



*Invested in America*

February 5, 2013

**Via Electronic Mail**

Mr. Dominique Cerutti  
President and Deputy CEO  
NYSE Euronext  
11 Wall Street  
New York, NY 10005

Mr. Jon Robson  
Chief Executive Officer  
NYSE Technologies  
11 Wall Street  
New York, NY 10005

**Re: NYSE Euronext Global Data Agreements**

Dear Messrs. Cerutti and Robson:

SIFMA appreciates the opportunity to comment on the NYSE Euronext Global Data Agreements (available [here](#)) (together, “Agreements”), and the willingness of the exchange staff to engage in ongoing discussions with SIFMA regarding the Agreements, including the Global Data Agreement for Redistributors (“RDA”), Global Data Agreement for End Users (“EUA”), NYSE Euronext Market Data Policies (“Policies”), and the Global Data Agreements Glossary (“Glossary”). SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. These comments represent the collective comments of the SIFMA Market Data Subcommittee which represents the views of the broader SIFMA membership on market data issues.

We respectfully request that the exchange not finalize the Agreements, nor request that our members sign the RDA, until after we have met with senior officers of the exchange and agreed on resolutions to our concerns. The Agreements raise substantial issues at the heart of the exchange’s relationship with member firms and the exchange’s role as a self-regulatory organization and exclusive processor of market data that must be distributed on fair and reasonable terms and in the public interest.

Attached is a chart that provides section-by-section issues, concerns, and changes requested by members. Below we discuss in more detail eight areas of particular concern: (1)

inadequate notice of policy and rule changes and unacceptable unilateral amendment; (2) the definition and ownership of derived data; (3) non-display and unit of count; (4) inadequate explanation of products governed now and in the future by the Agreements; (5) lack of differentiation between firm redistribution and market data vendors; (6) unreasonable requirements for the terms of end user contract; (7) unilateral indemnity and limitation of liability clauses; and (8) unclear and unfair audit and reporting requirements. In this letter, the terms “exchange” and “NYSE Euronext” refer to NYSE Market, Inc. and Euronext N.V.

## **1. Inadequate Notice of Policy and Rule Changes and Unacceptable Unilateral Amendment**

Fair and reasonable and nondiscriminatory access to market data is critical to our members, our clients, and the efficient functioning of the markets. The Agreements (including the Policies) regulate that access and, therefore, represent substantial rules that require clear notice and a constructive dialogue between the exchange and its members and the public prior to implementation. The 1975 amendments make clear that Congress intended that access to information about securities quotations and transactions should not be the subject of a contract of adhesion.

SIFMA appreciates that the exchange issued the draft RDA in advance for review and comment. To date, however, the exchange has made no commitment as to whether or how it will respond to comments received or make changes. Member firm review of the proposed new agreement and corresponding policies has been challenging because the exchange has not explained clearly which provisions are new, which provisions are amended, and which provisions are the same as those under the current agreement and policies. This is contrary to standard practice between vendors/service providers and their clients, and is deficient practice between a self-regulatory organization like the exchange and its members. A change in policy can result in an increase in costs of millions of dollars even to a single member, and to the investors who do business through that member. A single policy change can result in higher market data fees (*e.g.*, changes to the unit of count or fee liable data usage) and necessary modifications to technology systems, business models, and client services. It can have a significant impact on competition, access to market data, and the capital formation purpose of the exchange itself.

Given these potential impacts, and as a collection of rules of the exchange, the Agreements including the Policies they incorporate by reference are subject to the SRO rulemaking requirements under the Exchange Act. Rule 19b-4(c) states:

A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless: (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization, or (2) it is concerned solely with the administration of the self-regulatory organization and is not [about] the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

It is undeniable that the Agreements regulate and control access to the use and distribution of market data, thereby meeting the definition of an SRO rule. The new RDA and Policies

are not “reasonably and fairly implied” by an existing rule or concerned solely with the exchange’s administration. Accordingly, the exchange must file the new RDA and Policies with the Securities and Exchange Commission for review, public comment, and approval.<sup>1</sup> Some of the many provisions of the RDA and accompanying Policies that meet this definition include: Real-time and Delayed Data Policies (Market Data Policies Version 1.0 at 15), Internal Non-Display Use Policies (*id.* at 16), Unit of Count Policies for Display Use (*id.* at 17), Derived Data Policies (at 21), and Non-Professional Subscriber Policies (*id.* at 27).

Moreover, the exchange is an “Exclusive Processor” of securities information within the meaning of Exchange Act Section 3(22)(B). Among other things, the exchange may not limit access to market data in a manner inconsistent with the provisions and policies Congress set forth in Exchange Act Section 11A, including the requirement that it must disseminate market information on terms that are fair and reasonable. This is necessary and appropriate because the exchange benefits from its unique regulatory status as the exclusive processor and sole source of the data compiled from price information broker-dealers submit to the exchange under regulatory compulsion. Broker-dealers and investors have no other place to access this sole-source market data.

As currently drafted, the RDA allows the exchange to unilaterally amend the RDA and Policies. (See Sections 10.4, 19.1 and 19.2 of RDA, allowing for unilateral changes to Policies and RDA by notice to member). In addition to being contrary to law as explained above, this is commercially unreasonable given the importance of market data to members and their clients. For any amendment, notice must be clear and directed to members (not simply posted on a website or buried in other notices) and afford an opportunity to comment and negotiate. To enable members to conduct their business on behalf of investors in an orderly manner, any material changes to Policies should only occur on an annual basis and be aggregated. Otherwise the result will be confusion and the imposition of unnecessary burdens.

To address these issues, we request that a clause be added to the RDA that states:

The RDA will not be modified except pursuant to a writing signed by each party, with only two exceptions: modifications for compliance with the Exchange Act and fee changes as permitted by applicable law. Without limiting the foregoing, a modification that constitutes a proposed rule change will not take effect until after Commission approval. In the case of any amendment, NYSE Euronext will provide

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<sup>1</sup> Nor can there be any doubt that market data aggregation and dissemination is a facility of a national securities exchange. Exchange Act Section 3(a)(2) defines “facility” of a national securities exchange in a way that unambiguously encompasses market data:

The term ‘facility’ when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

you with one hundred twenty (120) days' prior notice of the proposed effective date of the change by sending a separate email to \_\_\_\_\_ containing the heading: "Proposed Amendment to RDA or Market Data Policy" and setting forth the proposed change, the reason for it, and the process for you to comment on the proposed change. NYSE Euronext will consider all comments and publish a summary of its response to those comments. Material changes will only occur no more than once per calendar year.

