

February 8, 2013

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Dear Sir and Madame

CSA Staff Consultation Paper 21-401 – Real-Time Market Data Fees

AFME welcomes the opportunity to comment on the CSA paper. Market data pricing has been a matter of concern to the industry for some time, the significance of which has increased with the growing number of exchanges and trading platforms entering the market over the last few years. AFME is surprised by some of the conclusions in the report, in particular that the report finds it appropriate that volume scaled consolidated market data fees be seven to ten times more expensive in Canada than in the U.S. (V.2(b) page 10109). We would like to highlight that also that the report does not take into account different unit of count policies, in particular the TSX policy that requires a count of instances, “per interrogation device”, whereas other exchanges allow reporting on a per user basis. The TSX pricing reflected in the report is therefore not a complete picture of the market data fees charged when taking this into account. On this basis we feel it is erroneous to compare TSX with other international exchanges such as NYSE and LSE and then to conclude that TSX pricing is not unreasonable (V.4(a) page 10111).

The TSX method of charging per interrogation device has a significant impact on the overall cost as per the following simplified example:

	NYSE L1	London Stock Exchange L1	Toronto Stock Exchange L1
1 User	\$ 154.95 per user per month (Tapes A and B, CONSOLIDATED TAPE)	\$43 per user per month	\$58 per access per month
100 User Firm (as a more realistic)	\$26.50 per user per month	\$43 per user per month	\$48 per access per month

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example)			
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User A has a trader workstation (a multi screen multi processor environment). On that workstation User A has a Bloomberg terminal, a Thomson Reuters 3000Xtra terminal, 3 spreadsheets with market data, a front office application and two settlement applications.

Cost for User A as follows:

	NYSE L1	London Stock Exchange L1	Toronto Stock Exchange L1
1 User	\$ 154.95 per month	\$43 per month	\$464 per month
100 User Firm (as a more realistic sample)	\$ 26.50 per month	\$43 per month	\$384 per month

It can be seen that this access model makes market data fees much more expensive in the Canadian marketplace than in its international counterparts. Where buyers purchase market data directly from a marketplace we believe a simpler model reducing the administrative cost burden, similar to that followed by LSE, NASDAQ for Nordics, SWX or Borsa Italiana would be as follows:

- Consumer firm to declare all access across any vendors it consumes directly to the exchange
- Consumer firm pre-nets to per user prior to reporting and the exchange bills consumer firm directly
- If the exchange wishes to validate the data with the consumer firm at any stage, the consumer firm can provide a fully detailed report of the underlying user and vendor details.

AFME would favour Canadian market data fees to be regulated in much the same way as the US is regulated and as such prefers Option 5 in the report.

Option 1: Cap fees for “core data”

This option would consist of defining a set of data, known as core data that would be necessary to comply with regulatory requirements. The regulatory authority would then regulate the distribution of the fees applicable to this core data, whether distributed through the IP or through the marketplaces. Since core data would not necessarily need to include all data elements that are currently in market data feeds, it could be available at a lower price. Marketplaces would be free to set fees for non-core real-time data products, subject to the normal fee review and approval process. To prevent marketplaces from bundling core data with other data as a way to circumvent the pricing restrictions, marketplaces would be required to offer core data as a stand-alone product.

We believe setting a cap for core data, defined as both top-of-book and depth-of book, is appropriate but as a standalone solution is not entirely workable. The disadvantage with this

solution is that it is likely to create abiding tension between market participants. What may be core for one may not be core for another and may serve to unnecessarily disadvantage one market participant over another.

Option 2: Cap data fees charged by a marketplace until it meets a de minimis threshold

This option would impose a cap on the fees that a marketplace could charge for its market data until it reaches a de minimis threshold for a period of time. This threshold could be based on market share or market share combined with some other metric. The cap could be set at zero or at a nominal amount until the threshold is met. If a marketplace falls below the de minimis threshold for a certain period of time, its market data fees would be subject to the cap until the marketplace moves above the de minimis threshold again. The cap would not apply to marketplaces that are above the de minimis threshold. Marketplaces in this situation would be able to set fees, subject to the approval process in place.

This measure would be helpful in that it would limit new entrants or market places with less market share from charging fees excessive to the value they deliver. What it does not address is the escalation of fees by larger established markets. Those marketplaces already above such a de minimis threshold would remain in a position to exert price control. Like option 1 this is not a standalone solution.

Option 3: Cap all data fees for all marketplaces starting at a de minimis threshold and gradually increasing the threshold and the applicable caps. This option would limit the level of market data fees individually charged by all marketplaces. Similar to the previous option, the de minimis threshold could be based on market share or market share combined with some other metric. We have not decided what the de minimis threshold metric could be; however, to facilitate an understanding of this option we will use market share as the de minimis metric. Whereas option 2 only contemplates a single market share threshold and fee cap, this option would create a matrix with a cap level for each threshold interval. The cap for the de minimis threshold could be set at zero or at a nominal amount until the de minimis threshold is met. The cap would increase when a marketplace moves beyond the de minimis market share threshold and into a higher market share threshold. Conversely, the cap would decrease to a lower level if a marketplace regresses back to a lower market share threshold. Similar to option 2, a marketplace must remain above a set threshold for a certain period of time before it can increase its fee up to a level that corresponds to the threshold tier it is in. This option would prevent any marketplace from charging fees that are not reflective of its market share. Additionally, the tier fee caps and market share thresholds structure would keep fee increases in check by tying them to a marketplace's market share.

