



February 8, 2013

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RE: CSA Staff Consultation Paper 21-401, Real-Time Market Data

Dear Sir/Madam:

SIFMA¹ appreciates the opportunity to comment on the CSA Staff Consultation Paper 21-401, Real-Time Market Data Fees (the “CSA Paper”). The hundreds of securities firms, banks and asset managers represented by SIFMA have extensive experience as producers, consumers and distributors of market data around the world. It is truly the “oxygen” of the market. Market data rules, policies, and pricing should not advantage one group of investors over another. “Fair and reasonable access” to full information about current prices of securities trading in the market is necessary to assure investor confidence and protection.

While market data is an extremely complicated area, we believe analysis flows from two simple bedrocks, both of which the CSA Paper expressly recognizes. First, “real-time market data plays a key role in the price discovery process and provides vital information on the trading activity of the marketplace.” Second, “each marketplace is the only source of order and trade information sent to and transacted on its facility...”.

Market data is critical to the market. Each marketplace has a monopoly on the data transacted on it. All policies in this space must flow from these two facts.

For example, the CSA Paper notes that marketplaces cite “fees charged by competitors and peer marketplaces” in setting their own fees. As each marketplace is the sole source of data transacted on the exchange, justifying fees by citing another marketplace’s fees constitutes a circular exercise in

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

which one sole source provider claims prices are competitive by comparing those prices to fees set by another sole source provider.

There are no market forces in play here. This is why Option 7, mandating a data utility to operate on a cost-recovery basis (cost plus a reasonable rate of return), is possibly the best option for ensuring the equitable provision of this data. The utility could be overseen by a board constituting a cross section of the market – buy-side, sell-side, exchanges, vendors, retail investors.

If amendments are necessary to ensure fair and reasonable access on non-discriminatory terms to this data, then those amendments should be enacted. The costs exchanges should be allowed to recover must be those directly related to collecting and distributing market data, not other extraneous costs such as advertising, regulation, member services and listing services. With regard to the costs of regulation, we believe those costs should be recouped directly through member fees rather than indirectly through the sale of monopoly market data.

The options for establishing fee caps on data are generally superior to the existing system, though not as preferable as Option 7. The key weakness inherent in the cap options is the prospect that “core data” would be defined so narrowly that major tranches of very significant data are excluded, thus leaving critical sole source data outside the scope of protection. Our experience in the United States has been that exchanges strive to make “core data” narrow, slow, and difficult to use, so as to increase the revenues to be generated from uncapped non-core data. We would expect that dynamic to be at play in Canada as well.

While it would not be a substitute for the options discussed above, we believe Option 8 – publishing amendments to market data fees and fee models for comment – would be a valuable addition to any of the above. Exchanges have an incentive to set fees – or caps under the options discussed in the CSA Paper – at a level well in excess of cost plus a reasonable rate of return. That creates an opportunity to cross-subsidize competitive ventures with the revenue derived from the captive rate-base. This results not only in inefficiencies in the distribution of market data, but also distortions in adjacent markets including trading and the provision of analytics. Greater transparency would thus help ensure, not only a more efficient market data market, but also more competitive and efficient adjacent markets.

We would also like to highlight that the CSA paper 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 most 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 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 to market data users making market data fees much more expensive in the Canadian marketplace than in many of its international counterparts. Where buyers purchase market data directly from a marketplace, we believe a simpler model reducing the administrative and cost burdens 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.

This would also allow for the TSX to keep up with the technological advances by allowing a single user to access TSX data from multiple devices and platforms without incurring an extraordinary surcharge for doing so, while maintaining its competitive value and consistency with many other international marketplaces.

We appreciate the work that went into producing the CSA Paper. If you have any questions or would like to discuss these subjects further, please call Melissa MacGregor, Managing Director and Associate General Counsel at SIFMA, at 202-962-7385.

Respectfully submitted,

Melissa MacGregor
Managing Director and Associate General Counsel