## **2. RDA Provisions Restricting Members' Use of Derived Data (and Claiming Right to Charge for Derived Data) are Abuse of Monopoly Position**

In the RDA, the exchange claims proprietary rights in Market Data (as defined in the Glossary) and goes further by imposing restrictions on customers' use of their own derived data (Section 5) and claiming the right to impose fees for use of derived data (Section 9.4). These provisions must be amended to absolutely clarify our members' ownership of their own respective derived data and give each member as a "customer" free rein to use its own derived data.

Under intellectual property law and statute, the exchange does not have an "ownership" right in the raw market data itself, let alone derived data. Congress' major re-write of the securities laws in 1975 sought to encourage the broad dissemination of market data to the public in order to effectuate the creation of a true National Market System. The structure and functioning of this legislation make clear there is no "ownership" interest possessed by the exchange in raw market data.

Historically, intellectual property protection in the United States has required at least a minimum level of creativity. That policy was unanimously reaffirmed in the 1991 Feist decision.<sup>2</sup> The production of raw market data entails no creativity, and hence no intellectual property rights attach. It is only downstream, where creativity adds value to the data, that intellectual property rights may attach. When members use raw market data as inputs in creating indices, structured products, and other items, as between the member and the exchange, it is clearly the member and not the exchange that has a proprietary interest in the derived item. In many cases, the exchange's use of such derived data without the member's permission would constitute misappropriation and unfair competition. The exchange is in a monopoly position as the aggregator of market data that our members report to it as broker-dealers under regulatory compulsion. Imposing on our members through a contract of adhesion what the exchange cannot claim through intellectual property law or statute -- a right to control use of and charge for use of derived data -- is a flagrant abuse of this monopoly position conferred on the exchange as a self-regulatory organization and Exclusive Processor under the Exchange Act.

Accordingly, the following changes should be made to the RDA:

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<sup>2</sup> Feist Publications, Inc., v. Rural Telephone Service Co., 499 U.S. 340 (1991).

- Definition of “Market Data” – Delete clause b. so that the exchange cannot expand the scope of this definition. Limit clause a. to refer to only data actually provided by the exchange.
- RDA Section 5 should be amended as below
  - DERIVED DATA
  - 5.1 In General. You and your Affiliates and Service Facilitators may create Derived Data from Market Data made available under this Agreement, but only as prescribed in the Policies.
  - 5.2 Derived Data as Market Data. Derived Data shall be deemed to be Market Data for all purposes under this Agreement (including requirements relating to Fees and Reportable Activities) only if, ~~in NYSE Euronext’s sole discretion:~~
    - a. it is reasonably technically feasible for any person who was not involved in the creation of such Derived Data and who does not have knowledge of the formula(s) and trade secrets used to create such Derived Data to extract the Market Data from the Derived Data (whether by , calculation, translation or similar method); or
    - b. the Derived Data is used as a direct substitute for the Market Data; ~~or~~
    - c. ~~you Use or Redistribute the Derived Data otherwise than as the Product Schedule expressly permits.~~

Otherwise, Derived Data shall not constitute Market Data under this Agreement and you may Use Derived Data and may Redistribute Derived Data ~~as the Product Schedule permits.~~

- RDA Section 7 – Revise to clarify that Customers do not need to report on use of Derived Data.
- RDA Section 9.4 -- Delete reference to "Derived Data". Imposing fees on Customer's distribution of its own Derived Data and products is overreaching.
- RDA Section 14.1 – Revise so that Customer only acknowledges the exchange’s *assertion* that it has proprietary rights and to make it absolutely clear that this assertion does not apply to any Derived Data.
- RDA Section 14.3 – Cooperation must be limited to commercially reasonable cooperation as determined by Customer’s counsel. Section must be revised to make clear that this assistance will not be provided for Derived Data.
- RDA Section 14.8 – Revise so that Section 14.8 does not apply to Derived Data.

### 3. Non-Display and Unit of Count

As noted above, our members must own their own Derived Data. Accordingly, SIFMA strongly believes there should be no circumstances where users should have to account for, or be limited in, their use of Derived Data. Member firms report the raw market information to the exchange which then aggregates the data to sell back to them (and others). The exchange cannot justify levying additional fees or administrative burdens through new Policies intended to govern Members’ subsequent use and transformation of that very same market information.

SIFMA member firms need to have broad latitude in their use of NYSE Euronext “Market Data” (as such term is defined in the RDA, excluding Derived Data), for non-display

purposes in an easy to manage process for administration purposes. The descriptions of non-display usage in the exchange documents are confusing and the exchange policies vary from the non-display price list to such an extent that member firms are unable to determine if they are being required to pay multiple times for the same usage. In addition, non-display fees seem to include fee liability for usage not ordinarily charged, such as usage required for legal compliance (compliance, accounting and audit activities) which should be excluded. Other exchanges have agreed to eliminate this sort of usage from fee liable non-display usage.

The unit of count for traditional data usage purposes (other than use for non-display purposes) should always be based on natural user regardless of the number of access points or vendors from whom the same data is received. We incorporate by reference our SIFMA comment letter to the SEC dated May 5, 2010 concerning the topic of unit of count with regard to the exchange's OpenBook product (available [here](#)). SIFMA takes the same position here.

#### **4. Inadequate Explanation of the Products Governed by the Agreements Now and in the Future**

The Agreements use inconsistent and confusing definitions for “Market Data”, “Product”, and “Product Schedule”. The definition of each is open-ended and can be determined by the exchange at will and seemingly without notice to the counterparty. As a result, firms are left without clear guidance of what the Agreements are intended to cover, except that the Agreements clearly excluded the feed produced by the Consolidated Tape Association. Neither the EUA nor the RDA includes a “Product” list, thus allowing the Exchange to add, subtract, divide, and redefine product at will.

For example, the Glossary includes the following definitions:

“Euronext Product” means any Product identified as a Euronext Product in the Product Schedule. “NYSE Product” means any Product identified as a NYSE Product in the Product Schedule.

“Market Data” means:

- a. information and data about financial instruments, the issuers of financial instruments and indices; and
- b. such other information and data as NYSE Euronext may from time to time identify.

“Product” means a collection of one or more items of Market Data that NYSE Euronext identifies and makes available as a Market Data product. It does not include any market data product that U.S. securities markets make available under a National Market System plan under the Securities Exchange Act of 1934.

“Product Schedule” means the schedule that a Customer is required to complete and execute in order for it (a) to select the Products that it wishes to receive under the RDA or EUA and (b) to provide information that NYSE Euronext requires relating to the Customer's receipt, Use and Redistribution of Market Data.

Further, under Section 3.2 of the Policies, the exchange has the ability to add additional products to the Product Schedule upon approval of such products by the Commission. As a result, the Product Schedule can be changed at any time with no notice to the counterparty. This is a patently unfair business practice.

