

December 6, 2017

VIA ELECTRONIC DELIVERY

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Petition for Rulemaking Concerning Market Data Fees

Dear Mr. Fields:

The undersigned capital market participants (the “Undersigned Firms”) respectfully petition the U.S. Securities and Exchange Commission (the “SEC”) to initiate rulemaking proceedings to require exchanges to disclose certain information concerning fees charged to market participants for equity market data, to institute a public notice and comment process before SEC approval or disapproval of exchange rule filings related to certain market data fees, and to conduct a thorough review of equity market data fee structure as it relates to the collection, distribution, and sale of market data.

Exchanges Enjoy an Oligopoly over Equity Market Data Fees

Under the Securities Acts Amendments of 1975, Congress granted broad authority to the SEC to establish a National Market System (“NMS”) for securities. Within this framework, exchanges effectively control the dissemination and sale of all equity market data—which securities trading and institutional firms have no choice but to purchase regardless of the cost if they want to remain competitive in the marketplace. This structure has led to accelerating and significant price escalation for market data.

As required by the SEC’s Display Rule, vendors and broker-dealers are required to display consolidated data from all the market centers that trade a stock.¹ In order to comply with the Display Rule, such vendors and broker-dealers must purchase and display consolidated data feeds distributed by securities information processors (“SIPs”), which are owned by the exchanges and operated pursuant to NMS plans. The fees charged by SIPs are distributed as income to each of the participating exchanges.

Under the NMS plan governance structure, there are limitations on the ability of NMS plan advisory committees to participate in and influence deliberations and decisions of NMS plan operating committees. Exchanges exercise complete control over key aspects of NMS plan governance, including setting fees, and this governance structure exacerbates conflicts of interest

¹ Vendors and broker-dealers must display such data where the vendor or broker is providing other quotation information in a context in which a trading or order routing decision can be implemented. *See* Regulation National Market System, 17 C.F.R. § 242.603(c).

and allows exchanges to promulgate rules unilaterally to the detriment of broker-dealers and buy-side representatives.

In addition to the SIP data feeds, exchanges also sell proprietary data feeds directly to market participants. These data feeds—which did not exist in 1975—are provided outside the construct of an NMS plan and are offered pursuant to individual SRO rules. Such data generally are more expensive than the SIP data feeds² but they also include much more comprehensive data, including “depth-of-book” and “imbalance” data, and generally are subject to less latency. In today’s high-speed electronic markets, many broker-dealers, market makers, hedge funds, data distributors, and a wide array of other market participants have concluded that they must purchase proprietary data feeds from exchanges in order to remain commercially competitive.³

The Undersigned Firms acknowledge the important role that exchanges play in the marketplace and the investment of financial and other resources that exchanges make in maintaining the health and quality of the markets. However, tracking the growth in demand, exchanges have regularly increased market data prices in the face of stagnating or declining revenue streams in other areas.⁴ While the profitability of listing and order matching fees has

² There are some notable exceptions. For example, IEX provides its market data feed for free. *See* Francine McKenna, *IEX CEO Katsuyama stands firm on exchange’s fee-only model*, MarketWatch (June 22, 2016), available at <https://www.marketwatch.com/story/iex-ceo-katsuyama-stands-firm-on-exchanges-fee-only-model-2016-06-21>. In 2008, both BATS and Direct Edge “display[ed] their best quotes in the core data feeds through either the International Securities Exchange (‘ISE’) or National Stock Exchange (‘NSX’) and offer[ed] their depth-of-book data directly to customers without charge. BATS also [made] depth-of-book data available to the public without charge on its Internet Web site.” U.S. Sec. & Exch. Comm’n, Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data, 73 Fed. Reg. 74711, 74790 (Dec. 9, 2008).

