April 25, 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-2017-02

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 "Proposed Clarification"), which proposed clarifications to the fee schedules of the Consolidated Tape Association ("CTA") Plan and the Consolidated Quotation ("CQ") Plan (collectively, the "Plans"). The Proposed Clarification 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. As will be made clear in this response, the Proposed Clarification is not designed to impose extra fees on data recipients by re-classifying every possible use of data as a Non-Display Use. We believe that a majority of the comment letters, especially those from individual traders, reflect a misunderstanding regarding the applicability of the Non-Display Use and access fees adopted in October 2014 ("2014 Fee Amendments"). Contrary to the submissions, many of the scenarios presented by commenters would *not* subject data recipients to Non-Display Use or access fees.

At its core, the Proposed Clarification is designed to halt a practice whereby a subset of vendors are mischaracterizing their customers' usage and creating artificial loopholes for Non-Display Use and access fees in an attempt to obtain a competitive advantage over other vendors. It is important to remember that the distinction between the device fees, the Non-Display Use fees, and the access fee was already set in the 2014 Fee Amendments, and many vendors are fully complying with that distinction.[1] But some vendors are exploiting what they perceive as an ambiguity in the 2014 Fee Amendments in order to gain an advantage over other vendors, allowing them to profit from new or existing customers by offering them lower fees than such customers could obtain from vendors who apply the 2014 Fee Amendments correctly. Abrogating the Proposed Clarification would only allow this uneven playing field to continue. We therefore believe that the Commission should not take any action that would interfere with the immediate effectiveness of the Proposed Clarification.

[1] *See* Letter from David Craig, President, Thomson Reuters, dated April 21, 2017 ("Thomson Reuters Letter").

I. Background

A. The Non-Display Use Fees Were Implemented in the 2014 Fee Amendments After Input from the Plans' Advisory Committee and Industry Participants.

The Participants amended the Plans' fee schedules in October 2014 to establish fees for non-display uses of data and reduce the device fees assessed on professional subscribers.[2] The 2014 Fee Amendments responded to long-term changes in data-usage trends. In formulating the proposed fee changes, the Participants studied the optimum allocation of fees among market data users and consulted with industry representatives that sit on the Plans' Advisory Committee and with other industry participants.

The 2014 Fee Amendments realigned the Plans' charges more closely with the ways in which data recipients consume market data. To reflect the changes in consumption of market data, the Participants reduced the rates that professional subscribers paid for each of their display devices while establishing fees for non-display consumption of data, referred to as Non-Display Use. For example, among other fee reductions, the professional subscriber fee was reduced for individuals and firms only having one or two devices, with a ten percent decrease in the fees charged to these subscribers. The other tiered device rates for professional subscribers also were reduced. Additionally, in the 2014 Fee Amendments, the Participants retained the monthly $1.00 nonprofessional subscriber fee as a cost-effective rate for retail investors.

The 2014 Fee Amendments created Non-Display Use fees in recognition of the increasingly large amounts of data being made available via data feeds and the significant value vendors and their subscribers could derive from using such feeds in specific ways. Non-Display Use was defined in the 2014 Fee Amendments as any use accessing, processing, or consuming real-time Network A or Network B quotation information or last sale price information for a purpose other than in support of a data feed recipient's display or further internal or external redistribution. The 2014 Fee Amendments provided a non-exhaustive list of examples of Non-Display Use,[3] including:

- Trading in any asset class;
- Automated order or quote generation and/or order pegging;
- Price referencing for algorithmic trading;
- Price referencing for smart order routing;
- Operations control programs;
- Investment analysis;
- Order verification;
- Surveillance programs;
- Risk management;
- Compliance; and
- Portfolio Valuation.

[2] See Securities Exchange Act Release No. 73278 (October 1, 2014), 79 FR 60536 (October 7, 2014) ("2014 Fee Amendments").
[3] Non-Display Use fees do not apply to the creation and use of derived data.

