



Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Petition for Transparency of Funding of Consolidated Market Data

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”), Investment Company Institute (“ICI”), Managed Funds Association (“MFA”) and Council of Institutional Investors (“CII”) and the undersigned capital market participants (collectively, the “Petitioners”)¹ are writing to petition the Securities and Exchange Commission (the “SEC” or “Commission”) to require that the self-regulatory organizations (“Plan Participants”) that manage the three joint-industry plans (the “Plans”) under which the securities information processors (“SIPs”) collect and disseminate consolidated equity market data publicly disclose basic information about the funds collected from users under the Plans and how those funds are used. In brief, we are requesting that the Commission amend the Plans to require quarterly disclosure, at a minimum, of (i) the amounts of fee revenue, by category, received by the Plans, and revenues received as a result of audits; (ii) the amounts that are paid out to the Plan Participants, processors, administrators, and others; and (iii) amounts that are paid to operate and enhance the SIPs. We believe these disclosures are necessary for stakeholders to be able to evaluate the appropriateness of SIP fees in general and how the Plan Participants are managing the SIPs, which are intended to operate as public utilities for the benefit of those stakeholders.

Background

In December 2017, a broad cross-section of 24 equity market participants, including many of the undersigned firms, petitioned the SEC to actively address widespread concerns over the high costs of market data and connectivity fees charged by exchanges and under the SIP plans.² That petition asked the Commission to take action, among other things, to require more transparency of all market data revenues and related costs and to require that SIP fee filings be subject to notice and comment before they may become effective. The Petitioners endorse and support all the recommendations contained in that letter.

Since that time, the Commission has taken various actions to require that the exchanges and the SIPs provide a high and appropriate level of transparency when they seek to justify new fees and fee increases, and to reject fee filings that fail to provide a clear basis to support a decision that they meet the standards established by the Securities Exchange Act of 1934 (the “Act”). The staff has also provided additional guidance concerning this issue.³ Accountability for transparency in market data and

¹ Descriptions of the signing associations and names of signing firms are provided in the attached Appendix.

² Letter to Brent J. Fields, Secretary, SEC (December 6, 2017), avail. at <https://www.sec.gov/rules/petitions/2017/petn4-716.pdf>.

³ Securities Exchange Act Release No. 83755 (July 31, 2018), avail. at <https://www.sec.gov/litigation/opinions/2018/34-83755.pdf> (order granting motion for stay of fee amendment to the Consolidated Tape Association (CTA) Plan) (“Bloomberg Order”); Securities Exchange Act Release No. 83148 (May 1, 2018), 83 FR 20126 (May 7, 2018) (abrogating fee amendment to the CTA Plan); Securities Exchange Act

connectivity fee filings is particularly necessary because exchanges have a natural monopoly over market data their members generate with their trading activity, as well as a monopoly over access to their own markets, and they collectively control the governance of and the setting of fees for the Plans.

The Petitioners commend these recent actions, which we believe are important and constructive steps to address long-standing concerns by the securities industry and investors. At the same time, it remains the case that there is an almost complete lack of transparency about exchange proprietary and SIP market data and connectivity revenues and related costs. The need for more transparency is a theme frequently expressed by equity market stakeholders, including participants at the Roundtable on Market Data and Market Access hosted by the Commission last October.⁴

The Commission Should Amend the Plans to Force Greater Transparency

While the Commission considers additional ways to address transparency of proprietary market data and make progress on other fronts, including reexamining the components of “core data”, Plan committee governance reform, and considering a “competing consolidator” alternative to the current SIP structure, we believe it should act without delay to mandate greater transparency around SIP fees. In particular, we propose that the Commission use its authority to amend the Plans to require that the governing committees for the Plans disclose, each quarter, at a minimum, the following items of information:

- The fee revenue received by each of the Plans, in the aggregate and segmented by fee type – professional subscribers, non-professional subscribers, non-display, quote query, access fees, redistribution charges, or other fee categories. Separately, the Plans should disclose the amounts of any revenues received resulting from audits of market participants, as well as the fee categories that are the subject of such audits.
- The dollar amounts that are paid to each of the Plan Participants, the Plans’ processors and administrators, and any other amounts paid to subcontractors or for other operational purposes.
- The dollar amounts, if any, that are paid for system operations, upgrades and enhancements.