³ Decimalization has narrowed quote depth at the national best bid and offer, causing SIP data feeds to have less informational value. *See, e.g.*, Letter from Christopher Nagy and Richard Urian, TD Ameritrade, to Elizabeth M. Murphy, Secretary, U.S. Sec. & Exch. Comm’n, Jan. 28, 2011, at 3. Broker-dealers’ customers also are increasingly “demanding that routing decisions and order execution be driven by combining the top of book feeds directly from each exchange instead of from the SIP.” Letter from Joe Wald, CEO, Clearpool Group, to Brent J. Fields, Secretary, U.S. Sec. & Exch. Comm’n, Dec. 16, 2016, at 3. SIFMA also has acknowledged the need for market participants to purchase proprietary data feeds simply, as a practical matter, to compete within today’s marketplace, which is microsecond-fast. *See* Letter from Theodore R. Lazo, Managing Dir. & Assoc. Gen. Counsel, SIFMA, to Mary Jo White, Chair, U.S. Sec. & Exch. Comm’n, July 31, 2013, at 10 n.27. In addition, both the New York Stock Exchange and Nasdaq point to “imbalance” data as being critical to the price discovery process, and both exchanges sell such data products—which are disseminated in the minutes leading up to the open and close—for a premium. *See* Nasdaq, Opening and Closing Crosses, <https://www.nasdaqtrader.com/Trader.aspx?id=OpenClose> (stating that its “Net Order Imbalance Indicator . . . provid[es] users with invaluable details about the opening and closing orders and the likely opening and closing prices of a security.”); *see also generally* NYSE Arca, Auctions, https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Auctions_Brochure.pdf.

⁴ For example, in January of last year, the New York Stock Exchange “unbundled its Openbook Real-Time direct feed, which had an access fee of \$5,000 per month, into four products with combined access fees of \$12,000 per month.” *See* Matt MacFarland, *SEC Review Threatens Growth of Exchanges’ Lucrative Market Data Fees*, S&P Global (Nov. 7, 2016), <http://marketintelligence.spglobal.com/our-thinking/ideas/sec-review-threatens-growth-of-exchanges-lucrative-market-data-fees>. At the same time, the parent company of the New York Stock Exchange, Intercontinental Exchange, reported that revenues from listings and transaction and clearing services remained relatively stagnant even as revenues from data services grew rapidly. *See, e.g.*, Intercontinental Exch., Inc. Form 10-K (Annual Report), at 39 (Feb. 7, 2017) (reporting that, from 2014 to 2016, revenues from listings increased from

declined markedly, market data fees have increased significantly—according to one study, exchange data, access, and technology revenues have increased by approximately 62 percent between 2010 and 2015.⁵ According to another study, “market data remains the fastest growing business segment for exchanges”—in 2016, revenues from market data and index business lines made up 19 percent of total exchange industry revenues, up from just 12 percent in 2011, and the largest exchange, Intercontinental Exchange, Inc., reported that it earned 44 percent of its total revenues from these business lines that year.⁶

At the same time, the high cost of equity market data has adversely impacted a variety of other participants in the capital markets. The high fees, which typically are borne by broker-dealers and either directly or indirectly by the retail and institutional investors they serve, have led certain market participants to divert capital from new investment initiatives or from the development of new products and services for investors. In 1975, exchanges were granted sole control over market data because, historically, they were viewed as providing a public service by facilitating trades and matching buyers and sellers. The legislative history of the Securities Acts Amendments indicates that Congress viewed each exchange as, “in effect, a public utility.”⁷ This was reasonable given that exchanges operated as member-owned, non-profit entities in 1975. But today, exchanges are for-profit, shareholder-owned, commercial enterprises. They no longer simply facilitate trades—they collect and sell market data that has become a necessity in today’s world of complex, data-driven trading strategies. Furthermore, exchanges are in direct competition for order flow with many market participants to whom they sell equity market data, creating anti-competitive incentives and a conflict of interest. Today, for-profit exchanges enjoy an oligopoly over the dissemination and sale of market data. This construct is in fact inconsistent with the 1975 Congressional mandate that the SEC assume a special oversight and regulatory role for market data dissemination when natural competitive forces cannot be relied upon.⁸

Existing Disclosure Requirements Concerning Market Data Fees are Inadequate

Under Section 6 of the Exchange Act, the SEC must determine that an exchange has promulgated rules that provide for the “equitable allocation of reasonable dues, fees, and other charges”; “promote just and equitable principles of trade”; prevent “unfair discrimination between

\$367 million to \$419 million and net revenues from transaction and clearing increased from \$3.144 billion to \$3.384 billion, whereas revenues from data services almost tripled, increasing from \$691 million to \$1.978 billion).

