



December 16, 2021

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

Submitted via electronic filing: www.sec.gov/rules/sro.shtml

Re: Joint Industry Plans; Notice of Filing of the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan (File No. SR-CTA/CQ-2021-03) and Notice of Filing of the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (File No. S7-24-89)

Dear Ms. Countryman:

BlackRock, Inc. (together with its affiliates, “BlackRock”)¹ appreciates the opportunity to comment on the above-referenced fee amendments (“Amendments”) filed by the national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, the “SROs” or “Participants”) for the national market system (“NMS”) plans governing the collection, consolidation, and dissemination of market data. These Amendments establish fees for the new core data elements which were adopted by the Securities and Exchange Commission (“SEC” or “Commission”) in the Market Data Infrastructure Rule (“MDI Rule”).²

Our views on the Amendments can be summarized as follows:

- BlackRock appreciates that the Participants sought to apply a deliberate and evidentiary approach to establish prices and we are supportive of some aspects of the filings. Fee filings should be adequately supported by a rigorous evaluation of cost and competition. However, we believe that the methodology used in the proposed Amendments is fundamentally flawed and inappropriate and would establish fees that are unfair, putting the competing consolidators at a competitive disadvantage.
- BlackRock supports the *a la carte* fee structure, inclusion of odd-lot quotations free of charge, and the creation of a moderately priced non-professional rate for depth of book content.

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals around the world. BlackRock is the investment adviser to the iShares family of exchanges-traded funds (“ETFs”). BlackRock also advises non-US ETFs.

² Securities Exchange Act Release No. 34-90610, 86 FR at 18596 (April 9, 2021)

- The Participants propose to leave fees for existing core data elements unchanged, but we believe that the profits and operating costs of the exclusive securities information processors (“SIPs”) should be deducted from these fees to reflect the new role of competing consolidators.
- The proposed fees for depth of book and auction information are overpriced in the Amendments and should be adjusted appropriately.

Introduction

BlackRock supports the Commission’s goals in modernizing our market data ecosystem. Market data serves as the foundation for our national market system and plays an essential role in promoting fair and efficient markets and facilitating best execution. As such, we believe that it is crucial to update our market data infrastructure to conform with the significant evolution in technology and trading practices since the SIPs were originally implemented in the 1970s.

We believe that the MDI Rule will significantly reduce the information asymmetries between proprietary data feeds and the public tape by expanding the definition of core data. These additions will broaden the usability of NMS market data and enhance transparency for investors. The MDI Rule will also strengthen resiliency, reduce latency, and foster innovation by introducing a decentralized competing consolidator model to replace the existing exclusive SIPs. But to achieve these policy aims, the fees for the additional data elements must be priced fairly and equitably. We agree with the SEC that market data fees should be subject to competitive forces or reasonably related to the cost of producing the content.³ Otherwise, the extent to which market participants adopt the new information will be limited if it is prohibitively costly, contravening the objective of expanding access to better meet the diverse needs of investors in today’s equity markets.⁴ Furthermore, an unreasonably priced fee schedule will decrease demand for consolidated market data from end users, which may discourage firms from entering the market as competing consolidators and hinder competition.

While BlackRock is supportive of certain aspects of the filings, we believe that collectively the proposed market data fees are neither fair nor reasonable, as we elaborate further below. Consequently, BlackRock urges the Commission to disapprove the Amendments because they will substantially subvert the goals of the MDI Rule.

Efficient Fee Structure

Fundamentally, we support the Participants’ decision to create an *a la carte* fee structure for the expanded elements of consolidated market data. Different investors have different market data needs. Ideally, market participants should be able to select from a variety of market data products and pay just for the content that they consume. However, as the Commission noted, this is only possible if the NMS plans “develop different fees for data content underlying

³ SEC Division of Trading and Markets, “[Staff Guidance on SRO Rule Filings Relating to Fees](#),” May 21, 2019

⁴ See 86 FR at 18600. The Commission agrees that more comprehensive and latency-sensitive NMS information can be significantly beneficial in facilitating informed trading decisions, and the Commission believes that such information should be more widely distributed and more readily accessible.

market data offerings that contain subsets of the data content underlying consolidated market data.”⁵ *A la carte* pricing gives market participants greater choice in subscribing to market data which helps to ensure the usefulness of NMS information and make it more accessible. Furthermore, the alternative of establishing a bundled price would be discriminatory and inconsistent with how proprietary market data feeds are packaged by exchanges, as products such as auction order imbalances can be purchased separately.⁶

BlackRock also commends the Participants for including odd-lot quotations free of charge with Level 1 data⁷ and creating a moderately priced non-professional rate for depth of book content. Odd-lot data is an essential component of Level 1 information because the national best bid and offer (“NBBO”) is an incomplete representation of the best available prices without odd-lot quotations. As the Commission noted, “individual odd-lot orders now often represent economically significant trading opportunities at prices that are better than the prices of displayed and disseminated round lots.”⁸ Consequently, the inclusion of odd-lot data at no additional cost provides market participants with more comprehensive top of book quotation information, strengthening best execution and enhancing transparency and price discovery.

