

April 11, 2000

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549

Re: Securities Exchange Act Release No. 42208, File No. S7-28-99

Dear Mr. Katz:

The Securities Industry Association (SIA)¹ is pleased to offer its comments on the Securities and Exchange Commission's (SEC) Concept Release: "Regulation of Market Information Fees and Revenues." SIA applauds the SEC's effort to raise this historically contentious issue and to seek solutions in a timely manner.

The issue of access to quality data and its cost are critical to SIA's member firms and their customers. Transparent markets are essential to maintaining the public's trust and confidence in our capital markets. Interest in our markets has fueled an unprecedented demand for this data. Market data fees are also an important component of the evolving market structure debate involving increased competition among exchanges, Nasdaq and ECNs, discussions of "for profit" exchanges, and discussion of alternative structures for "price discovery."

INTRODUCTION

SIA's members are not of one mindset on the issues raised by the Concept Release. While there is overwhelming support for relating costs to revenues, there are significant differences of opinion as to which costs ought to be funded by these fees. Although some firms believe that new rules should require market data fees be based only on the direct costs of aggregating and disseminating market data fees, other firms

¹ The SIA brings together the shared interests of more than 740 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift and pension plans. The industry generates more than \$300 billion of revenues yearly in the U.S. economy and employs more than 700,000 individuals.

This comment letter was reviewed by SIA's Board of Directors and reflects the input of SIA's Technology Management Committee, Market Data Subcommittee, Ad-hoc Committee on Technology & Regulation, Financial Information Forum, Financial Information Services Division, and Ad-hoc Committee on Market Structure.

believe that common costs, such as market operation and market regulation, contribute to the value of the information and should be recoverable through market data fees.

Beyond that, virtually no firm believes it is a good idea to have the SEC act as a ratemaker and decide which individual cost items should be funded by market data fees. However, virtually every firm would agree that the degree of micromanagement contemplated by the release would not be under consideration had there been both more disclosure of revenue, cost- and usage-related information and more opportunity to participate in the rate-setting process at the network level². Opening up this process could allow a consensus to form around all relevant information known at the time *before* the network submits a fee filing to the SEC.

Thus, we support the principles espoused by the SEC in the release – reliance on greater consensus of all parties, increased public disclosure of information, and broader participation in the process. Delivering on these three principles will go a long way toward reducing disputes over fees. If deemed necessary, the SEC should consider taking appropriate steps to ensure that discussions between firms, vendors and exchanges are given official sanction by the appropriate government regulators. The fourth principle - development of objective standards for setting fees – should ideally be the joint responsibility of all parties at the network level. However, in the absence of any agreement on such standards, it is believed SEC rulemaking may be necessary to implement them. Some firms, however, point out that this may lead to cumbersome utility-type ratemaking proceedings.

SIA's experience with its members with respect to market data issues and its attempts to resolve misunderstandings between them and the market information networks indicates that a broad cross section of SIA members are extremely frustrated by poor communication and the lack of a dialogue. This is primarily due to a lack of criteria for evaluating fair and reasonable fees and costs, a lack of available financial and usage information, and a lack of effective user participation in the fee-setting process. A broad cross-section of SIA members are also extremely frustrated with the administrative confusion and complexity of managing market data records and monitoring fees and usage across networks and, for those firms with an international presence, across borders.

THE SIA/ARTHUR ANDERSEN STUDY

In 1999, SIA retained Arthur Andersen LLP to write a report on market data pricing in response to questions and concerns raised by members of the SIA Technology Management Committee. SIA's views on many of the issues raised by the Concept Release are outlined in the recommendations set forth in its Report on Market Data Pricing, issued in June 1999.

² The term "network" is used in this letter to describe the current governing structure established by the exchanges and Nasdaq to set policies relating to market data fees.