⁵ Larry Tabb, *The Market Data Deathmatch: The Increasingly Brutal Fight Over Equity Market Data Costs*, Tabb Group (Jan. 26, 2016). Indeed, in Nasdaq’s most recent 10-K filing, it stated that the 2016 and 2015 increases in data products revenues were “primarily due to growth in proprietary data products revenues . . . and higher customer demand for U.S. proprietary data products,” respectively, among other factors. See Nasdaq, Inc., Form 10-K (Annual Report), at 38 (Mar. 1, 2017). This trend exists across the board for the exchanges—for example, Intercontinental Exchange reported in its 10-K for the year ending December 2015 that its revenues from “data services fees” increased 26 percent from the previous year. See Intercontinental Exch., Inc., Form 10-K (Annual Report), at 78 (Feb. 4, 2016).

⁶ Andy Nybo, *The Exchange Industry Expands Through Diversification: Growing Revenues Through Market Data and Index Services*, Tabb Forum (July 11, 2017), <http://tabbforum.com/opinions/the-exchange-industry-expands-through-diversification-growing-revenues-through-market-data-and-index-services>.

⁷ See S. Rep. No. 94-75, at 11 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 189.

⁸ See S. Rep. No. 94-75, at 12 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 190.

customers, issuers, brokers, or dealers”]; and prevent burdens on competition.⁹ Section 11A requires exchanges to distribute data on terms that are “fair and reasonable” and “not unreasonably discriminatory.”¹⁰ In addition, because the SEC requires exchanges to provide certain market data through SIPs, it has opined that fees charged for SIP data “need to be tied to some type of cost-based standard in order to preclude excessive profits if fees are too high or underfunding or subsidization if fees are too low.”¹¹

Currently, however, exchanges’ disclosures related to their equity market data fees and expenses are inadequate, making it difficult for market participants to make informed comments and the Commission to make reasoned findings. Although exchanges recently have begun to modestly enhance their disclosures related to market data fees, they remain inadequate.¹² Exchanges are not required to itemize by product or service their revenues from the sale of market data, or to indicate whether their market data revenues derive from the sale of proprietary data or SIP data. Moreover, in the past some exchanges have combined market data revenues with, for example, revenues from technology fees or connectivity fees.¹³ There is a complete lack of transparency concerning the allocation of hundreds of millions of dollars collected by exchanges for the dissemination of data through SIPs—even though exchanges have complete control over setting SIPs’ fees with no input from other market participants—nor are exchanges required to disclose *any* information about their costs related to the collection and dissemination of market data. In 2004, the SEC proposed a rule to require exchanges to disclose more detailed revenue and expense information, including information related to market data fees.¹⁴ The SEC stated that such disclosures would enhance the Commission’s oversight of exchanges, provide greater transparency to key aspects of exchanges’ governance and operations, and most significantly, allow the Commission and others to determine whether an exchange is meeting its obligations under the Exchange Act.¹⁵

⁹ 15 U.S.C. § 78f(b).

¹⁰ 15 U.S.C. § 78k-1(c).

¹¹ Concept Release: Regulation of Market Information Fees and Revenues, Release No. 34-42208, 64 Fed. Reg. 70613, 70627 (Dec. 17, 1999).