Under Section 12.1 of the EUA, the Exchange has the ability to

“(a) discontinue providing some or all Market Data or Product, either completely or in a particular manner, on ninety (90) days’ notice; and/or (b) modify any Market Data or Product or the means or characteristics of its transmission.”

The Exchange further limits its obligation to provide 90 days notice of modifications to Products under Section 12.1, if it is “not reasonably practicable to give notice” or where the Exchange believes that there will not be a material impact on End Users under Section 12.2. In either scenario, the Exchange has an unfettered ability to make unilateral changes. SIFMA believes that in all cases of changes to Products, given members’ investment in technology and our clients’ potential reliance on a Product, and the need for members to decide whether to continue to subscribe to a modified Product under the terms of the Agreements, any exception to 90 days notice should be limited to “as necessary to comply with applicable law.”

## **5. Lack of Differentiation Between Firm Redistribution and Market Data Vendors**

The RDA does not currently make the necessary distinction between redistribution of market data as a broker-dealer and redistribution as a market data vendor. Redistribution of market data in the ordinary course of a broker-dealer’s business in a manner solely designed to further such business is not equivalent to a market data vendor with a primary business of selling market data.

It is understandable to have such extensive restrictions in the case of a market data vendor whose primary business is providing data externally. However, applying these terms to broker-dealers and treating them as redistributors (especially where the distribution is solely to affiliates – which should not be considered redistribution in the first place – or incidentally to external clients of the broker-dealer), places onerous and impractical requirements on them and their trading partners that is not commensurate to the risk arising from that very limited redistribution of such data. SIFMA requests more latitude for such limited redistribution and that a distinction be made amongst the categories of redistributors based on business purpose and categories of redistributors.

## **6. Unreasonable Requirements for the Terms of End User Contract**

The RDA requirements for end user contracts (defined as “Conforming Contracts”) are overly restrictive and onerous. It is unreasonable to require firms to revise all existing customer agreements in accordance with Section 6.2 of the RDA, especially considering that the EUA can be changed by the exchange at any time. In the very least, existing end-user agreements members have with their clients should be grandfathered. The exchange should

have no interest in frustrating the very investors whose orders and trade executions constitute the market information underlying the exchange's "Products."

Accordingly, SIFMA proposes that Section 6.2 of the RDA be deleted and replaced with the following:

"A person may enter into a Conforming Contract with you (rather than entering into an EUA with NYSE Euronext) only insofar as you (rather than the person) maintain an Entitlement System that controls the person's receipt of Market Data. Each such Conforming Contract shall provide rights to End Users and protections for NYSE Euronext that are consistent with those rights and protections that are standard in the financial services industry for contracts between market data redistributors and their end users. Upon learning of any End User's material breach (with respect to use of the Market Data) of a Conforming Contract that it has entered into with you, you shall reasonably promptly notify NYSE Euronext of the breach."

Finally, the requirement in Section 6.3 that members provide confidential customer contracts to the exchange would most likely constitute a confidentiality violation as between firms and their customers. This requirement must be eliminated.

## **7. Unilateral Indemnity Clause and Limitation of Liability**

Typically, the liability and indemnity provisions in a mutually agreed upon document would start from a place of mutuality, with the drafting party justifying any one-sidedness. In this case, the RDA is blatantly one-sided in the risk-sharing without any apparent justification. In terms of liability, the NYSE Euronext Companies' aggregate liability is capped at fees paid and payable within the applicable year, while the customer has unlimited liability. (See Section 17.7). Because of Section 17.7, the exchange can argue that its indemnity liability is capped, while the customer has unlimited liability under its two indemnification provisions.

The RDA's indemnifications are skewed on every level, from high level substance, to details, to process. The RDA – the agreement designed to give customer the right to *Redistribute* the Market Data – does not provide an intellectual property ("IP") indemnity for the *Redistribution* of the Market Data. Instead, the IP indemnity in Section 14.4 of the RDA is limited to claims that member's "receipt or Use" of the Market Data infringe IP rights. As a result, the exchange can argue that Section 6.4 requires customer to indemnify it for claims that the redistributed Market Data was infringing, presumably even if the exchange itself caused the infringement. The indemnities are further skewed in terms of who receives the indemnity (all Disseminating Parties and NYSE Euronext Companies in the case of customer's indemnity vs. only customer in the NYSE Euronext's indemnity) (see sections 6.4, 14.4 and 14.6), the condition precedent to the indemnity applying (see Section 14.5 making the exchange's indemnity contingent on customer complying "in full" with the indemnification procedures in Section 14.7 vs. Sections 6.4 and 14.6, which don't contain this condition precedent), and application of typical IP indemnity carveouts (*e.g.*, use of item in conjunction with other material not supplied by indemnifying party, caused by modification by user, arising from use other than in accordance with applicable agreement, etc.), which apply to the exchange's indemnity in 14.4 but not to the customer's indemnity.



Customers are paying significant fees for Market Data, and the risk-sharing provisions of the liability and indemnity provisions must be made fair and mutual. The limitation of liability provisions must equally apply to customer and NYSE. The exchange's indemnity must cover redistribution, and the drafting of the indemnities (including who receives the indemnities, conditions precedent, and application of IP indemnity carveouts) must be made mutual.

## **8. Unclear and Potentially Unfair Audit and Reporting Requirements**

The reporting obligations of members under the RDA are onerous, and unfairly subjective. The member is required to record and report usage based on Section 5 of the Policies document, which is confusing, inconsistent with the terms of the RDA, and can be unilaterally changed by the exchange. The member's usage reports must comply with form and format requirements that are currently unknown, and subject to the exchange's unilateral change. And, the sufficiency of a member's records and reports is unfairly determined at the sole discretion of the exchange. In addition, in Section 7.4, Report Inaccuracies, the length of time offered to Recipient to receive a refund for over-reporting is unfair and unreasonable. This period should be extended from ninety (90) days to at least one-hundred-eighty (180) days considering the exchange is entitled to an undefined period of time to demand payment for member's under payment. The exchange needs to provide all of its members with reasonable and objective standards for reporting.

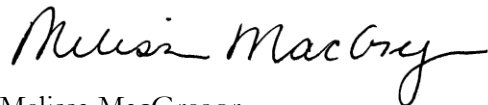
The exchange's record retention and compliance review terms are overly burdensome and excessive. Section 7.7, Records Maintenance and Availability, unfairly requires member to maintain (and make available) records for a minimum of five (5) years when industry standards dictate that members only maintain records for a maximum of three (3) years. In addition, if the exchange requires access to any member records, such records need to be requested by the exchange upon reasonable advance written notice, and such access needs to be subject to member's confidentiality, IT security, and control requirements.