The Participants established three categories of Non-Display Use of market data:

- Category 1 applies when a data recipient makes Non-Display Use of real-time market data on its own behalf.
- Category 2 applies when a data recipient makes Non-Display Use of real-time market data on behalf of its clients.
- Category 3 applies when a data recipient makes non-display uses of real-time market data for the purpose of internally matching buy and sell orders within an organization.

Data recipients can be charged for each of the three categories of Non-Display Use they utilize. If a data recipient makes Non-Display Use of real-time market data on behalf of its clients (a Category 2 use), its clients are not charged the Category 2 Non-Display Use fee or the access fee. Instead, the data feed recipient (who in this example could be a broker-dealer using the data for smart order-routing) is charged the Category 2 Non-Display Use fee once and is charged the access fee once, but its clients are not charged either fee for the Non-Display Use by the broker-dealer on their behalf. Category 3 is the only Non-Display Use fee that can be charged multiple times; that possibility arises only if a data feed recipient operates more than a single ATS, exchange, or ECN, and the fee is charged once per ATS, exchange, or ECN.

As explained in additional detail below in response to the comment letters, what constitutes a "data feed" is important for understanding the limited scope of the 2014 Fee Amendments and why many retail investors and individual traders were not affected by the Non-Display Use fees (and will still not be affected by the Proposed Clarification). The Non-Display Use and access fees are only charged to those data recipients that have direct access to a "data feed." A "data feed" is not just any stream of data that provides consolidated quotation and last sale information. For instance, a data recipient simply receiving a display-only data product would not be receiving a "data feed" and therefore should not be subject to the Non-Display Use or access fees. Such a data recipient should only be charged a device fee.[4] A "data feed" is the consolidated quotation and last sale information delivered in a data format that can be integrated into a data recipient's systems or software without the need for a user to ever see the actual data. The data feed is used by the data recipient as an input to run their own systems and software, providing the data recipient with flexibility to process and manipulate consolidated quotation information and last sale information as they see fit.

B. The Participants Filed the Proposed Clarification to the Non-Display Use Definition Pursuant to Rule 608 after Consultation with the Plans' Advisory Committee.

The Participants submitted the Proposed Clarification to ensure that the distinctions described above between the device fees, the Non-Display Use fees, and the access fee were

[4] The Participants note that it is possible that a data recipient who receives data that is only being displayed *could* be receiving a "data feed." However, as explained below, in such situations, the data recipient is receiving a more robust data product than it might actually need and should consider switching to a display-only data product to avoid access fee charges if in fact it does not need the full functionality of a data feed.

being properly and equitably applied to vendors' customers. Following the 2014 Fee Amendments, the Participants became aware that certain vendors were mischaracterizing the usage of their customers as subject to solely the device fees despite the fact that the data was delivered in a format that enabled their customers to integrate the data into their own systems and software for Non-Display Use. This mischaracterization led to certain vendors offering their customers lower fees, to the detriment of other vendors who properly characterized their customers' usage as subject to the Non-Display Use and access fees. Consistent with the Non-Display Use fees that were established in the 2014 Fee Amendments, the Participants submitted the Proposed Clarification to eliminate those vendor mischaracterizations of data usage and not as a means of charging additional fees to all data recipients.

Consequently, and in contrast to the concerns expressed by some misinformed commenters, the Proposed Clarification was filed with the Commission to place all vendors on an equal footing so as to maintain a balanced, fair, and equitable competitive landscape. As explained in more detail below, the Proposed Clarification is not designed to impose Non-Display Use and access fees on every data recipient. Instead, the Proposed Clarification is narrowly tailored to address unfair practices being used by a subset of vendors to advantage themselves over other vendors. In particular, the Participants were troubled that despite the fact that certain vendors provided customers with access to true data feeds (as opposed to what are properly viewed as Display Uses), those vendors were taking advantage of understandings of use that pre-dated the 2014 Fee Amendments to continue to report that their customers were subject to the lower device fees rather than the applicable Non-Display Use and access fees others were paying in accordance with the existing fee schedule. This misinterpretation of the 2014 Fee Amendments has not only upset the balance struck by the Participants in the 2014 Fee Amendments between who should be subject to the device fees versus the Non-Display Use fees, it has also upset the competitive balance among vendors. The Participants filed the Proposed Clarification in order to definitively resolve any ambiguity with regards to the applicability of the Non-Display Use and access fees to eliminate this imbalance.