¹² For example, the most recent earnings announcements by Intercontinental Exchange, Inc. and Nasdaq included more detailed market data fee disclosures. *See* Sandler O’Neill and Partners, Company Note: Intercontinental Exch., Inc. (Nov. 2, 2017) (noting that the exchange disclosed its “limited exposure to real-time equity market data,” including a breakdown of SIP revenue compared to real time proprietary market data revenue); Nasdaq 3Q17 Earnings Presentation (Oct. 25, 2017), *available at* http://ir.nasdaq.com/common/download/download.cfm?companyid=NDAQ&fileid=960853&filekey=B7E8B500-964A-4F40-9585-35E00882D325&filename=Q3_17_Earnings_Presentation.pdf (disclosing a 6 percent increase in “Data Products” revenues “[p]rimarily due to growth in shared tape plan revenues as well as higher audit collections,” as well as the number of SIP users compared to proprietary depth products users).

¹³ *See* John Ramsay, *Shining a Light on Market Data Costs*, Medium (June 21, 2017), <https://medium.com/boxes-and-lines/shining-a-light-on-market-data-costs-c50bd559fd05>.

¹⁴ *See* Proposed Rule: Fair Administration and Governance of Self-Regulatory Organizations, Release No. 34-50699, 69 Fed. Reg. 71126 (Dec. 8, 2004). This rule proposal was removed from the SEC’s unified agenda in 2011.

¹⁵ *See id.* at 71160 (“The assessment [of an exchange’s adequacy of resources devoted to its regulatory program] would be useful to the Commission and others in determining whether the exchange or association is meeting its obligations under Sections 6, 15A, and 19 of the Exchange Act, among other statutory provisions.”).

Ensuring that exchanges' fees are constrained by competitive forces is not merely good policy; it is the law. As the Commission is aware, SIFMA, on behalf of its members and the investing public, was engaged in litigation with the SEC for almost a decade.¹⁶ In the course of this litigation, the U.S. Court of Appeals for the District of Columbia Circuit found, based on the extensive record relating to the contested fees before the Court, that the SEC failed to show that depth-of-book fees charged by NYSE Arca are subject to competitive forces and are not in violation of the Exchange Act.¹⁷ The Court directed the SEC to set forth a reasoned basis for concluding that NYSE Arca's depth-of-book data product is subject to "significant competitive forces."¹⁸ The Court noted that "the costs of collecting and distributing market data can indicate whether an exchange is taking 'excessive profits' or subsidizing its service with another source of revenue."¹⁹ SIFMA has pursued this action through the U.S. federal courts and SEC administrative proceedings, and the action is now on appeal and pending before the Commission, because of the critical importance of depth-of-book data to the public and to the functioning of the market. The Commission should act in accordance with the Court's holding; in addition, requiring exchanges to disclose cost information related to its market data products would enable the Commission and market participants to more easily assess whether exchanges' fees comply with the Exchange Act.²⁰

Market Data Fee Changes Should Not Be Immediately Effective Upon Filing

As self-regulatory organizations ("SROs"), exchanges must file rule changes, including fee changes, with the SEC.²¹ Generally, the SEC may approve a rule change only after determining that the proposal is consistent with the requirements of the Exchange Act.²² This is not an insignificant requirement and the SEC's determination must be properly evidenced—as recently as August 2017, the U.S. Court of Appeals for the District of Columbia remanded the SEC's

¹⁶ See *NetCoalition v. Sec. & Exch. Comm'n*, 615 F.3d 525 (D.C. Cir. 2010); *NetCoalition v. Sec. & Exch. Comm'n*, 715 F.3d 342 (D.C. Cir. 2013).

¹⁷ See *NetCoalition v. Sec. & Exch. Comm'n*, 615 F.3d at 538-44. The Court vacated and remanded the SEC's order. See *id.* at 544. The Court re-affirmed its position on the Exchange Act requirements in *NetCoalition II*: "*NetCoalition I* remains a controlling statement of the law as to what sections 6 and 11A of the Exchange Act require of SRO fees." *NetCoalition v. Sec. & Exch. Comm'n*, 715 F.3d at 354.