There is a strong public interest in transparency around SIP funding and how funds are used. As the Commission has noted, Congress intended that the consolidated data feeds would “form the heart of the national market system”.⁵ Under the so-called “display rule”⁶, vendors and broker-dealers are required to display market data from all market centers that trade a stock, and therefore they must buy and display consolidated data distributed by the SIPs, which are owned by the two largest exchanges. The Commission has stated that investors “must have [consolidated data] to participate in the U.S. equity markets” and that “preserving the integrity and affordability of the consolidated data stream” is “one of the Commission’s most important responsibilities.”⁷ Finally, “[b]ecause the three joint-industry plans

Release No. 84432 (October 16, 2018), avail. at <https://www.sec.gov/litigation/opinions/2018/34-84432.pdf> (order setting aside market data fees of NYSE Arca, Inc. and Nasdaq Stock Market LLC) (“SIFMA Order”); Securities Exchange Act Release No. 84433 (October 16, 2018), avail. at <https://www.sec.gov/litigation/opinions/2018/34-84433.pdf> (order remanding for review, as a denial of access, various fee changes filed by various national securities exchanges and national market system plan participants); Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (disapproving proposed connectivity fee changes by BOX Exchange LLC); SEC Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), avail. at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

⁴See <https://www.sec.gov/spotlight/equity-market-structure-roundtables>.

⁵ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37497, 37503 (June 29, 2005), citing H.R. Rep. No. 94-229, 94 Cong., 1 Sess. 93 (1975).

⁶ 17 C.F.R. § 242.603(c).

⁷ Bloomberg Order, *supra* note 3, at 4.

responsible for disseminating required NMS core data are monopolistic providers of such data, there is no market competition that can be relied upon to set prices.” Therefore, consolidated data fees “need to be tied to some type of cost-based standard” to determine whether they are fair and reasonable⁸, and “to preclude excessive profits if fees are too high.”⁹

Notwithstanding this status of the Plans essentially as public utilities, investors and the industry have no voting representation on the governing committees and no visibility into how decisions on the setting of fees and use of SIP funds are made by the voting representatives. At the same time, Plan Participants as a group are conflicted in their management of the SIPs, given their financial interest in the distribution of SIP revenues and in their individual proprietary market data feeds. The value of these feeds could be undercut depending on whether and how SIP feeds are enhanced to make them more useful for trading purposes by more participants.

The need for basic transparency is especially acute because of these conflicts and this closed governance structure. The Plans do not now disseminate any information on how much fee revenue the Plans receive. Understanding how fee revenue available to the Plans compares to the amounts distributed to Plan Participants, the affiliated processors and administrators of the Plans, and for other purposes, would allow market participants to better assess and provide input on the management of the SIPs. Data on how much is being spent to enhance SIP technology and functionality bears on the extent to which Plan Participants are investing in the future development of the SIPs, compared to the funds that are distributed to the Plan Participants. Information on amounts collected from audits and the matters covered would allow stakeholders that are subject to audits to assess and question, as appropriate, the dependence of SIP revenues on audits, how audit topics are prioritized, how these factors change over time, and the reasons for such changes.

Further, disclosure of revenues by the type of fee charged would allow stakeholders to assess how the mix of SIP revenues changes over time based on type of subscriber (professional vs. non-professional) or type of use (display, non-display, or per quote). This data would help to inform views on how fairly fee burdens are allocated, and how much Plan revenue is generated from non-display use.¹⁰ Plan Participants presently voluntarily disclose each quarter the percentage allocation of fee revenue among these categories, as well as the amounts distributed to individual Plan Participants, but these disclosures are not required by the Plans and could be revoked at any time by majority vote of the governing committees.