SIA continues to support these recommendations, which follow:

1. Create an accurate, updated and comprehensive database of market data prices, terms, conditions, policies, procedures, pilots and administrative interpretations of each exchange. This could be made available via exchange web site and/or in print. The objective is to **communicate** to all users of market data what the policies and fee structures are and to keep the information current. SIA will work jointly with the Financial Services Information Division of the Software and Information Industry Association (FISD), which has already begun work on a database of "Plain English" statements of market data policies, with links to exchange web sites, to accomplish this.
2. Encourage exchanges to **standardize** the market data terms, conditions, policies and procedures as much as possible. Legitimate, business-based differences may be appropriate, but from the perspective of users, multiple administrative environments are inefficient and unnecessary.
3. Encourage exchanges to **simplify** the accounting, auditing and reporting of market data usage. Effective enterprise licensing agreements that can eliminate detailed reporting should be implemented and the exchanges' requirements for exhaustive system and application descriptions should be re-examined.
4. Develop **criteria** to evaluate exchange fee proposals as required by Section 11A of the Securities Exchange Act of 1934, which calls for fair, reasonable and non-discriminatory application of fees for market data. The SIA would like to encourage financial disclosure by the exchanges that supports the criteria that will be developed. For example, any rule filing on market data fees should project the impact on exchange revenues and user costs in whatever detail is required by the criteria. That might include the:
 - Impact on non-professional vs. professional revenues and costs;
 - Impact of substantial changes in usage by a class of users; or
 - Impact of market data revenue "rebates" on various classes of users.
5. Join in the effort already underway by the FISD and other industry organizations to establish a centralized utility to improve the efficiency of market data administration in the areas of electronic reporting, inventory management and reconciliation, and industry documentation.
6. SIA would also like to encourage an alternative governance structure for market data that would include a broader exchange, industry, and public representation.

The dramatic changes in the growth and structure of the securities markets and the frustration of all participants in the debate over market information issues combine to demand a new and more effective process for managing this key component of the securities business.

SPECIFIC COMMENTS

1. Cost-Based Limits On Market Data Revenues

SIA members support relating costs to market data revenues.

Of the various costs discussed in the release, SIA member firms agree that the direct costs of gathering and transmitting market data should be recoverable through assessment of market data fees.

Common costs, such as those relating to market operation and market regulation, present more of a challenge. Some firms oppose any consideration of these costs in determining whether market data fees are appropriate. They believe that the cost of operating a well-run competitive exchange is a cost of doing business and should not be funded by market data fees that they feel are assessed by virtue of a monopoly status. Furthermore, they believe that a significant part of the burden of market regulation - supervision and surveillance of trading personnel - is actually shouldered by the firms themselves with respect to their market makers and block traders. These surveillance and compliance activities also contribute to the quality of market data, yet their costs are not funded by market data fees.

Another group of firms opposes recovery of common costs through market data fees because of a distrust of network policies and the current fee-setting process. They believe that, without what they regard as adequate justification of the costs involved or adequate disclosure, the determination of common costs will be inherently biased.

Finally, another group of firms subscribes to the view expressed in the release that the costs of operation and regulation contribute substantially to the value of the market information generated and should at least be partially recoverable by market data fees. These firms agree that "market regulation by the SROs helps assure that the information on which investors rely is not tainted by fraud or manipulation." Even the firms in this last category, however, believe more disclosure and participation in the network governance is needed.

Some SIA members support the fourth step of the SEC's framework which requires each SRO to allocate total market information costs to the various networks whose securities it trades to determine network cost-based limits. Once the cost-based limit is determined by each network, the results should be released for public comment. The issue of a "standard allocation percentage" for each SRO cannot be resolved until the calculations are completed for each network.

2. Fairness and Reasonableness of Specific Fees

SIA firms strongly support a fee structure that is fair to markets, vendors, broker-dealers and all users, including retail investors. Members believe that fair and reasonable access to quality market data is essential to the goals of transparency. This includes Nasdaq Level II information and equivalent market data from CTA. The fee structure should seek to ensure that no information is out of the reach of even the smallest investor. Today, the cost of obtaining one real-time quote may be relatively inexpensive to the individual investor, but the cost of receiving dynamically updated real time data, an increasingly important tool in today's fast-moving markets, may be relatively expensive.

