



April 27, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE., Washington, DC 20549

Re: SR-CTA/CQ-2021-02 (Release No. 34-93615); SR-CTA/CQ-2021-03 (Release No. 34-93625); S7-24-89 (Release No. 34-93618); S7-24-89 (Release No. 34-93620)

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ respectfully submits this supplementary letter to the Securities and Exchange Commission (“Commission”) in response to the Commission’s Orders Instituting Proceedings to approve or disapprove the above-referenced proposals submitted by the Consolidated Tape Association (“CT”) Plan and Consolidated Quotations (“CQ”) Plan (the “CT/CQ Plans”), and the Nasdaq Unlisted Trading Privileges Basis (“UTP”) Plan (collectively, the “Plans”).² These proposals would amend the Plans to adopt fees (“Fee Proposals”) for the receipt of the expanded consolidated market data for national market system (“NMS”) stocks required to be disseminated under the Commission’s Market Data Infrastructure Rule (“Infrastructure Rule”)³ and to implement the non-fee-related aspects (“Non-Fee Proposals”) of the Infrastructure Rule (collectively, the “Proposals”).⁴ As discussed in more detail in SIFMA’s previous comment letter,⁵ SIFMA strongly opposes the Proposals and urges the Commission to disapprove them as they contradict the Commission’s direction in the Infrastructure Release and otherwise fail to meet the standards under the Securities Exchange Act of 1934 (“Exchange Act”) for consolidated market data fee filings.⁶

¹ 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 one million employees, we advocate on 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).

² See Release No. 34-94310 (February 24, 2022), 87 FR 11748 (March 2, 2022) (SR-CTA/CQ-2021-02); Release No. 34-94309 (February 24, 2022), 87 FR 11763 (March 2, 2022) (SR-CTA/CQ-2021-03); Release No. 34-94308 (February 24, 2022), 87 FR 11755 (March 2, 2022) (S7-24-89).

³ See Release No. 34-90610, 86 FR 18596 (April 9, 2021) (File No. S7-03-20) (“Infrastructure Release”).

⁴ See Release No. 34090610 (December 9, 2020), 86 FR 18596 (April 9, 2021).

⁵ See Letter from Ellen Greene & William C. Thum, SIFMA to Vanessa Countryman, SEC (December 17, 2021) (“December Comment Letter”).

⁶ See Sections 11A(c)(1)(C) and 11A(c)(1)(D) and Rule 603(a) of Regulation NMS.

As specified in the Infrastructure Release, the Operating Committees of the CT/CQ Plans and the UTP Plan were required to propose new fees regarding the receipt and use of new core data required to be disseminated under the Commission's Infrastructure Rule by November 5, 2021. In response to this requirement, certain self-regulatory organization ("SRO") Participants of the Plans (i.e., the Cboe, NYSE and Nasdaq exchange families) authorized the filing of the Fee Proposals ("Submitting Exchanges"). The Fee Proposals include a footnote stating that they were filed with the Commission over the objections of other SRO Participants of the Plans as well as the Advisory Committee to the Plans.⁷

As discussed in our December Comment Letter, the Submitting Exchanges fail to show that the Fee Proposals meet the Exchange Act standards for consolidated market data fee filings. In their filings, the Submitting Exchanges disregard the Commission's historic, reasonably related to costs standard for assessing consolidated market data fees and instead create a completely unreasonable standard to justify the proposed fee. In particular, the Submitting Exchanges have created a ratio in which they compare the exchanges' charges for their proprietary depth-of-book feeds with their charges for their proprietary top-of-book feeds. This ratio is completely arbitrary and in no way shows that the proposed fees are fair, reasonable, and not unreasonably discriminatory as required under the Exchange Act.

In the Fee Proposals, the Submitting Exchanges also take the position that Competing Consolidators should be charged Redistribution Fees just like any other market data vendor. Such a position completely undermines the Commission's efforts in the Infrastructure Rule to change the method by which market data for NMS stocks is consolidated and disseminated through the introduction of a decentralized consolidation model where competing consolidators and self-aggregators replace the exclusive SIPs. As the Commission clearly states in this release, imposing Redistribution Fees on Competing Consolidators would be unreasonably discriminatory toward them as they would have to pay fees that self-aggregators do not have to pay.

Both the Infrastructure Rule and the CT Plan⁸ are designed to ensure that consolidated equity market data is distributed fairly and reasonably and provides the content needed to facilitate best execution in today's market. Notwithstanding the clear public benefit these

⁷ The Fee Proposals include the following statement from the objecting SRO Participants and the Advisory Committee:

FINRA, IEX, LTSE, MIAX, and MEMX have not joined in the decision to approve the filing of the proposed amendment, and Nasdaq BX is also withholding its vote at this time. Additionally, the Advisory Committee requested that the following statement be inserted into the filing: The Advisory Committee has actively participated in the rate setting process with the SROs and has provided the SROs with opinion and guidance on rate setting appropriate to the interests of consumers throughout the process. The Advisors collectively believe that SIP data content fees should be universally lower to align with the un-coupling of SIP data content from the SIP exclusive processor, a function to be performed by Competing Consolidators. The Advisors believe that while their input was important in the process, the core principle of fees being fair and reasonable was not achieved.

⁸ See Release No. 34-92586 (August 6, 2021), 86 FR 44142 (August 11, 2021).

rulemakings will provide, the Submitting Exchanges are engaged in a strategy to undermine the Commission's authority over market data to preserve their current revenues from both proprietary and SIP data. This strategy is evidenced by the lawsuits they have filed seeking to overturn the Infrastructure Rule and the Commission's approval of the CT Plan. The near-term goal of these lawsuits is to narrow the Commission's statutory authority over market data, with the long-term goal being to protect and increase the lucrative revenue they receive from market data. As we noted, the Submitting Exchanges' latest actions in the Fee Proposals further demonstrate this strategy and are yet another example demonstrating why the conflicted SRO model should be reformed.⁹

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As discussed above and in more detail in our December Comment Letter, we continue to recommend that the Commission disapprove the Proposals. SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact Ellen Greene (at 212-313-1287 or egreene@sifma.org) or William Thum at (202-962-7381 or bthum@sifma.org).

Sincerely,



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Managing Director
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William C. Thum
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⁹ See Oversight of America's Stock Exchanges: Examining Their Role in Our Economy, U.S. House Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, 117th Cong. (2022) (testimony of Ellen Greene).