¹⁸ See *NetCoalition v. Sec. & Exch. Comm'n*, 615 F. 3d at 544.

¹⁹ *Id.* at 537.

²⁰ In its recent report to the President entitled "A Financial System That Creates Economic Opportunities," the Treasury Department consulted with FSOC member agencies and noted that neither SIP nor depth-of-book data are subject to effective competitive forces; that depth-of-book data from one exchange is not substitutable for depth-of-book data from another exchange; and that the SEC has authority to ensure fees are "fair and reasonable," "not unreasonably discriminatory," and represent an "equitable allocation of reasonable fees among persons who use the data." The Treasury Department recommended that the SEC "consider these factors when determining whether to approve SRO rule changes that set data fees." See U.S. Dep't of Treasury, *A Financial System That Creates Economic Opportunities* 63-64 (Oct. 6, 2017), available at <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

²¹ 15 U.S.C. § 78s(b).

²² See *supra* text accompanying notes 9-10.

approval of an SRO's rule change because the SEC failed to conduct a "reasoned analysis" of the proposed rule change as required by the Exchange Act.²³

Prior to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), SROs' rule changes related to fees were subject to a public notice and comment process before approval or disapproval by the SEC. The Dodd-Frank Act, however, amended Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act") to provide that SROs' fee changes become immediately effective upon filing.²⁴ Similarly, pursuant to SEC Rule 608(b) under Regulation National Market System ("NMS"), SIP fee changes become effective immediately upon filing.²⁵ Although the SEC has argued that the SIP fees "need to be tied to some form of cost-based standard,"²⁶ there is no information available about exchanges' costs related to collecting data. In addition, the surge in data acquisition and usage has led to reviews by exchanges and market data vendors claiming in certain cases that market participants are acting inconsistently with the terms of their contracts.²⁷ But, the onerous terms and conditions that exchanges place on their data usage—including limitations on the number of users and the locations from which the data can be accessed—change frequently and are often violated by users inadvertently, resulting in significant contract penalties in some cases.²⁸

This contributes to the current state wherein the basis for an exchange's equity market data fees and accessibility requirements is opaque to investors and market participants. Exchanges may implement new fees or increase existing fees for market data feeds with minimal review. The SEC has authority to suspend a fee filing after it has been filed, but it has only very rarely exercised its discretion to intervene in connection with exchange fee filings. In the public interest and for the protection of investors, there should be more transparency and stakeholder input into fee filings through the public notice and comment process, as well as more transparency into fee increases

²³ See *Susquehanna Int'l Group v. Sec. & Exch. Comm'n*, 866 F.3d 442, 447 (2017).

²⁴ Prior to 2010, the statutory language provided that SROs' fee changes "may" take effect upon filing, but the Dodd-Frank Act amended the Exchange Act so that fee changes "shall" take effect upon filing, and also expanded the affected entities to include "any person, whether or not the person is a member of the self-regulatory organization." See Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 916(c). The sparse language of the legislative history indicates that Congress intended to streamline SROs' rule filing procedures, an initiative that, unsurprisingly, was praised at the time by the largest exchanges. See S. Rep. 111-176, at 106 (2010).

²⁵ See Regulation NMS, 17 C.F.R. § 242.608(b)(3).

²⁶ See Concept Release: Regulation of Market Information Fees and Revenues, Release No. 34-42208, 64 Fed. Reg. 70613, 70627 (Dec. 17, 1999).

²⁷ See Chris Kentouris, *Squeezing Market Data Costs: Why, When, Where and How*, FinOps Rep. (Jan. 29, 2016), <http://finops.co/slider/squeezing-market-data-costs-why-when-where-and-how>.

