

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION



In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by the Consolidated
Tape Association in its role as a registered
Securities Information Processor.

Admin. Proc. File No. 3-18314

APPLICATION FOR AN ORDER SETTING ASIDE
AMENDMENTS OF THE CONSOLIDATED TAPE ASSOCIATION
LIMITING ACCESS TO ITS SERVICES

The Securities Industry Financial Markets Association (“SIFMA”) submits this application, pursuant to Section 11A of the Securities Exchange Act of 1934 (the “Act”), or alternatively, to the extent those provisions are determined to be inapplicable, pursuant to Commission Rule 608(d) or Section 19 of the Act, for an order setting aside certain amendments unilaterally issued by the Consolidated Tape Association (CTA) in its role as a registered securities information processor (“SIP”). The amendments limit the access of SIFMA’s members and their customers to market data made available by CTA and are inconsistent with the Act.

1. SIFMA is a trade association that represents certain securities firms, banks, and asset managers. Market data is integral to the business of SIFMA’s members and their customers, and members of SIFMA regularly access or seek to access the market data that registered SIPs like CTA make available.

2. CTA has provided notice that it has filed amendments to its fee plan, which purport to allow it to expand the class of persons subject to the “nondisplay” and “access” fees charged for core, top-of-book market data made available exclusively by CTA in its role as a registered SIP. *See* SEC Release No. 34-82071; File No. SR-CTA/CQ-2017-04 (Nov. 14, 2017). The amendments became effective upon filing with the Commission, and the Commission has not yet suspended the amendments or instituted proceedings to disapprove them.

3. Section 11A of the Act provides aggrieved persons with the right to seek Commission review of SIP actions limiting access to its services. 15 U.S.C. § 78k-1(b)(5). If the Commission, upon notice and application by an aggrieved person or on its own motion, reviews the limitation of services and does not find that it is consistent with the provisions of the Act, or the rules and regulations thereunder, or finds that the limitation discriminates unfairly or imposes an inappropriate or unnecessary burden on competition, the Commission shall set aside the limitation on services. *Id. See also* 17 C.F.R. § 242.608 (providing requirements for and review

of amendments to national market system plans).

4. The Commission should review and set aside CTA's amendments because they constitute improper limitations on access to CTA's services under Section 11A(b) and (c). The new and increased fees limit access to critical and exclusive market data for persons unwilling or unable to pay CTA's onerous, supra-competitive fees. Furthermore, the Commission should set aside the amendments because SIFMA's members and their customers must pay fees that are not consistent with the Act. The amendments are not "fair and reasonable," 15 U.S.C. § 78k-1(c)(1)(C), they do not "assure that all . . . persons may obtain [market data] on terms which are not unreasonably discriminatory," *id.* § 78k-1(c)(D), and they do not "provide for the equitable allocation of reasonable . . . fees . . . among . . . persons using [the SIPs'] facilities," *id.* § 78f(b)(4). Nor do they "promote just and equitable principles of trade" or "protect investors and the public interest." *Id.* § 78f(b)(4). The amendments thus unfairly discriminate against SIFMA members and impose a "burden on competition" that is not necessary or appropriate in furtherance of the purposes of the Act. *Id.* § 78f(b)(5)(B). Finally, the amendments do not comply with the substantive and procedural requirements for plan amendments contained in Commission Rule 608. 17 C.F.R. § 242.608. In sum, the amendments are unlawful and unenforceable under Section 11A(b)(5).

5. For the foregoing reasons, SIFMA respectfully requests that the Commission review and set aside the CTA amendments.

Dated: December 13, 2017

Respectfully submitted,

SIDLEY AUSTIN LLP



Michael D. Warden
Benjamin Beaton
Kevin P. Garvey
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
bbeaton@sidley.com

Counsel for SIFMA

Rule of Practice 420(c) Statement: Service upon the applicant may be accomplished by serving their attorneys at the address listed above.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by the Consolidated
Tape Association in its role as a registered
Securities Information Processor.

Admin. Proc. File No. 3-18314

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2017, I caused a copy of the foregoing Application for an Order Setting Aside Amendments of the Consolidated Tape Association in its role as a registered Securities Information Processors Limiting Access To Their Services to be served on the parties listed below by First Class Mail.

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
(via hand delivery)

Douglas W. Henkin
Seth T. Taube
Joseph Perry
Baker Botts LLP
30 Rockefeller Plaza
New York, NY 10112
douglas.henkin@bakerbotts.com

Dated: December 13, 2017



Benjamin Beaton