As retail investors have grown more sophisticated and engaged in the equity markets, it is also becoming increasingly essential that individual investors are able to participate on a level playing field. From a market data perspective, this means that they need to have access to the same information which is available to professional traders at affordable prices. The proposed non-professional fee for depth of book content accomplishes this objective and will help to broaden adoption of this new category of data.

Failure to Redistribute Processor Costs

The Participants have not adjusted core data content fees to properly account for the operating expenses of the exclusive SIPs.

Consolidated market data charges today include fees for data content, data consolidation and dissemination, and connectivity services – of which the first two fees are currently bundled into a single price.⁹ The MDI Rule is fundamentally altering the ecosystem for market data by transitioning the collection, consolidation, and dissemination of NMS market data from the exclusive SIPs to competing consolidators. The Commission intended that this change would “unbundle the data fees for consolidated market data from the fees for its consolidation and distribution”¹⁰ because the prospective fees charged by competing consolidators would now “include fees for aggregation and generation of consolidated market data products and transmission of such products to subscribers.”¹¹ As a result, core data content fees should have been reduced by at least 40% to reflect the new role of competing consolidators and

⁵ See 86 FR at 18687.

⁶ For instance, market participants can subscribe separately for the NYSE Order Imbalances and Cboe Auction Feed.

⁷ It is generally accepted that Level 1 data includes top of book quotations and last sale price information. The Participants also propose to bundle regulatory data, administrative data, SRO specific program data, and odd-lot information with Level 1 Core Data.

⁸ Securities Exchange Act Release No. 34-88216, 85 FR at 16738.

⁹ See 86 FR at 18772.

¹⁰ See 86 FR at 18800.

¹¹ See 86 FR at 18684.

deduct both SIP profits and operating costs from the price.¹² However, the Amendments propose to leave fees for existing core data elements unchanged. In doing so, the Participants fail to address the Commission's concern that any new fees need to consider "that the effective national market system plan(s) for NMS stocks is no longer operating an exclusive SIP and is no longer performing aggregation and other operational functions."¹³ Keeping core data fees the same would opaquely raise prices for data content. This is counterintuitive, as *ceteris paribus*, substituting the exclusive SIP with a competing consolidator for processing services should not lead to increased market data costs for consumers. The Commission explicitly stated in the adopting release for the final MDI Rule that it "would not expect fees for content equivalent to the data content of consolidated market data to be higher, because under the amendments the SROs are not required to incur significant new costs."¹⁴

Excessive and Unreasonable Fees for Depth of Book Information

The proposed fees for depth of book information are overpriced, based on the flawed methodology presented in the Amendments.

The proposed fees for depth of book data are calculated by benchmarking against the pricing of proprietary depth products offered by exchanges. The ratios between the prices of exchange depth of book feeds, such as the NYSE Integrated Feed and Nasdaq TotalView, and their corresponding top of book offerings were used to calculate a multiplier which was subsequently applied to Level 1 consolidated market data. However, this methodology is inappropriate because it double charges customers for top of book information and references depth of book feeds which are not truly comparable.

The Participants propose to establish a fee category for the new depth of book data elements adopted by the MDI Rule. In amended Rule 600(b)(26), depth of book information is defined to consist only of the *aggregated quotes available at the next five prices* beyond the NBBO.¹⁵ The relatively narrow scope of depth content delineated by the MDI Rule needs to be considered when determining a fair price for this data. However, this distinction is not incorporated in the proposal, since the pricing methodology is based upon full depth of book products, which contain data on all orders, inclusive of top of book information.¹⁶ Referencing packaged market data products on a one-for-one basis to value stand-alone, unbundled depth of book feeds is not appropriate. The correct price should be a function of the *difference* between each exchange's depth of book and top of book offerings to reconcile for the duplication in content. The current methodology would be analogous to McDonald's charging its customers the price of a Big Mac combo meal for an individual side order of french fries. As proposed, market

¹² See 86 FR at 18765. This 4% discount is derived directly from Commission estimates of SIP operating expenses (\$16 million) and revenues (\$390 million) in 2018 without any consideration of possible profits. Exclusive SIP profits should also be subtracted from the fees for core data content as any markup for consolidation services should transition to be within the purview of competing consolidators.

¹³ See 86 FR at 18685.

¹⁴ See 86 FR at 18774.