²⁸ See, e.g., *id.* For example, the exchanges recently created new categories of "display" and "non-display" uses of market data, and imposed new, higher fees on non-display use of data (such as trading algorithms). See, e.g., Notice of Filing and Immediate Effectiveness of the Twenty-Second Charges Amendment to the Second Restatement of the CTA Plan and the Thirteenth Charges Amendment to the Restated CQ Plan, Securities Exchange Act Release No. 34-80300 (Mar. 23, 2017). Since then, SIFMA has noted at least one instance in which the New York Stock Exchange sent a letter to a vendor interpreting these terms (and imposing new fees) such that "the display uses have been defined out of existence." See Letter from Melissa MacGregor, Managing Dir. and Assoc. Gen. Counsel, SIFMA, to Brent J. Fields, Secretary, U.S. Sec. & Exch. Comm'n, Apr. 18, 2017, at 3.

that come in the form of policy changes or changes to the terms and conditions stipulating allowable uses of market data.

Proposed Rulemakings and Study

1. Proposed Rule Requiring Disclosure of Certain Information on Equity Market Data Fees

In the interest of transparency and to permit a rigorous assessment of whether an exchange is meeting its statutory and regulatory obligations, the Undersigned Firms respectfully petition the Commission to revisit its 2004 proposal to require exchanges to disclose, among other things, their (i) revenues earned from market information fees, including market data fees, itemized by product;²⁹ and (ii) expenses related to information technology, itemized “by categories including data center costs, systems hardware and software, systems consultant fees, and electronic surveillance systems.”³⁰ In particular, exchanges should be required to disclose all revenues and costs, itemized by product and service, associated with their collection and dissemination of market data, as well as the number of clients that use such products and services. For example, exchanges should be required separately to disclose information concerning “connectivity” fees, which market participants must pay in order to connect to exchanges and which some commentators believe are being used by exchanges to mask increases to market data costs. As the Commission noted in 2004, such additional disclosure would improve the transparency of SROs’ governance and operations and would permit the Commission and market participants to understand an exchange’s sources of revenue and to assess an exchange’s expenditures on its regulatory program against its revenues.³¹ This assessment would allow the Commission and others to determine whether an exchange is meeting its obligations under Sections 6 and 11A of the Exchange Act and whether the competitive market is functioning well.

In addition, the Undersigned Firms respectfully petition the Commission to amend applicable SIP Plans, or to amend Regulation NMS, to require exchanges to make comprehensive disclosure of information about market data revenue derived through NMS plans, including the allocation of revenues derived from data distributed by SROs through SIPs. As the Investment Company Institute explained in a 2016 letter to SEC Chair Mary Jo White, SIPs “are the exclusive SEC-approved providers of key market data, including information on national best bids and offers, last sales and regulatory halts. . . . SIPs do not, however, disclose publicly even rudimentary information concerning the allocation of this revenue among the SROs [that operate SIPs] or the amounts expended for SIP maintenance or improvement.”³² And, under the SIPs’ plan governance structure, broker-dealers and buy-side representatives are not permitted to vote on new fees, fee increases, or any related governance processes, despite the inherent conflict of interest that exists for exchanges. The Undersigned Firms agree that there must be more transparency around the

²⁹ See Proposed Rule: Fair Administration and Governance of Self-Regulatory Organizations, *supra* note 14, at 71159.

³⁰ See *id.* at 71160.

³¹ See *id.* at 71159.

³² See Letter from Paul Schott Stevens, President and CEO, Inv. Co. Inst., to Mary Jo White, Chair, U.S. Sec. & Exch. Comm’n (Oct. 19, 2016), *available at* <https://www.ici.org/pdf/30325.pdf>.

hundreds of millions of dollars in fees collected by SROs for data that market participants are required to purchase in order to meet their regulatory obligations.