Similarly, Section 13, Compliance Reviews, is overly broad and burdensome, and unfair to members. Any access by the exchange of member's sites or systems needs to be subject to the exchange's reasonable advance written notice, and compliance with member's confidentiality, IT security, and control requirements. Furthermore, Compliance Reviews by the exchange should be limited to once annually, and any third party auditors designated by the exchange must receive member's pre-approval. In order to minimize the overly intrusive nature of Compliance Reviews, the exchange's access to member's premises, systems, and books and records should be limited to only those premises, systems, and books and records that are reasonably applicable to demonstrate compliance with the Agreement. And, exchange should prepare and complete the audit at its own expense, at one mutually agreed upon member location, with no more than member's reasonable cooperation. All Compliance Reviews and other exchange access to member's sites, systems, or information, in connection with the RDA and Policies, must adhere to these same standards.

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Thank you for the opportunity to provide comments on the Agreements. We look forward to meeting with you to further clarify these issues and provide additional feedback. Please call me at 202-962-7385 to set-up a meeting between our members and senior officers at the exchange to discuss the significant issues summarized in this letter. I would also be happy to address any questions you may have.

Sincerely,



Melissa MacGregor  
Managing Director & Associate General Counsel

cc: Duncan L. Niederauer  
John K. Halvey  
Jennifer Nayar  
Michael Hodgson  
Michael Bournes  
Janet Parkhurst  
Chairman Elisse B. Walter, SEC  
Ira D. Hammerman, General Counsel, SIFMA

| Global Data Agreement for Redistributors (RDA) - Comments Log |   |                                |             |
|---|---|--------------------------------|-------------|
| Ref. in document / Clause                                     | Comment   | Reviewer                       | Review Date |
|   | Amend the order of legal precedence so that the T&C's of the GDA take priority as these will (hopefully) be negotiated and agreed.  | SIFMA Market Data Subcommittee |             |
|   | Order of Precedence should be reversed for (2) and (3) as the Policies can be changed unilaterally by NYSE  | SIFMA Market Data Subcommittee |             |
| Signature Form  | Accordingly, entire RDA should not be modified except pursuant to a writing signed by each party, with only 2 exceptions: (a) modifications for compliance with '34 Act changes (as per current agreement) and (b) fees change as permitted by applicable law, which should be made on 90 days' notice. Thus, references to "all applicable Policies" in Signature Form should be changed to NYSE Euronext Market Data Policies Version 1.0 (as opposed to an open-ended reference to policies that may be issued by NYSE in the future). | SIFMA Market Data Subcommittee |             |
| 1.1   | Only difference is this agreement now is specifically geared to NYSE proprietary products.  | SIFMA Market Data Subcommittee |             |
| 1.2   | Only difference is this agreement now is specifically geared to NYSE proprietary products.  | SIFMA Market Data Subcommittee |             |
| 2.1   |   | SIFMA Market Data Subcommittee |             |
|   | This agreement governs the NYSE Euronext data we receive from third party redistributors. This is not acceptable to us.   | SIFMA Market Data Subcommittee |             |
| 2.2   | The scope of coverage of this agreement should be more clear. Please provide list of current products for customer review. Also, see changes to definition of "Product" in Glossary comments.   | SIFMA Market Data Subcommittee |             |
| 2.3   |   | SIFMA Market Data Subcommittee |             |
| 3.1   |   | SIFMA Market Data Subcommittee |             |
| 3.2   | If the Agreement is not effective as to any Products that have not received SEC approval, then why are they included in the Schedule, and if they can be used prior to such approval then what governs the terms of use? Is use of such   | SIFMA Market Data Subcommittee |             |
| 4.1   | Must add 'Distribute' to ensure that internal use is clearly allowed.   | SIFMA Market Data Subcommittee |             |
| 4.2   | Change to "NYSE Euronext does not convey to Customer any proprietary rights or other interest in the Market Data other than the licenses and rights expressly granted."   | SIFMA Market Data Subcommittee |             |
| 4.3   | Not previously called out. Putting restrictions on a firms' use of its own work product is over-reaching.   | SIFMA Market Data Subcommittee |             |
| 5.1   | Derived Data not defined with the previous agreement and/or market data policies; See comments to Sec. 12 of the GDA policies. Amend as follows: 5.1 In General. You and your Affiliates and Service Facilitators may create Derived Data from Market Data made available under this Agreement.   | SIFMA Market Data Subcommittee |             |

|     |  |                                |  |
|-----|--|--------------------------------|--|
| 5.2 | Amend as follows: 5.2 Derived Data as Market Data. Derived Data shall be deemed to be Market Data for all purposes under this Agreement:<br>a. it is reasonably technically feasible for any person who was not involved in the creation of such Derived Data and who does not have knowledge of the formula(s) and trade secrets used to create such Derived Data to extract the Market Data from the Derived Data (whether by , calculation, translation or similar method); or<br>b. the Derived Data is used as a direct substitute for the Market Data.<br>Otherwise, Derived Data shall not constitute Market Data under this Agreement and you may Use Derived Data and may Redistribute Derived Data.  | SIFMA Market Data Subcommittee |  |
| 5.3 | This is overly broad. What about non-real-time, delayed & end of day data, or redistribution that is non-systematic and/or limited in frequency and amounts of data? This should be expressly allowed.   | SIFMA Market Data Subcommittee |  |
| 6.1 | Firms need advance notice of T&C's and they need to be clearly spelled out and not added to policies nor inconsistent with this Agreement nor imposed at anytime.  | SIFMA Market Data Subcommittee |  |
|     | 6.1(a) should state replace "Policies" with "Section 21 of this RDA"   | SIFMA Market Data Subcommittee |  |
|     | Overreaching. Firms will not share its Agreements (but should only have to confirm an agreement with similar or suitable terms and protections exists.)  | SIFMA Market Data Subcommittee |  |
| 6.1 | Delete 6.1b in its entirety and replace with "that person is permitted to receive such Market Data under a current Conforming Contract." (See revised requirements for Conforming Contract in comments to Section 6.2 below).  | SIFMA Market Data Subcommittee |  |
| 6.2 | Its unreasonable to require Redistributors to revise all existing customer agreements in accordance with 6.2, especially considering that the EUA can be changed by NYSE-Euronext at any time. Delete Section 6.2 and replace with the following: "A person may enter into a Conforming Contract with you (rather than entering into an EUA with NYSE Euronext) only insofar as you (rather than the person) maintain an Entitlement System that controls the person's receipt of Market Data. Each such Conforming Contract shall provide rights to End Users and protections for NYSE Euronext that are consistent with those rights and protections that are standard in the financial services industry for contracts between market data redistributors and their end users. Upon learning of any End User's material breach (with respect to use of the Market Data) of a Conforming Contract that it has entered into with you, you shall reasonably promptly notify NYSE Euronext of the breach." See revised definition of "Conforming Contract" in comments to Glossary. In (a), (b), and (d), the RDA should not make reference to the EUA agreement that is not being signed by the parties. In the last sentence you should be required to "use commercially reasonable efforts" to promptly notify NYSE. | SIFMA Market Data Subcommittee |  |
| 6.3 | Delete. Customers should not be required to disclose confidential customer contracts to NYSE-Euronext. This is an unreasonable request.  | SIFMA Market Data Subcommittee |  |
|     | Indemnity should be limited to "third party" claims, should not include "receipt" of Derived Data or Market Data and clause (i) should include limitation "other than as permitted under this Agreement." For mutuality, indemnity must be narrowed to apply to only NYSE Euronext and not "each Disseminating Party", or NYSE Euronext's indemnity (which currently applies only to Customer) must be extended to Customer's Affiliates.  | SIFMA Market Data Subcommittee |  |