Consequently, the Participants filed the Proposed Clarification with the Commission on March 2, 2017, pursuant to Section 11A of the Securities Exchange Act of 1934, and Rule 608 thereunder; however, the development of the proposed clarification was subject to an open discussion with industry participants and made publicly available long before it was filed with the Commission.

- First, as part of the September 8, 2016 General Session meeting of the Plans' Operating Committee, the Operating Committee discussed the Proposed Clarification among the Participants, the Plans' Advisory Committee,[5] and SEC staff. In particular, those in attendance were provided with redline versions of the updated Non-Display Use Policy, the Network A fee schedule, and the Network B fee schedule, and the CTA Administrator provided an overview of the Proposed

[5] The Participants note that the Plans' Advisory Committee consists of industry representatives from all areas of the industry; they include representatives of data vendors, retail brokers, institutional investors, broker-dealers, and investors. The Advisory Committee also includes advisors employed by members of SIFMA. Information about the Advisory Committee is available here: https://www.ctaplan.com/advisory-committee.

Clarification and its need to ensure that similarly situated vendors report usage in a similar manner. During that meeting, there was no objection from the Plans' Advisory Committee regarding the Proposed Clarification.

- Second, as part of the November 16, 2016 General Session meeting of the Plans' Operating Committee, the Operating Committee discussed additional changes to the Proposed Clarification, specifically focusing on changes meant to clarify the applicability of the access fee. Again, this discussion occurred with the Plans' Advisory Committee present; the Advisors did not raise any objections to the Proposed Clarification. It was only after these discussions took place that the Participants approved the Proposed Clarification to be submitted to the Commission.

- Third, on December 1, 2016, a notice was posted on the CTAplan.com website that advised that the Participants had filed the Proposed Clarification.[6] This notice included the updated Non-Display Use Policy, the Network A fee schedule, and the Network B fee schedule that had been approved by the Operating Committee and provided to the Advisory Committee and discussed at the November 16, 2016 General Session meeting.

On March 2, 2017, the Participants filed with the Commission the Proposed Clarification without any changes to the updated Non-Display Use Policy, the Network A fee schedule, and the Network B fee schedule that had been approved by the Operating Committee, pursuant to Rule 608(b)(3) for immediate effectiveness, which the Commission then noticed for public comment.

II. Summary of Comment Letters

The comment letters opposing the Proposed Clarification generally fall into three categories.

- First, some commenters are confused about the scope of the Proposed Clarification, with most of the confusion relating to the application of the Non-Display Use and access fees that have been in place since the 2014 Fee Amendments. We believe that this letter should alleviate any confusion on the part of such commenters and others similarly situated and demonstrates the rational application of the Non-Display Use and the access fees that have been in place since October 2014.

- Second, two commenters raise concerns about a potential increase in the price of one particular data product being offered in the marketplace, the Bloomberg Server Application Program Interface product ("Bloomberg SAPI"). As explained below, the Bloomberg SAPI and other similar products are providing

[6] The notice is available here: https://www.ctaplan.com/announcements#110000057154.

their users a level of access to CTA/CQ data that enables Bloomberg's customers to engage in Non-Display Use of the data, and thus should be charged in the same way as a data recipient that is directly receiving a data feed. As a result, if such a product was permitted to skirt the fees imposed by the 2014 Fee Amendments, Bloomberg and other vendors providing similar products would maintain a competitive advantage over other vendors providing the same functionality to clients in simply a different format, but who correctly report their usage of such products.

- Finally, some commenters object to Non-Display Use fees being charged at all. But the Proposed Clarification does not create new fees – it only serves to clarify the applicability of the 2014 Fee Amendments – and any challenge to the imposition of the Non-Display Use fees is an impermissible attempt to re-open consideration of the 2014 Fee Amendments. Critically, abrogating the Proposed Clarification would not rescind those fee changes adopted as part of the 2014 Fee Amendments. Instead, the only effect of abrogation of the Proposed Clarification would result in certain vendors continuing to be disadvantaged for properly characterizing their customer's usage while other vendors mischaracterize the descriptions of the Non-Display Use and access fees to improperly provide their customers the benefit of lower fees.