2. SEC Rule 608 and SIP Fee Filings

The operative language providing for immediate effectiveness of SIP fee filings is contained in SEC Rule 608: “A proposed amendment may be put into effect upon filing with the Commission if designated by the sponsors as . . . [e]stablishing or changing a fee or other charge collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment.”³³ The rule was promulgated pursuant to the Commission’s authority under Section 11A of the Exchange Act.³⁴

The Undersigned Firms propose that the Commission remove Section 608(b)(3)(i) from SEC Rule 608. Unlike the framework for proprietary market data fee filings, Section 11A of the Exchange Act does not speak to the immediate effectiveness of SIP fee filings, and the Dodd-Frank Act did not impact these provisions. The rule amendment thus would preclude SIPs’ market data fee filings from becoming immediately effective, and would require a public notice and comment period prior to the SEC’s approval or disapproval of any fee changes—thus allowing for transparency and stakeholder input.

3. SEC Study of Equity Market Data Fees

Finally, the Undersigned Firms respectfully request that the Commission conduct a thorough review of equity market data fee structure as it relates to the collection, distribution, and sale of market data—which was last the focus of an SEC review following a concept release almost 20 years ago in 1999.³⁵ Such a review would be consistent with the directive in the recent Treasury Report that the SEC and CFTC, “conduct comprehensive reviews of the roles, responsibilities, and capabilities of SROs under their respective jurisdictions and make recommendations for operational, structural, and governance improvements of the SRO framework.”³⁶ As part of this review, the SEC should follow its statutory mandate to ensure that fees charged to market participants for market data are “fair and reasonable,” “not unreasonably discriminatory,” and represent an “equitable allocation of reasonable fees among persons who use the data.”³⁷ The SEC’s review also should consider whether market participants have a reasonable opportunity to be heard prior to SEC approvals of new market data fees or increases to existing market data fees. Based on this review, the SEC should consider whether any additional regulatory changes related to market data are warranted, potentially including amendments to the Display Rule and related

³³ 17 C.F.R. § 242.608(b)(3).

³⁴ See 15 U.S.C. § 78k-1.

³⁵ See Concept Release: Regulation of Market Information Fees and Revenues, *supra* note 11. The Advisory Committee on Market Information released its final report responsive to the concept release in 2001. See SEC Advisory Committee on Market Information, *Report of the Advisory Committee on Market Information: A Blueprint for Responsible Change* (Sept. 14, 2001).

³⁶ U.S. Dep’t of Treasury, *A Financial System That Creates Economic Opportunities*, *supra* note 20, at 186.

³⁷ See *supra* text accompanying notes 9-10.

NMS rules and reforming NMS plan governance to allow voting representation from stakeholders such as broker-dealers and buy-side representatives.

In addition, the SEC review should consider the development of a more robust and transparent framework for assessing market data fee filings. In particular, the SEC may want to enhance its economic analysis (or require the SROs to provide a more enhanced analysis) that includes not simply the direct impact of a fee increase, but also the indirect impacts on distribution and usage channels, including whether the data contribute or detract from market efficiency and competition. In some cases, a rule change can create new limitations on how data can be used by consumers and/or integrated into third-party platforms, analytics, and trading systems. In other cases, a rule change can create a completely new data set, or a new technical mechanism for the SRO to distribute existing data to the market. In the latter cases, the SEC may need to consider not just the fee for the new data set or mechanism, but whether the creation of the new data set or mechanism is consistent with relevant securities laws and regulations.

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The Undersigned Firms appreciate the opportunity to submit this request for rulemaking concerning equity market data fees. If you have any questions, please contact Ben Brown at 202-862-3922.

Respectfully submitted,

Bloomberg LP
Citadel Securities
Citigroup Global Markets Inc.
Clearpool Group, Inc.
E*TRADE Financial Corporation
Fidelity Investments
Hudson River Trading LLC
Investors Exchange LLC (IEX)
IMC
Interactive Brokers Group
ITG, Inc.
MFS Investment Management

Morgan Stanley & Co. LLC
RBC Capital Markets
The Charles Schwab Corporation
Scottrade, Inc.
Sun Trading LLC
Susquehanna International Group, LLP
TD Ameritrade, Inc.
Tower Research Capital
T. Rowe Price Associates, Inc.
UBS Securities LLC
The Vanguard Group, Inc.
Virtu Financial, Inc.