



November 14, 2017

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE., Washington, DC 20549

Re: ***NYSE and Cboe Market Data Fee Increases to Become Effective in January 2018***

Dear Secretary Fields,

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is concerned that the 2018 NYSE and Cboe market data fee pricing publications are more examples of the exchanges’ unfettered and unwarranted price increase on proprietary exchange data. NYSE Arca proposes to increase the Non-Display Fee for the NYSE Arca Integrated feed by approximately 50% effective January 1, 2018 (“NYSE Pricing Proposal”).<sup>2</sup> Additionally, Cboe plans to introduce new fees for Non-Display Usage of Equity Depth market data for the BZX Exchange, BYX Exchange, EDGX Exchange, and EDGA Exchange, subject to regulatory approval, effective January 2, 2018 (“Cboe Pricing Proposal”).<sup>3</sup>

SIFMA is commenting in advance of NYSE and Cboe (together, the “Exchanges”) filing the required rulemaking proposals under the Securities Exchange Act of 1934 (the “Exchange Act”) because these filings are typically made only weeks or days before the fees become effective. This timing does not give commenters adequate time to review and respond to the proposals, nor does it provide the Commission staff with sufficient time to review the proposals and comments as required by the Exchange Act. SIFMA hopes that this advance comment will provide the Commission staff with reasonable notice of the Exchange’s intentions well in advance of the filings.

In 2008, two years after becoming a public company, NYSE began increasing fees for non-core data and the other exchanges quickly followed suit. Despite SIFMA and others expressing

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<sup>1</sup> SIFMA represents these broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

<sup>2</sup> NYSE PDP: Market Data Pricing (January 1, 2018 \*pending effectiveness with the SEC) *available at* [https://www.theice.com/publicdocs/nyse/data/NYSE\\_Market\\_Data\\_Pricing\\_2018.pdf](https://www.theice.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing_2018.pdf).

<sup>3</sup> Cboe Notice Regarding Changes to Cboe U.S. Market Data Policies Effective January 2, 2018 *available at* [http://cdn.batstrading.com/resources/market\\_data/2018/Notice-Regarding-Changes-to-Cboe-US-Market-Data-Policies-Effective-January-2-2018.pdf](http://cdn.batstrading.com/resources/market_data/2018/Notice-Regarding-Changes-to-Cboe-US-Market-Data-Policies-Effective-January-2-2018.pdf)



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concern about these fees, the Commission has allowed the exchanges to continue raising prices on proprietary market data, thus allowing market data to be a primary source of income for the exchanges.<sup>4</sup> Exchange revenues in 2016 were driven by a 29.2% increase in market data revenues to a total of \$5.4 billion.<sup>5</sup>

Moreover, in *NetCoalition I*, the United States Court of Appeals for the District of Columbia Circuit said that market data fees must be fair and reasonable, represent an equitable allocation of fees, and be nondiscriminatory. In determining whether the data fees are fair and reasonable, the Commission must conclude that the exchanges provided sufficient evidence demonstrating that the fees are constrained by market prices.<sup>6</sup>

SIFMA believes that the NYSE and Cboe Pricing Proposals are clear examples of unjustified price increases pursuant to *NetCoalition I and II*. The Commission staff should not approve these proposals, even if filed with immediate effectiveness, because the fees are unlawful on their face. Considering the recent ruling in *Susquehanna*, the Commission must conduct its own analysis to ensure proprietary market data feeds are constrained by competition prior to approving the fees as fair and reasonable.<sup>7</sup>

SIFMA respectfully requests the Commission conduct a thorough review of the NYSE and Cboe Pricing Proposals and reject the proposed increases as unfair and unreasonable.

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<sup>4</sup> Letter from Ira Hammerman, SIFMA, and Markham Erickson, NetCoalition, to SEC to comment on File No. SR-NYSEARCA-2010-97, Exchange Act Release No. 63291 (December 8, 2010); Letter from Ira Hammerman to SEC commenting on Release No. 34-69272, File No. SR-NYSE-2013-23 (April 29, 2013); Letter from Ira Hammerman to SEC commenting on Release No. 34-69553; File No. SR-NYSEMKT-2013-40 (June 6, 2013); letter from Ira Hammerman to SEC commenting on SEC Release No.34-71503; File No. SR-NYSE-2014-13 (February 11, 2014); Letter from Ira Hammerman to SEC commenting on Release No. 34-72688; File No. SR-BATS-2014-028 (August 22, 2014); Letter from Ira Hammerman to SEC commenting on Release No. 34-72750; File No. SR-NYSE-2014-40 (August 22, 2014); Letter from Ira Hammerman to SEC commenting on Release No. 34-73011; File No. SR-NYSEARCA-2014-93 (October 2, 2014).

<sup>5</sup> Jo Parsons, *Exchange Data Made Up a Third of Revenues in 2016* (July 11, 2017), available at <http://www.finregalert.com/exchange-data-made-up-a-third-of-revenues-in/>.

<sup>6</sup> See *NetCoalition V. SEC*, 615 F.3d 525 (D.C. Cir. 2010) (“NetCoalition I”); *NetCoalition v. SEC*, 715 F.3d 342 (D.C. Cir. 2013) (“NetCoalition II”); and *Susquehanna International Group v. SEC*, 82 FR 44239 (D.C. Cir. 2017).

<sup>7</sup> *Susquehanna International Group v. SEC*, 82 FR 44239 (D.C. Cir. 2017).



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SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions or need any additional information, please contact me at 202-962-7385 or [mmacgregor@sifma.org](mailto:mmacgregor@sifma.org).

Sincerely,

/Melissa MacGregor/

Melissa MacGregor  
Managing Director and Associate General Counsel

cc: Brett Redfearn, Director, Division of Trading and Markets