Indeed, another commenter, one of the largest vendors of market data, submitted a comment endorsing the Proposed Clarification precisely because it views the Proposed Clarification as necessary to level the playing field and ensure that similarly situated data customers are paying the same price for the same services (as the Securities Exchange Act of 1934 requires), just as we explain below.

III. Response

A. Non-Display Use and Access Fees Are Limited in Scope.

Neither the 2014 Fee Amendments, adopting the Non-Display Use and access fees, nor the Proposed Clarification are designed to extract fees from every data recipient; both are narrowly focused on achieving the balance struck in the 2014 Fee Amendments between the decreased value in displayed usage versus the increased value in Non-Display Use. Importantly, the Non-Display Use fees are assessed only on a data recipient that uses consolidated quotation information or last sale information in such a way as to integrate the data into its own systems or software applications allowing it to make Non-Display Use of the data. In order to have such level of access to the data, a data recipient must have received the data in a form of a data feed that would be subject to the access fee; proper delivery of data to a display-only device would not enable such Non-Display Use. Non-Display Use fees do not apply to a data recipient who is only accessing the data via a user display interface provided by a third party.

Various commenters have provided misinterpretations of the applicability of the Non-Display Use and access fees that are misinformed and incorrectly broaden the scope of their

applicability. For example, one commenter stated that "all platforms (regardless of the level of 'display' or 'non-display') use the data to perform calculations on the data."[7] The same commenter stated that defining non-display usage to include automated order or quote generation, investment analysis, and portfolio evaluation would include every brokerage platform or analysis platform with the exception of software that solely displays data, thus subjecting "all users of all software to access fees that are significantly higher than they pay today." Additional comment letters provided similar misunderstandings of the Proposed Clarification, claiming that there would be virtually no data recipient not subject to the Non-Display Use fees.[8]

These analyses are wrong. They fail to take account of the distinction between the fees charged to a brokerage platform that receives a data feed *and uses it for multiple purposes (including providing displays to its customers)* versus the fees charged to users who simply access that platform to view the data from the feed. Although it is true that the firms providing these types of platforms could be charged Non-Display Use and access fees because of their receipt and use of data feeds for multiple purposes, that does not mean that the clients of such a platform would be charged the same fees. If a platform made use of a data feed, then the firm running the platform would be charged an access fee. Additionally, if the platform made Non-Display Use of that data feed, then the firm would also be charged a Non-Display Use fee, and if the use was on behalf of both itself and its clients, it would be charged a Category 1 and a Category 2 Non-Display Use fee. However, one of its clients accessing that platform would not be charged either the Non-Display Use fee or the access fee because they are simply accessing the platform and not the data feed. As such, even if the platform had 500 users, the firm providing the platform would be charged only once for its Non-Display Use on behalf of its clients, but the clients would not be individually assessed the Non-Display Use or access fees.

As another example of a misinterpretation, SIFMA, in its comment letter, suggests a scenario in which a firm receives Network A data from the CTA, and makes that data available to 10 professional devices for display use only. SIFMA asserts that this hypothetical firm would have to pay an access fee of $2,000 per month and a Non-Display Use fee of $4,000 per month.[9] SIFMA's analysis, however, is wrong. First, if this hypothetical firm is only displaying data on its own devices, there would not be any Non-Display Use, and therefore there would be no Non-Display Use fees. Second, the access fee is applicable only if the firm is receiving access to a data feed. So if the firm is not receiving a data feed, then it would not be assessed the access fee. If the firm is receiving access to a data feed, then SIFMA is correct that the firm would be charged the access fee. But if the firm was only using the data feed for display purposes, then the firm should switch to a different data product (with lower fees) where it would receive only a