¹⁵ Depth of book data means all quotation sizes at each national securities exchange and on a facility of a national securities association at each of the next five prices at which there is a bid that is lower than the national best bid and offer that is higher than the national best offer. For these five prices, the aggregate size available at each price, if any, at each national securities exchange and national securities association shall be attributed to such exchange or association.

¹⁶ NYSE Integrated Feed, Nasdaq TotalView, Cboe Full Depth, and IEX DEEP all include information about trades and top of book quotations in addition to depth of book content.

participants who subscribe to both Level 1 and depth of book data would essentially be paying twice for top of book content. Fees for depth of book information should be adjusted to use a multiplier of 2.94x to eliminate the overcharging from double counting top of book data.¹⁷

The Participants should have applied additional fee reductions to account for the fact that the exchange depth of book products used in the price calculation are not perfectly equivalent to the depth of book information mandated by the MDI Rule. Exchange depth of book products predominantly offer information about orders at all price levels, not just the next five prices beyond the NBBO as established by Rule 600(b)(26). Furthermore, proprietary depth of book products are primarily structured as comprehensive order-by-order feeds, which do not aggregate orders at each price level. Information has economic value. The depth of book elements prescribed by the MDI Rule warrant a lower price because they include much less content than these proprietary feeds. Additionally, complete, order-by-order depth of book feeds are likely to be associated with “additional operational costs ... because of increased message traffic with order by order data at all price levels.”¹⁸ Accordingly, an aggregated feed with only five levels of depth should have been priced at a discount relative to the corresponding exchange offerings to compensate for the material differences in both information content and costs. The proposed Amendments would make the depth of book content from competing consolidators prohibitively expensive relative to the exchanges’ proprietary products, which serves to perpetuate the two-tiered ecosystem for market data that the MDI Rule was intended to address.

Mispriced Auction Information

The fee schedule for auction information has similar flaws to the proposed fees for depth of book data; the methodology is inappropriate and would lead to double counting and overpriced fees.

Information about auction order imbalances is included with the NYSE Integrated Feed, Nasdaq TotalView, and IEX DEEP data products, therefore the proposed depth of book prices already incorporate the fees for auction imbalance data. Thus, the proposed fees would result in double charging consumers who purchase both auction and depth of book information from competing consolidators.

Depth of book pricing is also inappropriately used to derive the value of auction data. Auction information is more closely aligned with top of book content, as it only provides high-level information about aggregate order imbalances and does not include order by order details or data about multiple price levels. The pricing rationale proposed in the Amendments uses traded volumes to arrive at a 10% multiple for auction data.¹⁹ However, this ratio is inexplicably applied to the depth of book feed, which conveys information about displayed liquidity not trading activity. It would have been more congruent with the SROs’ proposition to use Level 1 core data as the basis for pricing auction content as this feed is more closely associated with trade volume. The fees for auction information should be set to 10% of Level 1 core data prices.

¹⁷ This multiplier of 2.94x is the result of subtracting top of book costs from the original ratio proposed in the Amendments (i.e., 3.94x – 1).

¹⁸ See 86 FR at 18627.

¹⁹ See 86 FR at 67520. “[T]he Participants looked to the number of trades that occurred during the auction process as compared to the trading day, and determined that roughly 10% of the trading volume is concentrated in auctions.”

The Commission stressed that “auction information should be included in core data to promote more informed and effective participation in auctions by market participants and to potentially broaden the range of market participants who participate in auctions, enhancing auction liquidity and price discovery.”²⁰ This objective cannot be achieved under the current proposal, which sets fees at a level that discourages widespread consumption of the data.

Conclusion

Although we support some elements of the filings, BlackRock strongly opposes the proposed Amendments, as we do not believe they are in line with the MDI Rule’s objectives of expanding access to equity market data and leveling the playing field between proprietary data feeds and the public tape. Specifically, by establishing prices for NMS information which are neither fair nor reasonable, we believe that the Amendments would create concrete economic disincentives which will stifle demand for consolidated market data and effectively undermine the viability of the decentralized consolidation model.

As noted in the filings, there is broad industry objection to the Amendments: “FINRA, IEX, LTSE, MIAX and MEMX have not joined in the decision to approve the filing of the proposed amendment” and the “Advisors believe that while their input was important in the process, the core principle of fees being fair and reasonable was not achieved.”²¹ We appreciate the Commission’s initiative to improve governance by mitigating inherent conflicts of interest and reforming the voting structure of the NMS plan for market data. We believe that these proposed Amendments are further evidence that the new consolidated tape plan should be expedited to safeguard the objectives of the MDI Rule.

We respectfully thank the Commission for the opportunity to express our views on the proposed Amendments. We welcome any questions or further discussion on this topic.

Sincerely,

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²⁰ See 86 FR at 18631.

²¹ See 86 FR at 67519, footnote 14