This option relies on the increasing thresholds and applicable caps remaining reasonable to the market share of the marketplaces to which they apply. This measure will also introduce a potentially unnecessary level of complexity into the charging system.

Option 4: Cap fees for data sold through the IP

This option would cap the fees that marketplaces charge buyers who purchase their data from the IP. All marketplaces would be subject to a cap, although not necessarily the same one (as in option 3). This model preserves the pass-through model but caps the costs that could be passed through. The cap could be set by the regulators and implemented through a rule. The marketplaces would still be free to set fees for direct subscribers and vendors, subject to the normal fee review and approval process. This option would create a lower-cost consolidated data feed from the IP. As many users do not need to purchase data directly from marketplaces (e.g., users that are not latency sensitive) this option could address their concerns. Users whose business models require them to purchase data directly from the marketplace or from third party vendors would not necessarily see a direct benefit in terms of lower costs, but the existence of a lower-cost alternative may impose some market discipline on data prices generally.

This proposal retains the problematic pass-through model, potentially allowing new market entrants to drive up total market data costs. Marketplaces may be inclined to charge more to market participants who access core data or ancillary services directly where this offsets the marketplace's fee cap to the IP.

Option 5: Regulate consolidated market data fees charged by the IP

This option is similar to option 4, except that it would directly regulate the fees charged by the IP for consolidated data rather than the fees charged by marketplaces. Unlike option 4, this model would eliminate the pass-through model but would necessitate creating a different fee and compensation model for the data fees. Like option 4, this option would not regulate fees for data sold directly by marketplaces. In this option, the IP and not the marketplaces would set the fee for its consolidated data, subject to approval by the regulatory authority. The fee could be determined by a rule of the regulatory authority, the IP independently or co-operatively by the marketplaces, as is done with consolidated data in the United States. Marketplaces would share in the IP's revenue on a predetermined basis, either by agreement or rule or as approved by the regulatory authority. Under this option, marketplaces would be free to set fees for direct subscribers and vendors, subject to the fee review and approval process. This approach is similar to the approach taken in the United States, where the revenue from the consolidated data distributed by the SIPs is allocated by a set formula. This option requires legislative amendments to the securities regulatory authority's jurisdiction to specifically regulate the operations of the IP and the fees charged for its products.

This option remains the preferred proposal for AFME members. AFME favours the U.S. method of regulating market data fees for consolidated data. Specifically it addresses the particular concerns relating to the current pass-through model. This is not a complete solution as it does create a different cost model for market participants purchasing data through entities other than the IP or for those taking direct unconsolidated feeds from marketplaces. AFME feels this could be used in conjunction with appropriate core data fee caps on core data purchased directly from marketplaces or other third party vendors and/or in conjunction with Option 8.

Option 6 – Cap consolidated data fees sold by marketplaces to all data vendors, not just to the IP
This option is also similar to option 4, however, instead of capping the fees that marketplaces charge buyers who purchase their data directly from the IP, the fees that marketplaces charge buyers of consolidated data from all data vendors would be capped. Marketplaces would be free to charge whatever fees they determine appropriate for non-consolidated data whether distributed by vendors or by the marketplaces directly. This will allow all data vendors to distribute the consolidated data at the same lower, capped rate to marketplace participants as the IP.

This option still retains, where data is purchased from the IP, the pass-through model of option 4. Any cap on consolidated data is workable only where the consolidated data comprises both top of book and depth of book levels of data. Caps on market data fees need to be related to the cost of the aggregation of such data and not to provide marketplaces with a cost plus revenue stream. As with Option 4 above it may be possible to envisage rising fees for non consolidated market data as an offset to marketplaces for any shortfall in reduced consolidated market data. This might also impact other charges to market participants connecting directly such as higher connection fees. This option could limit new consolidated market data entrants.

Option 7: Mandate a data utility to operate on a cost-recovery basis

Concerns about the costs of market data have lead some marketplace participants to suggest the creation of a “public utility” source of consolidated market data in Canada. A mandated data utility could be funded by marketplaces and/or data customers and would operate on a cost-recovery basis. Any revenue generated from the selling of the consolidated data would be divided amongst the utility participants based on a revenue sharing model agreed upon by all parties involved. The amount of revenue that each participant receives would be proportionate to their contribution to price discovery and liquidity. This utility would have to be overseen by the regulatory authority as it would be providing a service critically important to the capital markets. This option is similar to Option 5, except that it would be developed by the industry rather than imposed by the regulatory authority. Legislative amendments and an overhaul of the transparency requirements would be needed if a public data utility was created.

Understanding the costs of producing data is very important, but should be reflected in any potential price cap proposal. This proposal is not dissimilar to Option 5 but the challenges in the equitable distribution of the costs of establishing and maintaining its infrastructure and governance to marketplaces and market participants as a whole must be borne in mind.

Option 8: Publish amendments to market data fees and fee models for comments

This option would require a marketplace to publish for comment any amendments to its market data fee schedule. We could require marketplaces to also publish the rationale for amending the fees and a pre-implementation impact analysis at the time their proposed fee changes are filed with the regulatory authority for approval. This would impose some discipline as marketplaces would have to publicly justify any changes to fees and/or fee models.

Publication of market data fees is critical to transparency and may encourage more equitable charging behavior which AFME favours. However, again the solution is not standalone, and would

need to operate in conjunction with a system of market data fee caps. Whilst changes to market data fee increases may undergo some regulatory approval within this option, it fails to address market data fees as they currently stand and does not seek to rebalance the current charging systems (individual, consolidated, core or ancillary, or in relation to the value of that data).

Yours faithfully

April Day
Director, Equities, AFME