Members have differing opinions of what factors might justify disparities in fees. Some firms believe a fee structure should be based on usage data of the various user classes. They believe that a use-based system, such as the present one, equitably apportions fees in such a way as to spread part of the total costs of operating and regulating the market that generates real-time, accurate market data among all that benefit from continuous access to such market data. These firms would also encourage the continued reduction of non-professional fees.

Other firms believe that the present fee structure unfairly discriminates against broker-dealers and vendors that repackage or otherwise add value to the information for retail customers. They believe that redistribution of the information to customers participating via the internet has increased market data revenues exponentially, but at no additional cost to the exchanges. These firms believe that by re-packaging and re-transmitting the data electronically, vendors and brokers actually increase individual investors' access to information and must pay ever-increasing fees to do so. These firms believe that disparities in fees can only be justified by differences in the cost to deliver and administer services for specific types of users.

The Concept Release asks whether the current monthly non-professional fees "deter a significant number of retail investors from using real-time market information or preclude broker-dealers from providing enhanced information services to their retail customers." Some SIA firms believe this is the case. In particular, firms with online and wireless offerings feel they cannot package and use real-time market data in innovative ways because of the high cost of offering market data to their retail customers. These firms also believe that the non-professional fee simply duplicates charges the firm is already paying, particularly those firms that offer customers access to information through multiple channels. One of the issues raised by these firms is that the networks are perceived to exploit the increases in online usage as legitimate increases in revenue, irrespective of increases in the costs of distribution. Also, as one class of user (retail on-line) grows faster than another class, revenues to networks (and costs to users) shift significantly without explicit cost justification. Finally, these firms believe that resolution of these issues requires the establishment of cost-based criteria as well as a baseline allocation of revenue among user classes and a subsequent monitoring of actual experience against that baseline.

Other firms believe that it is reasonable to distinguish between direct on-line access and periodic telephonic communications through an intermediary as a means for determining the fee for non-professional access to real-time market data.

No analysis of fairness of a fee structure would be useful if it does not take into account the additional fees charged by market data vendors. As agents for the collection of most market data fees, it is essential that the policies worked out at the network level take vendors into account.

Firms overwhelmingly support the *concept* of enterprise fees both for simplicity of administration and for removing distinctions among categories of users as the basis for allocating fees. However, there are differences of opinion as to the appropriateness of the current enterprise fee arrangements. With respect to current enterprise fee arrangements, many SIA member firms do not find the present Network A enterprise arrangement to be useful. These firms feel that the enterprise fee is set so high that very few would view it as a bargain in light of their current usage. These firms would like enterprise fees to be cost-based as well. Further, the current Network A enterprise arrangement still requires all the record keeping complexity of the non-enterprise structure, so that no administrative savings can be realized.

Another view is that the current system provides non-discriminatory pricing options tailored to the needs of firms with varying levels of usage, including those firms willing to make a significant contribution toward helping to defray total costs in the form of a large enterprise fee for which they receive a corresponding right to use-license the data.

3. Subsidizing Market Regulation Costs

(See previous discussion under "Cost-based Limits on Market Data Revenues).

4. Compensating SROs in Accordance with the Value of Their Market Information

SIA believes this is more properly a decision to be reached by the participant SROs.

5. SRO Rebates to Members

Many SIA member firms oppose SRO rebates to members. These firms believe that if fees are cost-based, there should not be any excess. To the extent that revenues do exceed forecasted costs, they believe that any "excess" market data revenues should be for the benefit of the users, in proportion to their payments.

6. Plan and SRO Disclosure

SIA firms strongly agree that there should be more disclosure. A large part of the frustration expressed by SIA member firms can be attributed to the lack of financial

disclosure by the networks and SROs. Greater public disclosure of cost-related information at the network level will go a long way toward restoring public trust in the rate-setting process. SIA supports the concept of annual filings for the networks, including fees, user information and audited financial statements. SIA supports the concept of SRO's providing greater disclosure of costs and revenues of market data and other SRO functions.