|     |   |                                |  |
|-----|---|--------------------------------|--|
|     | Customer's indemnity shouldn't apply to claims resulting from modification/creation of Market Data/Derived Data without Customer's authorization, or receipt, use or redistribution of Market Data/Derived Data in violation of a contract with Customer. Narrow indemnity by adding after "created": "(but solely for suits or proceedings that arose from your breach of applicable law, gross negligence or willful misconduct)."  | SIFMA Market Data Subcommittee |  |
| 6.4 | In 6.4 (ii), we will only indemnify for Use or Redistribution of Market Data by on on behalf of us, other than as permitted under this Agreement due to our gross negligence or willful misconduct.   | SIFMA Market Data Subcommittee |  |
|     | This clause should be limited only to such data redistributed to the third party. "Immediately" should be replaced with "promptly". Breaches should be material under Section 6.5(b) and 6.5(d).  | SIFMA Market Data Subcommittee |  |
|     | (d) "any Fees or other amounts due and payable by the person to NYSE Euronext are overdue by more than thirty (30) days, and the person has received not less than thirty (30) days' notice of such Fees being overdue"   | SIFMA Market Data Subcommittee |  |
| 6.5 | Delete last sentence of 6.5. NYSE Euronext should indemnify Customer from any suit/proceeding that arises from Customer stopping provision of the Market Data.  | SIFMA Market Data Subcommittee |  |
| 6.6 | Delete clause in its entirety. For regulatory and confidentiality reasons and under firms' IT security policies, firms cannot provide NYSE-Euronext direct access to their products. Customer's reporting obligations should be sufficient.   | SIFMA Market Data Subcommittee |  |
| 7.1 | The information required should be reasonable and in line with industry practices, and the specific policies should be referenced. See changes to def. of Reportable Activity.  | SIFMA Market Data Subcommittee |  |
| 7.2 | Should be amended to state "You shall provide Reports in such reasonable form and format, inclusive of such information, as NYSE Euronext may reasonably request from time to time through the Product Schedule."   | SIFMA Market Data Subcommittee |  |
| 7.3 | Change "all reasonable efforts" to "commercially reasonable efforts'.   | SIFMA Market Data Subcommittee |  |
| 7.4 | Add "use commercially reasonable efforts to" before "notify NYSE Euronext", and change "immediately" to "promptly". Change "on demand" to "within 60 days of invoice receipt". Under reporting and over reporting should have mutual timeframes. Extended overpayment reporting from 90 days to 180 days.   | SIFMA Market Data Subcommittee |  |
| 7.5 | Should include a "commercially reasonable efforts" standard to comply with this request and in any event within sixty (60) days. Clarify the form of the certification.   | SIFMA Market Data Subcommittee |  |
| 7.6 | Modify Sec. 7.6(b) to ensure there is no immediate access and that we are given ample time to correct the issue or have some timeline such as 90 days that we get from Nasdaq; Increase refund time period to 180 days so as to coincide with Sec. 7.4. There should be a written notice and also cure period before noncompliance. Remove termination clause, this is excessive. Change "would have been technically possible during that period" to "can be reasonably inferred to have actually been performed by Customer based on factual knowledge regarding Customer's usage". | SIFMA Market Data Subcommittee |  |

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| 7.7 | Modify to 3 years instead of 5 years. We require a commercially reasonable standard to maintain all records, and we can only make them available to NYSE Euronext upon reasonable advance written notice, and subject to our IT security and control policies, and confidentiality restrictions.   | SIFMA Market Data Subcommittee |  |
| 8.1 | Modify to include 'reasonably feasible precautions' and also take into consideration expense, practicality and normal industry practice, consistent with each firm's agreed processes. Also, NYSE Euronext can't dictate what precautions will be via issuing revised Policies.  | SIFMA Market Data Subcommittee |  |
| 8.2 | Modify to require reasonable written request by NYSE Euronext and allow for use commercially reasonable efforts to comply within sixty (60) days. Change "detailed description" to "general description". NYSE shall not be permitted to make more than 2 such requests in a 12 month period.  | SIFMA Market Data Subcommittee |  |
| 8.3 | We require a commercially reasonable efforts standard to control all of our Distribution of Market Data to our employees. Add that NYSE Euronext won't unreasonably withhold or delay its approval of alternate technical and organizational measures. NYSE Euronext cannot have sole discretion in determining who are Affiliates and the Exchange can unilaterally rescind Affiliate approval.   | SIFMA Market Data Subcommittee |  |
| 8.4 | Modify to a commercially reasonable efforts standard, and replace "immediately" with "promptly" and only if permitted by applicable law. Delete "suspected".   | SIFMA Market Data Subcommittee |  |
| 8.5 | Modify such that all requests must be reasonable and any requested cooperation shall be at NYSE Euronext's expense, and not contrary to the interests of the firm.   | SIFMA Market Data Subcommittee |  |
| 8.6 | Replace "all steps necessary" with "commercially reasonable efforts requested in writing by NYSE Euronext". Replace "immediate" with "prompt". Delete last clause - "including all such steps as NYSE Euronext may specify in writing." All changes shall be at NYSE Euronext's expense.   | SIFMA Market Data Subcommittee |  |
| 9.1 | Modify to permit allowance for invoices in a good faith or bona fide dispute. Replace 30 days with 60 days.  | SIFMA Market Data Subcommittee |  |
| 9.2 | Unilaterally imposed price changes are a substantial risk. Fee increases should capped at increases in U.S. Department of Labor Producer Price Index for Technical Support, Training, and Other Services Related to Software Publishing (Product Code 511210-503), and limited to only once per annum, in order to give firms some budgetary certainty. Increases should also have a reasonable cap.   | SIFMA Market Data Subcommittee |  |
| 9.3 | Third Party only would be liable for fees in third party agreement as long as agreement is in place  | SIFMA Market Data Subcommittee |  |
| 9.4 | Delete reference to "Derived Data". Imposing NYSE Euronext fees on Customer's distribution of its own Derived Data and products is overreaching. We can only use commercially reasonable efforts to collect from End Users, and we can only do so as NYSE Euronext may "reasonably" require. Collections for Market Data usage by End Users should only apply if expressly set forth in the Product Schedule. NYSE Euronext cannot impose new collections at will. | SIFMA Market Data Subcommittee |  |
| 9.5 | Modify for "reasonable" pay schedule and "reasonable" instructions prescribed by NYSE. Clarify whether applicable taxes will be charged or collected.  | SIFMA Market Data Subcommittee |  |

