQ”), and Nasdaq UTP (“UTP”) to establish fees for consolidated market data offered pursuant to the market data infrastructure rule (“Infrastructure Rule”).

As we discussed in our prior comment letters on the NMS plan governing the public dissemination of real-time consolidated equity market data for NMS stocks (“CT Plan”),² BMO Capital Markets believes that of all of the issues being examined and debated, concerns relating to the provision of market data, including the current governance model of the NMS plans, are of utmost importance.³ We therefore would like to continue to express our support for the provisions of the CT Plan overall.

¹ BMO Capital Markets is a trade name used by BMO Financial Group for the wholesale banking businesses of Bank of Montreal, BMO Harris Bank N.A. (member FDIC), Bank of Montreal Europe p.l.c, and Bank of Montreal (China) Co. Ltd, the institutional broker dealer business of BMO Capital Markets Corp. (Member FINRA and SIPC) and the agency broker dealer business of Clearpool Execution Services, LLC (Member FINRA and SIPC) in the U.S., and the institutional broker dealer businesses of BMO Nesbitt Burns Inc. (Member Investment Industry Regulatory Organization of Canada and Member Canadian Investor Protection Fund) in Canada and Asia, Bank of Montreal Europe p.l.c. (authorized and regulated by the Central Bank of Ireland) in Europe and BMO Capital Markets Limited (authorized and regulated by the Financial Conduct Authority) in the UK and Australia. “Nesbitt Burns” is a registered trademark of BMO Nesbitt Burns Inc., used under license. “BMO Capital Markets” is a trademark of Bank of Montreal, used under license. “BMO (M-Bar roundel symbol)” is a registered trademark of Bank of Montreal, used under license. ® Registered trademark of Bank of Montreal in the United States, Canada and elsewhere. ¹¹™ Trademark of Bank of Montreal in the United States and Canada. ¹¹© 2020 BMO Financial Group

² References to certain prior comments, comment letters, and submissions on trading and market structure issues cited in this letter were filed under both BMO Capital Markets and “Clearpool Group” names. Clearpool Group was acquired by BMO Financial Group in April 2020.

³ See Letter from Joe Wald, Chief Executive Officer, and Ray Ross, Chief Technology Officer, Clearpool to Vanessa Countryman, Secretary, Securities and Exchange Commission (File No. 4-757), dated February 28, 2020 (Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data) and Letter from Joe Wald, Co-Head of Electronic Trading, and Ray Ross, Co-Head of Electronic Trading, BMO Capital Markets Group to Vanessa Countryman, Secretary, Securities and Exchange Commission (File No. 4-757), dated November 12, 2020 (Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data).

BMO Capital Markets is submitting this letter to further highlight the concerns we have in relation to certain governance issues inherent in the Fee Proposals. As discussed below, BMO Capital Markets strongly opposes the Fee Proposals and urges the Commission to disapprove them.

The Commission has indicated that it is responding to environmental, social and governance (“ESG”) concerns within the financial industry with an “all-agency approach.”⁴ As our letter will describe, the governance issues we are concerned with are those contributing to the poor decision-making of the operating committees of the CT/CQ Plans and the UTP Plan. And while the “G” in ESG may have more recently been often overlooked given the pressing and dire concerns wrapped up with the “E” and “S”, we believe that the Commission must disapprove the Fee Proposals in order to underscore the importance with which it values governance issues in our financial markets.

The Commission has recognized that the governance structures of the operating committees would benefit from a “more diverse set of perspectives represented from the full voting members of the operating committee of the New Consolidated Data Plan” and “would help to ensure that the operating committee benefits from these views before it takes action or files proposed plan amendments with the Commission.”⁵ As noted in our previous comment letters, the related real and potential conflicts of interests that currently exist relating to the provision of market data go to the heart of the decision-making problems in respect of the operating committees. BMO Capital Markets supports expanding voting representation under the CT Plan to non-SROs and having them participate as full voting members of the operating committee as we believe this will help address conflicts of interest currently present within the governance structures of the operating committees of the Securities Information Processors (“SIPs”).⁶ As such we cannot stress enough that it would be grossly inappropriate for the Commission to approve the Fee Proposals after stating itself that the “inherent conflicts of interest of the SROs... have affected the provision of core data.”⁷ To approve the Fee Proposals after identifying these shortcomings in the governance structures of the operating committees, would in effect give these failings the Commission’s tacit approval.

SIPs are supposed to perform a public service through provision of market data, though it is clear that the Commission no longer believes that they are achieving that purpose. Control of the decision-making of the operating committees is achieved through the control of multiple exchanges, each forming an exchange group. The Commission has stated that “exchange consolidation has altered the relative voting power of SROs such that exchange groups under common management now have greater voting power with respect to plan governance. Exchanges that historically had only one vote on NMS plans have now been consolidated into exchange groups that can control blocks of four or five votes.”⁸ In the Fee Proposals the proposed fee amendments are explicitly stated to be unrelated to the cost of providing that data, but rather to subscriber value, a model that does not reflect public service but rather profit maximization. This is a clear example of the operating committees failing to ensure that the public

⁴ See <https://www.sec.gov/sec-response-climate-and-esg-risks-and-opportunities>.

⁵ See Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) at 28707.

⁶ See Letter from Joe Wald, Co-Head of Electronic Trading, and Ray Ross, Co-Head of Electronic Trading, BMO Capital Markets Group to Vanessa Countryman, Secretary, Securities and Exchange Commission (File No. 4-757), dated February 5, 2021 (Joint Industry Plan; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data)

⁷ See Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) at 28708.

⁸ See Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) at 28712.

service mandates of the SIPs be achieved, and must be seen as a failure of governance, specifically the unmitigated conflicts of interests within the voting members.

Further evidence of the failure of the governance structures on the operating committees is the fact that the Fee Proposals have been proposed while the remaining reforms contained within the CT Plan are stayed pending the resolution of challenges filed in the Court of Appeals for the D.C. Circuit by the Nasdaq, NYSE, and Cboe family of exchanges. And while the Fee Proposals have been put forward in accordance with direction from the Commission, they have been made without any participation or representation from a more holistic board (as required under the new rules). It is somewhat shocking that this has been done notwithstanding that other members of the operating committees themselves have stated publicly that the Fee Proposals contradict the Exchange Act standards for consolidated market fees, which requires such fees to be fair, reasonable and not unreasonably discriminatory.⁹

Due to the myriad of governance issues identified above, we recommend that the Commission disapprove the Fee Proposals. In order to demonstrate its commitment to ESG principles, we ask that the Commission instead direct the responsibility for setting fees to an operating committee that reflects the structure laid out in the CT Plan.

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BMO Capital Markets continues to offer its assistance to the Commission as it examines the Fee Proposals. If you have any questions on our comment letter, please feel free to contact Joe Wald at [REDACTED], or Ray Ross at [REDACTED].

Sincerely,



Joe Wald
Managing Director, Co-Head of
Electronic Trading
BMO Capital Markets Group



Ray Ross
Managing Director, Co-Head of Electronic
Trading
BMO Capital Markets Group

Cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner

⁹ See Securities Exchange Act Release No. 34-93625 (November 19, 2021), 86 FR 67517 (November 26, 2021) at 67519, fn. 14