[7] *See* Letter from Jay Froscheiser, VP, DTN/Schneider Electric, dated April 19, 2017.
[8] *See, e.g.*, Letter from Brad Ward, dated April 17, 2017 ("I pay fees as a non-professional and can't afford an increase in my non-professional market access fees."); Letter from Marcus Mitchell, dated April 17, 2017 ("The verbiage seems to indicate that any software package that is used to deliver real time data could possibly be subject to non-display data [fees] if that package also provides analysis and alerting tools that can be programmed by the user."); Letter from Anonymous, dated April 20, 2017 ("And this latest proposal pretty much sweeps 99% of the user base into the non-display category.").
[9] *See* Letter from Melissa MacGregor, Managing Director and Associated General Counsel, SIFMA, dated April 18, 2017 ("SIFMA Letter"), at 3-4.

displayed version of the data on a device because access to a data feed is not needed for such a use. For the avoidance of doubt, the Proposed Clarification specifically permits the hypothetical firm discussed by SIFMA to display CTA data on 10 professional access devices without paying a Non-Display Use fee or access fee *if it structures its receipt of the data appropriately*, and both vendors and CTA itself are always available to consult with firms to ensure that they are able to do so.[10]

We hope that the above explanation and examples alleviate concerns about the breadth of the applicability of the Non-Display Use fee and access fee and responds to the misinformation certain commenters are disseminating to the Commission and the public regarding the Proposed Clarification. As explained in additional detail below, the Proposed Clarification is meant to remediate improper behavior by some vendors who are providing the equivalent of data feed access to their customers that allow such customers to manipulate and integrate the data into the customer's systems and software without correctly reporting their customers' use of the data. The Proposed Clarification is not an attempt by the Participants to extract extra fees from every data recipient, but instead is an attempt to ensure that vendors act on an equal competitive footing.

B. The Bloomberg SAPI and Other Data Products that Make a Data Feed Accessible to its Customers are Rightfully Subject to the Non-Display Use Fee and the Access Fee.

Comment letters from SIFMA and Bloomberg[11] highlight the improper pricing advantage that Bloomberg and certain other vendors gain by arguing that delivery of data via the Bloomberg SAPI should not be subject to the access fee, and depending on their customers' use, the Non-Display Use fees. To understand why these complaints are wrong, it is important to understand the different types of data products that can be provided by a vendor, generally falling into two categories. The first category consists of a purely displayed version of the data received on a device such that the data recipient can only see the consolidated quotation and last sale information without being able to integrate it into their own systems and software; the Proposed Clarification will have no effect on what users of this type of product pay (unless their

[10] SIFMA's comment letter also purports to rely on *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) and *NetCoalition v. SEC*, 715 F.3d 342 (D.C. Cir. 2013), to attack the Proposed Clarification (SIFMA Letter at 4). But that reliance fails for two reasons. *First*, both *NetCoalition* decisions were about setting fees for proprietary market data products and the Proposed Clarification does not set fees for any such purpose; therefore, the *NetCoalition* decisions are thus irrelevant. *Second*, all discussions about core data pricing in the *NetCoalition* decisions were dicta because no core data pricing was at issue in either case and neither case's holdings related to or depended upon how core data products are priced.

[11] Although Bloomberg acknowledges that it is the leading market data vendor, it does not discuss how significant its size is. It has been reported that Bloomberg's market share of the $27 billion global market data market stood at 33.4% at the end of 2016 with total revenue of some $9 billion for 2016. *See* "Burton-Taylor report: Global spend on financial information tops 24 billion USD," Automated Trader (Mar. 28, 2017), *available at* http://www.automatedtrader.net/news/at/157293/burton_taylor-report-global-spend-on-financial-information-tops--27-billion-usd. As a result, as the Bloomberg Letter makes clear, the Proposed Clarification will have no direct financial effect on Bloomberg itself and would at most impact a small percentage of Bloomberg's customers.

vendors increase prices outside the Commission's jurisdiction, something entirely out of CTA's control). The device fee contemplates that once that data has been visibly displayed via a graphical user interface, it could be exported via a data delivery exchange to a format such as Excel for further display use. Similarly, use of Bloomberg's Execution Management System (EMSX), including the Excel add-in features, would also be subject to the existing device fee and would not be considered Non-Display Use. The second category consists of a data feed being provided to a data recipient with the vendor basically acting as a pipe through which the data is delivered, which provides the data recipient with the capability to incorporate the data feed into the data recipient's systems and software; this type of user is essentially doing through a vendor what they would do if they accessed a data feed directly from CTA.