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| 9.6  | There should be no termination nor interest charged for failure to pay without notice and no termination for good faith disputes. Payments shall be due in 60 days.   | SIFMA Market Data Subcommittee |  |
| 9.7  | Modify such that collection costs are limited to third-party costs and not internal NYSE administrative costs.  | SIFMA Market Data Subcommittee |  |
| 10.1 | Modify such that firms may "use commercially reasonable efforts" to receive and Use and Redistribute in a manner that complies with all applicable laws and regulations. "Applicable laws" needs to be defined by NYSE.   | SIFMA Market Data Subcommittee |  |
| 10.2 | Delete the last clause: "that may reasonably...".   | SIFMA Market Data Subcommittee |  |
| 10.3 | Use of term "Policies" should only refer to initial set of Policies (assuming this is agreed by the parties), as RDA should not be able to be changed without mutual agreement, except as set forth in comments to Signature Form above.  | SIFMA Market Data Subcommittee |  |
| 10.4 | Minimum notice should be 120 days. Strike "or such shorter notice as the law of NYSE Euronext's regulators may require" (already covered under Sec. 10.1.)  | SIFMA Market Data Subcommittee |  |
| 11.1 | Modify to NYSE Euronext approval under 11.2 (a) shall not be unreasonably withheld, delayed, or conditioned. Modify to allow for ordinary use of on-site consultants/contractors, staff augmentation, etc. without additional approvals of NYSE Euronext. Use of such personnel interchangeably with Customer employees is standard practice in the industry. Delete: 11.1(b)(i) (separate agreement). Modify (b)(ii) "to comply with such additional terms as NYSE Euronext may reasonably prescribe." 11.1(e) Any policy change to definition of SF requires both parties' written agreement. | SIFMA Market Data Subcommittee |  |
| 11.2 | Modify 11.2 (b) to "reasonable" discretion, and its consent under clause 11.1(a) "reasonably" conditional upon:". Delete last sentence of (b) - not workable for large multinational companies. "Distribute" to ensure that internal use is clearly defined.  | SIFMA Market Data Subcommittee |  |
| 11.3 | NYSE Euronext's ability to revoke approval of a Service Provider should be on a "for cause" basis, as opposed to a "for convenience" basis. NYSE Euronext should not have power to decide that an entity in Customer's corporate family is not an Affiliate, as NYSE Euronext could exponentially increase Customer's fees by requiring multiple licenses within a corporate family.  | SIFMA Market Data Subcommittee |  |
|      | Modify 11.4(a) - use commercially reasonable efforts standard to ensure obligations of Service Facilitators and Affiliates. Modify to "promptly" stop providing Market Data rather than immediately.  | SIFMA Market Data Subcommittee |  |
|      | Modify 11.4(b)- any determination by NYSE that Affiliates or Service Providers have failed to act in accordance should be subject to a reasonable standard. Use commercially reasonable efforts to cure the breach. 15 day cure period.   | SIFMA Market Data Subcommittee |  |
|      | Modify 11.4(c) to state that "In no event shall you be liable for the obligations of a non-banking Affiliate or Service Facilitator." Firms should not be liable unless they did not exercise its reasonable efforts to maintain compliance by SF or affiliate. Alternatively, if NYSE requires contract with SF, then firm should have zero liability or responsibility.   | SIFMA Market Data Subcommittee |  |

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| 11.4 | 11.4(d) - we request a commercially reasonable efforts standard to inform all Affiliates and Service Facilitators of all relevant provisions of the Agreement, and also request a commercially reasonable efforts standard to promptly provide NYSE Euronext with a full description when learning that an Affiliate failed to comply with terms.   | SIFMA Market Data Subcommittee |  |
| 12.1 | Modify 12.1(a) to 120 days. 90 days notice for removal of a core product that may require updates to customer's systems or notification to downstream clients is often not enough time. Perhaps a tiered notification schedule dependant on the impact of the change would be considered?   | SIFMA Market Data Subcommittee |  |
|      | Please provide examples of changes (and reasons thereof). Please also confirm this does not include policies & fees. Notices should be in writing.  | SIFMA Market Data Subcommittee |  |
|      | Customer should have right to cancel with 5 days notice of any modification of data from time of announcement up to 30 days after the modification takes place.   | SIFMA Market Data Subcommittee |  |
|      | NYSE Euronext should promptly refund any up front payments if due to changes unacceptable to user firms and also due to termination, suspensions of service, or discontinuance.   | SIFMA Market Data Subcommittee |  |
|      | Fees should be reduced to the extent any change or discontinuance materially reduces/degrades product functionality/utility.  | SIFMA Market Data Subcommittee |  |
| 12.2 | Modify to require written notice. Strike "not reasonably practical"; only exception should be if the modification is driven by regulation. Notice must be written. Modify to exclude changes affecting prices - always required 90 days notice.   | SIFMA Market Data Subcommittee |  |
| 13.1 | Modify (a) as follows: Compliance Reviews may take place no more than once a year. Clarify whether the Authorised representatives will be independent or an NYSE Euronext regulatory employee. The independent representative should be subject to the Distributor's prior reasonable approval and must sign confidentiality agreement. NYSE Euronext must provide reasonable advance notice. Modify to "Distributor shall make available for examination..." (delete "access to"). Compliance reviews shall be subject to Distributor's IT security and control policies, confidentiality restrictions, confidentiality obligations to 3rd parties. Access shall be restricted to applicable systems, controls, and policies. Compliance review requires 90 days written notice, and will occur upon a mutually agreed upon date and location. Each of the following rights in 13.1(a) shall be granted "solely" rather than "in order" for them to carry out compliance reviews. Review period shall not be longer than 3 years, or until the date of the completion of the previous audit, whichever is shorter. | SIFMA Market Data Subcommittee |  |
|      | Modify (b) as follows: replace "fully" with reasonably"   | SIFMA Market Data Subcommittee |  |
|      | Modify (c) - replace with "use commercially reasonable efforts to ensure..."  | SIFMA Market Data Subcommittee |  |
| 13.2 | Should not be applicable to Distributors that are banks.  | SIFMA Market Data Subcommittee |  |