Separately, additional transparency would allow equity market participants to better assess the appropriate level of SIP fees in general and comment on fee changes. The Commission has repeatedly emphasized that, because the Plans constitute monopolies established by government fiat, SIP fees should bear some relationship to cost, and it has expressed a preference for consensus among market participants to assess reasonableness of market data fees.¹¹ If reasonableness depends on cost and stakeholders have no information on cost, however, it is hard to see how they can provide informed comment on SIP fees in general or fee changes, nor does it seem possible to form any consensus on these questions.

The cost incurred by individual exchanges in disseminating their own data to the SIPs is also a factor affecting the total cost to provide SIP data, but transparency about Plan fees and expenses should

⁸ *Id.* at 4-5.

⁹ SIFMA Order, *supra* note 3, at 5.

¹⁰ In recent years, the Plans increasingly have come to rely on non-display and access fees as revenue sources. *See* Bloomberg Order, at 5-7.

¹¹ *See, e.g.,* Bloomberg Order, at 14-15.

not depend on working out details on how to account for costs incurred by each of the Plan Participants. The need to evaluate how Plan Participants as a group manage SIP expenses exists regardless of how individual exchanges manage their own costs in sending data to the SIPs. The group-level data bears directly on how the SIPs are managed as utilities, is known to the Plan Participants and immediately available, and could be provided with virtually no effort or expense.

The Commission Has Broad Authority and Reason to Act

The Commission has broad plenary authority under Section 11A of the Act, among other things, “by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or subsystem thereof) or one or more facilities thereof.”¹² Under Rule 608 of Regulation NMS, the Commission may propose and adopt amendments to any national market system plan if it finds, after notice and opportunity for comment, that the amendment is necessary or appropriate in the public interest, for the protection of investors, the maintenance of fair and orderly markets, and in furtherance of the other goals of the Act.¹³

Therefore, the Commission has ample authority to amend the Plans to require Plan Participants to disclose the requested information. It is hard to imagine a more compelling case to use this authority, considering the vital public stake in the financing of the SIPs, the Commission’s own prior statements, the expressed desire of public stakeholders for transparency, and the unwillingness of a majority of Plan Participants to provide it.

* * *

If you have any questions or wish to further discuss this petition with us, please contact: SIFMA (T.R. Lazo at 202-962-7383 or tlazo@sifma.org); ICI (Susan Olson at 202-326-5800 or susan.olson@ici.org); MFA (Jennifer Han at 202-730-2600 or jhan@managedfunds.org); or CII (Ken Bertsch at 202-261-7098 or Ken@cii.org).

Sincerely,

/s/ T.R. Lazo
T.R. Lazo
Managing Director and
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/s/ Jennifer Han
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/s/ Susan M. Olson
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/s/ Ken Bertsch
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¹²15 U.S.C. 11A 78k-1((a)(3)(B)).
¹³ 17 C.F.R. § 242.608(a)(2).

Appendix

Descriptions of Signing Associations

The Securities Industry and Financial Markets Association (“SIFMA”) is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

The [Investment Company Institute](#) (“ICI”) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$23.5 trillion in the United States, serving more than 100 million US shareholders, and US\$6.9 trillion in assets in other jurisdictions. ICI carries out its international work through [ICI Global](#), with offices in London, Hong Kong, and Washington, DC.

Managed Funds Association (“MFA”) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has cultivated a global membership and actively engages with regulators and policymakers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

The [Council of Institutional Investors](#) (“CII”) is a nonprofit, nonpartisan association of U.S. asset owners, primarily pension funds, state and local entities charged with investing public assets and endowments and foundations, with combined assets of \$4 trillion. Our associate members include non-U.S. asset owners with more than \$4 trillion in assets and a range of asset managers with more than \$35 trillion in assets under management. CII members share a commitment to healthy public capital markets and strong corporate governance.

List of Signing Firms

Bloomberg LP

Capital Research and Management Company

The Charles Schwab Corporation

Citadel Securities

Citigroup Global Markets Inc.

Fidelity Investments

Investors Exchange LLC (IEX)

J.P. Morgan Securities LLC

Morgan Stanley & Co. LLC

RBC Capital Markets

T. Rowe Price Associates, Inc.

UBS Securities LLC

The Vanguard Group, Inc.

Virtu Financial, Inc.