The 2014 Fee Amendments were designed to target only the second category – those data recipients having access to and making Non-Display Uses of the data. The Proposed Clarification would clarify that delivery of data that allows a data recipient's systems and software to download the data onto authorized servers and "run server-based applications on the market data" would be subject to the Non-Display Use and access fees. The Bloomberg SAPI and other similar products offer essentially the same level of functionality as vendors directly passing a data feed through to their clients. As Bloomberg admitted, the Bloomberg SAPI allows data recipients to "view and download market data" and "run server-based applications on the market data."[12] As such, those data recipients making use of the Bloomberg SAPI are getting functionally the same product as those purchasing a data feed from another vendor or directly from CTA, but at a fraction of the cost.

Bloomberg argues that those using the Bloomberg SAPI should not be subject to the Non-Display Use fee and access fee because the output of the server-based application is displayed to users whose device or user ID has been entitled by Bloomberg.[13] But Bloomberg's focus solely on how the data *might be* disseminated by *some* SAPI users is misplaced. As was stated in the 2014 Fee Amendments and clarified in the Proposed Clarification, the access fee is charged to those data recipients who obtain data in a manner that enables the recipient to integrate that data into their own systems or software, regardless of whether and how the recipient chooses to use that data. And the Non-Display Use fee is applicable whenever data is used in a manner that does not make the data visibly available to a data recipient on a device. This is exactly what Bloomberg concedes the Bloomberg SAPI permits when Bloomberg states that the Bloomberg SAPI allows customers to run server-based applications on market data. For example, when Bloomberg first reported use of the Bloomberg SAPI service to the CTA Administrator, Bloomberg represented that "[s]ubscribers to Bloomberg's API service typically use the application for the following purposes: pricing engines, portfolio valuations, order management programs, risk compliance engines, and program trading applications." Prior to 2014, such use was subject to device fees *but only because Non-Display Use fees did not exist*.

---

[12] *See* Letter from Greg Babyak, Head of Global Regulatory and Policy Group, Bloomberg, dated April 18, 2017, at 4 ("Bloomberg Letter").
[13] *Id.* at 4-5.

However, consistent with the 2014 Fee Amendments, any such use constitutes Non-Display Use according to the definitions that went into effect in 2014 and should be subject to the Non-Display Use and access fees; the transmission of such data via the Bloomberg SAPI does not obviate that fact. Use of encryption or entitlements are not designed to restrict such use because they only control access to something that is transmitted, not what is transmitted, and it is the latter that determines whether Non-Display Use and access fees apply.

SIFMA, in its comment letter, also focuses a significant portion of its comments on the applicability of the Proposed Clarification on Bloomberg's SAPI. But SIFMA mischaracterizes the Bloomberg SAPI as "the quintessential display product."[14] While Bloomberg has a display product, e.g., Bloomberg Terminal, the functionality made available by the Bloomberg SAPI is not at its core a display product. Customers that choose to subscribe to both the Bloomberg Terminal and the Bloomberg SAPI presumably are doing so because they are engaging in a use of the data for uses other than display of the data. If in fact a customer only needs the display features, which would include use of EMSX and Excel add-in features, such a customer would not need the Bloomberg SAPI. The customer could end its use of the Bloomberg SAPI and then would not be subject to Non-Display Use or access fees. The ability to integrate consolidated quotation and last sale information into a data recipient's "server-based applications" clearly demonstrates the incongruence between SIFMA's description and the Bloomberg SAPI data product's overall functionality. For the avoidance of doubt, a hypothetical Bloomberg customer that only used Bloomberg Terminals and not the Bloomberg SAPI would not be affected in any way by the Proposed Clarification. Bloomberg itself implicitly concedes this: although it rents out more than 300,000 terminals, it only claims the Proposed Clarification would impact "hundreds" of its customers.[15]