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|------|--|--------------------------------|--|
| 13.3 | Modify for penalties for a 5% discrepancy (not 3%) which is industry standard. Good faith disputes should be excluded. Each side pays own costs for Compliance Reviews. Add additional wording around audit procedure - see FISD Best Practices document. Firms must have right to respond to NYSE Euronext audit findings within 90 days, this clause currently presents findings and fees as a fait accompli. Firms will pay undisputed underreported fees from a signed closed audit within 60 days after receipt of invoice. Delete last sentence. | SIFMA Market Data Subcommittee |  |
| 14.1 | Customer should only acknowledge NYSE's <b>assertion</b> that it has proprietary rights. Further, and very importantly, there should be an express, explicit carveout to make it clear that this assertion does not apply to any Derived Data. Change from "acknowledgement" to "assertion" by NYSE.   | SIFMA Market Data Subcommittee |  |
| 14.2 | Make first sentence clearly mutual to apply to transfers of interest in any IP, whether of either party or any 3rd party. The last sentence should exclude the rights granted in this Agreement.   | SIFMA Market Data Subcommittee |  |
| 14.3 | Cooperation must be limited to commercially reasonable cooperation as determined by our counsel. This assistance will only be provided for Market Data clearly owned under IP law by the Disseminating Party and not for Derived Data.   | SIFMA Market Data Subcommittee |  |
| 14.4 | 14.4(a) - remove "NYSE Products" and replace with "Market Data", remove "NYSE" and replace with "NYSE Euronext";   | SIFMA Market Data Subcommittee |  |
|      | For mutuality, indemnity must extend to Customer's Affiliates or all of Customer's indemnities in RDA should be narrowed to apply to only NYSE Euronext and not "each NYSE Euronext Company" or any Disseminating Party.   | SIFMA Market Data Subcommittee |  |
| 14.4 | 14.4(b) - remove in its entirety. The next paragraph should read "indemnify, defend, and hold harmless you against any claims...in accordance with this Agreement, of the Market Data infringes any Intellectual Property Rights of that third party".   | SIFMA Market Data Subcommittee |  |
|      | Indemnity should cover affiliations and Distribution or Redistribution.  | SIFMA Market Data Subcommittee |  |
| 14.5 | Modify: "The indemnity in clause 14.4 shall not apply to any claim that results in whole from:"  | SIFMA Market Data Subcommittee |  |
|      | 14.5(a) - request that ", recommended, or approved" be inserted right before "by NYSE Euronext";   | SIFMA Market Data Subcommittee |  |
|      | Add to end of sentence for (a), (b) and (c) "that was not recommended, required or approved by NYSE Euronext".   | SIFMA Market Data Subcommittee |  |
|      | 14.5(b) - request that "provided such means was not recommended or approved by NYSE Euronext" be inserted at the end of the sentence;  | SIFMA Market Data Subcommittee |  |
|      | Please clarify that the means have not been "required by or on behalf of NYSE Euronext".   | SIFMA Market Data Subcommittee |  |
|      | 14.5(c) - request that "provided such means was not recommended or approved by NYSE Euronext" be inserted at the end of the sentence;  | SIFMA Market Data Subcommittee |  |
|      | 14.5(d) - request that "and due to your gross negligence or willful misconduct" be inserted at the end of this sentence.   | SIFMA Market Data Subcommittee |  |
| 14.6 | Indemnity should be made subject to the indemnified party complying in full with clause 14.7. Limitations similar to limitations in 14.5 must apply to Customer's indemnity.   | SIFMA Market Data Subcommittee |  |
|      | Delete the word "receipt"; indemnity obligation should only arise if firm does not use the Market Data in accordance with the agreement (i.e. only if outside the scope of the agreement).   | SIFMA Market Data Subcommittee |  |

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|       | For mutuality, indemnity must be narrowed to apply to only NYSE Euronext and not "each NYSE Euronext Group Company", or NYSE Euronext's indemnity (which currently apply only to Customer) must be extended to Customer's Affiliates.   | SIFMA Market Data Subcommittee |  |
|       | Indemnity must only apply where Customer's Use was in violation of this Agmt. Its overreaching to make Customer indemnify NYSE Euronext for the exclusions in 14.5 in all cases.  | SIFMA Market Data Subcommittee |  |
| 14.7  | Modify. 14.7(a) - "is entitled" should be replaced with "seeks". Change 5 days to 30 days (notification of claim)   | SIFMA Market Data Subcommittee |  |
|       | 14.7(c) - request that the word "Indemnified" be changed to "Indemnifying" in the first line. Add "impose any liability or obligation on the Indemnified Party" after the words "reasonably likely". Add new final clause "without the Indemnified parties prior written consent"   | SIFMA Market Data Subcommittee |  |
| 14.8  | Should only apply to Redistribution (not Distribution/Use), requirements shall not apply to Derived Data. All rights therein belong to creating firm. We request that 14.8 use a commercially reasonable efforts standard. Reference to Policies should instead reference Section 7 of current Policies, as agmt shouldn't be modifiable without mutual written agmt except as set forth in comments to "Signature Form" above. | SIFMA Market Data Subcommittee |  |
| 15.1  | Delete "Not more than 60 days notice" (difficult in the event a customer is winding down a product). Termination by the Exchange should only be for cause. Mid-term termination will cause material and critical business continuity issues for clients. Customer can terminate for any reason on 30 days written notice.   | SIFMA Market Data Subcommittee |  |
| 15.2  | Minimum Term requires additional clarification as a Product Schedule has not been provided for review. We should not be required to maintain any minimums on feeds. Delete the word "material" following Section 15.2c.   | SIFMA Market Data Subcommittee |  |
| 15.3  | Amend from 5 days to 30.  | SIFMA Market Data Subcommittee |  |
| 15.4  | We require additional periods of time in section 15.4 (a)(i) and (ii), and 15.4(b). Sec. 15.4(a) (i) should be at minimum with 30 days written notice that fees are overdue by 60 days or more; Sec. 15.4(a)(ii) should be extended over a two year period. Sec. 15.4(b) should be at minimum of 60 days.   | SIFMA Market Data Subcommittee |  |
| 15.5  |   | SIFMA Market Data Subcommittee |  |
| 15.6  |   | SIFMA Market Data Subcommittee |  |
| 15.7  |   | SIFMA Market Data Subcommittee |  |
| 15.8  |   | SIFMA Market Data Subcommittee |  |
| 15.9  |   | SIFMA Market Data Subcommittee |  |
| 15.10 |   | SIFMA Market Data Subcommittee |  |
| 16.1  | Please define "Data License Agreement for Trading Members" (which is not defined).  | SIFMA Market Data Subcommittee |  |
| 16.2  | Delete. Amendments to contracts must only be by mutual agreement.   | SIFMA Market Data Subcommittee |  |
| 16.3  | Overly burdensome to have different terms between the two Agreements. Need to include cta policies as link as they are sometime different than NYSE.  | SIFMA Market Data Subcommittee |  |
| 16.4  | Termination or modification without prejudice to accrued rights, liabilities, etc. should apply to "either party". No termination fees shall apply.   | SIFMA Market Data Subcommittee |  |
| 16.5  |   | SIFMA Market Data Subcommittee |  |