7. Plan Governance, Administration and Oversight

SIA strongly supports the inclusion of member firms in the process for reviewing market data usage, pricing and systems performance and capacity. Some SIA member firms favor actual representation on the networks. Others believe that the same result can be achieved with an industry advisory committee. This committee would not necessarily need to vote in each network governance structure, but it should have the ability to review each network's annual plans and to submit its views to the networks, the SRO's, and the SEC.

Membership should include representatives of the major classes of securities firms, market data vendors and other market data users.

SIA strongly supports the concept of standardization and streamlining of agreements, policies and reporting requirements across the market data networks and strongly encourages the major networks to meet to develop a program to accomplish these objectives. In particular, SIA firms favor streamlining procedures for the approval of fee agreements and elimination or simplification of the forms for non-professional subscribers.

SIA believes that pilot programs are a useful mechanism for testing new pricing proposals in an efficient way. These programs should be fully disclosed (i.e., filed with the SEC for notice and comment) and be limited to a specific time, understanding that one year may not be sufficient to gain the appropriate experience in every case. Terms and conditions should be publicly available. Many firms also support repeal of the effective upon filing fee change rule as applied to market data fees, if a proposed fee change will raise fees for any class of user or alter the fee and user categories without prior public notice and comment.

MARKET STRUCTURE ISSUES

A number of market structure issues currently developing in the securities industry could have significant impact on the pricing of market information. One is the possible spin-off of NASDR from NASD and/or "NYSE" from NYSE. Presumably, the spin-off of either NASDR or "NYSE" from their parents would involve only member regulation and not market regulation. SIA members generally agree that market data fees should not be funding member regulation and thus, do not expect the fee issue to play a significant role in the deliberations over stand-alone exchanges.³

³ SIA's Board of Directors recently endorsed the concept of separating the market regulation function of an SRO from its member regulation function. SIA Press Release (<http://www.sia.com/html/pr993.html>).

Another possibility is the conversion of NASD or NYSE to “for profit” organizations. Conversion to “for profit” status has huge implications for market data pricing. Market data is an important part of exchange revenue streams. A “for profit” exchange structure would require safeguards and oversight to protect users of market information from unreasonable pricing.

We are also likely to see the participation of ECNs or new exchanges in existing market information networks or new networks. Market information networks costs and revenues will each be impacted by the activities of new participants. All the cost, allocation, fee setting and revenue distribution formulas will need to be reviewed, taking into account the fact that participants may be a mixture of membership and “for profit” organizations. ECN or exchange-matching systems have very different cost characteristics than market maker or specialist systems.

Finally, some member firms believe that one of the most important steps that the Commission can take to address market fragmentation in the internet age is to adopt rules that will have the effect of making real-time streaming data from all markets readily available at a reasonable price to all investors.

CONCLUSION

In conclusion, the SEC’s concept release deserves praise for documenting the importance of affordable and accessible market data to transparent markets and for proposing many creative approaches to addressing the fee issue.

Many of the ideas mentioned in the release – disclosure of costs, revenues and fees, more representation in network governance, and streamlined administrative procedures (including enterprise fees) – already enjoy widespread support among SIA members. Enactment of these reforms at the network level will alleviate many of the complaints members have about the current system. Moreover, a more open and democratic process at the network level will reduce pressure on the Commission to assume the more controversial and burdensome duties contemplated by the release, including rate making and choosing which SRO costs to pass along.

Increased trust and confidence on the part of member firms in the decisions made at the network level may avoid the need for rate-making and allow the SEC to continue to evaluate fee filings to determine whether they are fair, reasonable and equitable.

If we can provide any further information or clarification of the points made in this letter, please contact Donald Kittell, Executive Vice President, at (212) 608-1500 or Scott Kursman, Assistant General Counsel, at (212) 618-0508.

Respectfully Submitted,

Marc Lackritz
President

Jonathan G. Katz

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cc: The Honorable Arthur Levitt, Chairman
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 The Honorable Isaac C. Hunt, Jr., Commissioner
 The Honorable Laura S. Unger, Commissioner
 The Honorable Paul R. Carey, Commissioner
 Annette Nazareth, Director, Division of Market Regulation, SEC
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