It may be the case that some data recipients are using the Bloomberg SAPI and other similar products purely for display without integrating the data into their own systems or software. In such instances, the data recipient would be charged an access fee (because they have access to the data feed), but not the Non-Display Use fees (because they are not engaged in any Non-Display Use). But if this was occurring, there is no conceivable reason that data recipient needs to purchase a data product that allows them to access the data feed, and instead, such a data recipient could reduce its costs by purchasing a true display-only data product without incurring either the Non-Display Use or access fees. It is important to note that such a user would not have been sold an access-fee-incurring product by CTA, but could only have been sold it by a vendor; if such a vendor operating outside the Commission's jurisdiction sold a user a product it did not need for a price it did not need to pay, that is an issue between the vendor and the user and has nothing to do with CTA.

---

[14] SIFMA Letter at 2.

[15] *Compare* Bloomberg website touting 325,000 global terminal subscribers, https://www.bloomberg.com/company/bloomberg-facts/ *with* Bloomberg Letter at 1 (claiming that "hundreds" of customers would be affected).

Finally, Bloomberg claims that the Proposed Clarification is being applied in a discriminatory fashion by arbitrarily and disproportionately impacting the Bloomberg SAPI.[16] That is another distortion. First, the Proposed Clarification is not solely affecting the Bloomberg SAPI product, but will affect any vendor reporting their customers as being subject only to a device fee even though the vendor is actually making the data available in a format that enables Non-Display Use. Second, the only discriminatory application associated with the 2014 Fee Amendments is the mischaracterization by Bloomberg and other similarly situated vendors who have taken advantage of a perceived ambiguity for their own advantage (and perhaps to the detriment of the customers to whom they sold such products). This mischaracterization has led to an uneven playing field whereby vendors properly subjecting their customers to the Non-Display Use and access fees are losing customers to vendors taking advantage of a perceived loophole. The Proposed Clarification will resolve any ambiguity and ensure that all vendors operate on a level playing field.[17]

C. The Non-Display Fees Were Adopted by the 2014 Fee Amendments and Abrogation of the Proposed Clarification Would Only Maintain Unfair Competitive Imbalances.

SIFMA attacks the Proposed Clarification on a wide-range of broad policy reasons, claiming that the Proposed Clarification would harm investors, fail to maintain a fair, orderly, and efficient markets, and impede capital formation. But SIFMA's expansive attack on the NMS plan governance structure and market data fees fails to even recognize the key purpose of the Proposed Clarification: to resolve the competitive imbalance resulting from certain vendors' mischaracterization of their data products. While SIFMA characterizes the proposed clarification as a "Massive Fee Increase,"[18] SIFMA ignores the fact that the Non-Display Use fees were adopted as part of the 2014 Fee Amendments. The Proposed Clarification is not designed to impose additional fees on data recipients but instead is designed to ensure that the 2014 Fee Amendments are applied fairly and equitably by all vendors. The Proposed Clarification is narrowly focused on leveling the playing field between those vendors properly characterizing their customer's data usage and other vendors, like Bloomberg, who are attempting to obtain an unfair advantage by offering their customers lower fees despite providing the same level of access and functionality.

---

[16] Bloomberg Letter at 7. In addition, Bloomberg takes issue with the letter sent by the CTA Administrator to Bloomberg, arguing that the Proposed Clarification was conveyed to market participants through non-public letters. But the letter provided to Bloomberg is simply a straightforward application of the Proposed Clarification that was filed with the Commission. As detailed in this letter, the Bloomberg SAPI is correctly subject to the Non-Display Use and access fees because it allows a data recipient's systems and software to download data onto authorized servers and "run server-based applications on the market data." As a result, it squarely falls within the definitions set forth in the 2014 Fee Amendments and the Proposed Clarification.