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| 17.1  | We request that the following language be added directly before the period; "but in no event later than corrected for any other recipients of the data".   | SIFMA Market Data Subcommittee |  |
|       | Firms will need NYSE Euronext to exclude from this section the indemnity for infringement as well as any fraud, gross negligence or willful conduct.   | SIFMA Market Data Subcommittee |  |
|       | NYSE to warrant that it has the right to license the Data to firms and that the Market Data is non-infringing.   | SIFMA Market Data Subcommittee |  |
| 17.2  | We understand that NYSE Euronext cannot warrant the 3rd party data, but expect a warranty for NYSE Euronext data. We request that NYSE Euronext be excluded from Disseminating Parties in this provision.  | SIFMA Market Data Subcommittee |  |
| 17.3  | We understand that NYSE Euronext must disclaim liability for the 3rd party data, but expect NYSE Euronext to be liable for their own data. We request that NYSE Euronext be excluded from Disseminating Parties in this provision.   | SIFMA Market Data Subcommittee |  |
| 17.4  | Include condition that NYSE has adopted commercially reasonable standards to prevent such "unauthorized access."   | SIFMA Market Data Subcommittee |  |
| 17.5  | Rewrite Section to say firms are responsible for determining the usefulness of the products they use. Delete first sentence and other contrary terms.  | SIFMA Market Data Subcommittee |  |
| 17.6  |  | SIFMA Market Data Subcommittee |  |
| 17.7  | Liability cap must apply to both parties. We request that the cap be 3 times fees paid and payable.  | SIFMA Market Data Subcommittee |  |
|       | Suggested wording: Subject to clause 17.10, and except as relates to NYSE Euronext's indemnification obligations herein or NYSE Euronext's fraud, gross negligence or willful misconduct, the aggregate liability of all NYSE Euronext Group Companies (taken together) arising under or in connection with this Agreement in any calendar year shall not exceed the total of three times the Fees paid and payable by you in respect of that calendar year. | SIFMA Market Data Subcommittee |  |
| 17.8  |  | SIFMA Market Data Subcommittee |  |
| 17.9  | This should exclude to the extent NYSE causes the problem.   | SIFMA Market Data Subcommittee |  |
| 17.10 | Add liability exclusions for NYSE Euronext's indemnification obligations, gross negligence, willful misconduct and breach of confidentiality obligations. These liability carveouts are market standard.   | SIFMA Market Data Subcommittee |  |
| 18    | Delete "extraordinary weather conditions" "outbreak of infectious disease" "labour dispute" "communications or power failure" and "equipment or software malfunction" Each party should be liable for breaches arising from these events to the extent prevention of the event was within the party's reasonable control. Delete payment obligation exception.   | SIFMA Market Data Subcommittee |  |
| 19.1  | Delete provision. Agreement should not be able to be amended without mutual agreement of both parties, unless by regulatory mandate. See comments to Signature Form above.   | SIFMA Market Data Subcommittee |  |
| 19.2  | Delete.  | SIFMA Market Data Subcommittee |  |

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|      | Replace with: The RDA will not be modified except pursuant to a writing signed by each party, with only two exceptions: modifications for compliance with the Exchange Act and fee changes as permitted by applicable law. Without limiting the foregoing, a modification that constitutes a proposed rule change will not take effect until after Commission approval. In the case of any amendment, NYSE Euronext will provide you with one hundred twenty (120) days' prior notice of the proposed effective date of the change by sending a separate email to _____ containing the heading: "Proposed Amendment to RDA or Market Data Policy" and setting forth the proposed change, the reason for it, and the process for you to comment on the proposed change. NYSE Euronext will consider all comments and publish a summary of its response to those comments. Material changes will only occur no more than once per calendar year. | SIFMA Market Data Subcommittee |  |
| 19.3 |  |                                |  |
| 19.4 | Delete.  | SIFMA Market Data Subcommittee |  |
| 20.1 | We request that 20.1(d) should exclude competitors or allow for termination in such an event. Delete "or a material part" phrase from clause (d).  | SIFMA Market Data Subcommittee |  |
| 20.2 | Consent should not be unreasonably withheld or delayed. Assignment rights should be equal to the Exchange's.   | SIFMA Market Data Subcommittee |  |
| 21.1 | Notices must be by regular mail to designated notice address, not email/website posting. Firms don't have sufficient resource to monitor websites and email notice is not reliable, due to staff continuity/technology issues (e.g. spam blockers).  | SIFMA Market Data Subcommittee |  |
| 21.2 |  | SIFMA Market Data Subcommittee |  |
| 21.3 |  | SIFMA Market Data Subcommittee |  |
| 22.1 |  | SIFMA Market Data Subcommittee |  |
| 22.2 |  | SIFMA Market Data Subcommittee |  |
| 22.3 |  | SIFMA Market Data Subcommittee |  |
| 22.4 |  | SIFMA Market Data Subcommittee |  |
| 23.1 |  | SIFMA Market Data Subcommittee |  |
| 23.2 |  | SIFMA Market Data Subcommittee |  |
| 23.3 | Publicity restrictions should be mutual.   | SIFMA Market Data Subcommittee |  |
| 23.4 |  | SIFMA Market Data Subcommittee |  |
| 23.5 |  | SIFMA Market Data Subcommittee |  |
| 23.6 | Delete. It is impracticable for Customer to obtain all required consents, and -- if EU Data Privacy is to be covered -- NYSE Euronext should make reps re its processing of personal data. What personal data does NYSE Euronext need? This should apply to the extent required by law, in conformity with applicable law, rule or regulation, etc., and be made mutual.   | SIFMA Market Data Subcommittee |  |
| 23.7 | We request that this clause be revised to reflect comments made to Section 6.4, and that "an may likewise proceed against any person that obtains Market Data other than as this Agreement Contemplates" be removed as this sentence serves no purpose.  | SIFMA Market Data Subcommittee |  |
| 24.1 |  | SIFMA Market Data Subcommittee |  |
| 24.2 |  | SIFMA Market Data Subcommittee |  |
| 24.3 |  | SIFMA Market Data Subcommittee |  |
| 24.4 |  | SIFMA Market Data Subcommittee |  |
| 24.5 |  | SIFMA Market Data Subcommittee |  |
| 24.6 |  | SIFMA Market Data Subcommittee |  |
| 24.7 |  | SIFMA Market Data Subcommittee |  |