[17] As Thomson Reuters explains in its comment letter: "Thomson Reuters believes that fees for US equity market data are not currently being applied in an even manner, benefiting some clients over others. This Amendment clarifies how the fees should be applied and should allow the administrators of the exchange data to apply fees equally so that all clients pay the same price for the same service. Without this clarification, the industry will continue to operate in an inequitable manner." Thomson Reuters Letter at 1.

[18] SIFMA Letter at 2.

Therefore, abrogating the Proposed Clarification 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 Proposed Clarification would provide Bloomberg and other vendors with continued grounds for arguing (wrongly, we believe) that use of the Bloomberg SAPI and other similar products does not subject such usage to Non-Display Use or access fees.[19] Such a result would allow Bloomberg and similarly situated vendors to maintain their competitive advantage over other vendors that are already properly characterizing their customers' data usage. That is why Bloomberg unabashedly acknowledges at page 2 of its comment letter that "[t]he central issue is that the CTA will begin charging [Bloomberg] customers separately for the use [of SAPI]." Because those customers should have been paying the correct fees all along, Bloomberg's comment confirms that it is simply trying to maintain the unfair position it has gained by offering customers a non-display product at lower device fees while its competitors have not done the same.

Bloomberg and SIFMA also take issue with the process leading to the adoption of the 2014 Fee Amendments and the Proposed Clarification. For instance, Bloomberg states that the changes were not adopted pursuant to the process required under Regulation NMS Rule 608.[20] Additionally, SIFMA states that the Participants "have a long history of conducting the most meaningful NMS plan business in executive sessions," insinuating that the 2014 Fee Amendments and the Proposed Clarification were hidden from the public.[21] But as detailed above, the Participants sought input from industry participants for both filings as provided for in the Plans, and the Participants are following the exact requirements of Rule 608 in order to effectuate the Proposed Clarification.

The Participants approved the filing of the Proposed Clarification only after these discussions with industry representatives. It is extraordinary to now claim that the Proposed Clarification was adopted through a secretive process without industry input. Further, mandating that the Proposed Clarification be subject to notice-and-comment and Commission approval is illogical given the fact that the 2014 Fee Amendments, which resulted in the creation of the Non-Display Use fees, were themselves properly filed for immediate effectiveness.

Finally, Bloomberg claims that the proposal is an unfair burden on competition because Bloomberg is "asked to disclose all of its customers to the Exchange, including the specific method by which they consume data." Bloomberg claims that such a request is to obtain "confidential information under the guise of the SRO cloak," implying that this information will be used to market exchanges' proprietary data products.[22] But there is nothing nefarious here. It is important to remember that this data is being requested by the CTA Administrator as a

[19] The Participants believe that the Bloomberg SAPI and similar data products would be subject to the Non-Display Use fee and the access fee even if the Proposed Clarification was abrogated. The Proposed Clarification 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.
[20] Bloomberg Letter at 6-7.
[21] SIFMA Letter at 5.
[22] Bloomberg Letter at 8.

necessary part of its administrative functions, and not being requested by an individual exchange for its own benefit. As it always has, the CTA Administrator directly bills data recipients, and as a result, this information is necessary to carry out the Administrator function. Direct billing, and therefore the need for this information, long predates the Proposed Clarification and even the 2014 Fee Amendments. It is unclear why Bloomberg and other commenters believe that the Proposed Clarification has anything to do with this longstanding (and heretofore unchallenged) requirement.

Even more critical, though, is that the CTA Administrator has taken extensive measures to ensure that any confidential information obtained is not shared with any exchange's business units. In particular, the CTA Administrator has developed an internal policy for controlling confidential customer information, thereby restricting access to confidential information within NYSE and its affiliates' lines of business through information barriers. This internal policy was shared with the Plans' Advisory Committee to alleviate concerns like those raised by Bloomberg.

* * * * *

We hope that this letter resolves the misinformation being spread to the Commission and the public regarding the scope of the Non-Display Use and access fees. For the reasons discussed above, we believe that the Commission should allow the Proposed Clarification to remain effective. To do otherwise would maintain the uneven playing field vendors like Bloomberg 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
Chairman
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