

Vinson & Elkins

Constance S. Huttner chuttner@velaw.com
Tel 212 237 0040 Fax 917 849 5339

February 20, 2014

BY ECF

The Honorable Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street, Room 745
New York, NY 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: FEB 25 2014

Re: *Realtime Data, LLC D/B/A/ IXO v. Thomson Reuters Corporation, et al.*, Nos. 1:11-cv-6698, 1:11-cv-6700 and 1:11-cv-6703; *Realtime Data, LLC D/B/A IXO v. CME Group, et al.*, Nos. 1:11-cv-6697, 1:11-cv-6699 and 1:11-cv-6702; *Realtime Data, LLC D/B/A IXO v. Morgan Stanley, et al.*, Nos. 1:11-cv-6696, 1:11-cv-6701 and 1:11-cv-6704

Dear Judge Forrest:

We represent Data Provider Defendant Thomson Reuters Corporation ("Thomson Reuters") in the above-captioned consolidated action. We write on behalf of Thomson Reuters, as well as the other Data Provider, Bank and Exchange Defendants (collectively, "the Defendants"),¹ to request that the Court set a schedule for the briefing of attorneys' fees motions and the submission of Notices of Taxation of Costs to the Court.

As Your Honor knows, on January 27, 2014, the Federal Circuit affirmed this Court's November 15, 2012 and June 27, 2012 Orders granting Defendants' motions for summary

¹ The Data Provider Defendants include Thomson Reuters, Factset Research Systems, Inc., Bloomberg L.P., and Interactive Data Corporation, Inc. The Bank Defendants include Credit Suisse Holdings (USA), Inc. and Credit Suisse Securities (USA) LLC; The Goldman Sachs Group, Inc., Goldman Sachs & Co. and Goldman Sachs Execution & Clearing, L.P.; HSBC Bank USA, N.A. and HSBC Securities (USA), Inc.; J.P. Morgan Chase & Co., J.P. Morgan Securities Inc. and J.P. Morgan Clearing Corp. f/k/a Bear, Stearns Securities Corp.; and Morgan Stanley and Morgan Stanley & Co., Inc. The Exchange Defendants include BATS Trading, Inc. and BATS Exchange, Inc.; CME Group Inc., Board of Trade of the City of Chicago, Inc. and New York Mercantile Exchange, Inc.; International Securities Exchange; NASDAQ OMX Group, Inc. and NASDAQ OMX PHLX, Inc.; NYSE Euronext, NYSE Arca, Inc., NYSE Amex, LLC and Securities Industry Automation Corporation; and Options Price Reporting Authority.

February 20, 2014 Page 2

judgment of non-infringement and invalidity of the patents in suit, U.S. Patent Nos. 7,417,568, 7,714,747, and 7,777,651. *See Realtime Data, LLC v. Morgan Stanley et al.*, Nos. 2013-1092, 2013-1093, 2013-1095, 2013-1097, 2013-1098, 2013-1099, 2013-1100, 2013-1101, 2013-1103, 2014 WL 278757 (Fed. Cir. Jan. 27, 2014). Additionally, the Federal Circuit affirmed this Court's June 22, 2012 *Markman* ruling on claim construction and its August 2, 2012 decision to preclude Realtime from asserting infringement under the doctrine of equivalents. *See id.*

The Court's November 9, 2012 Final Judgments Pursuant to Fed. R. Civ. P. 54(b) stated that:

[T]his Court retains jurisdiction to hear any attorneys' fees motions brought by the Data Provider [Bank, and Exchange] Defendants in this Action. The Court will set a briefing schedule for those motions in due course. Accordingly, in the interim, the parties' time to file such motions under Federal Rule of Civil Procedure 54(d)(2)(B) is hereby extended to such date as the Court will set in the future.

1:11-cv-06698 D.I. 467 at 5-6; 1:11-cv-06696 D.I. 584 at 8; 1:11-cv-06697 D.I. 861 at 10. The Defendants respectfully suggest that the Court set a schedule for briefing attorneys' fees motions and ask that the Court do so at its earliest convenience in accordance with the schedule set out below. Further, in the interest of efficiency, Defendants respectfully propose deferring submission of the amounts sought in attorneys' fees and supporting documentation until after the Court issues its decision on liability for fees. *See, e.g.,* Fed. R. Civ. P. 54(d)(2)(C) ("[t]he court may decide issues of liability for fees before receiving submissions on the value of services"). Defendants respectfully submit that this approach will allow the parties and the Court to avoid further unnecessary expense and is the most efficient way to proceed.

The Defendants also ask that the Court set a concurrent schedule for the submission of Defendants' Notices of Taxation of Costs under Local Civil Rule 54.1(a), which states that Notices of Taxation of Costs must be filed "within thirty (30) days after the final disposition of [an] appeal, unless this period is extended by the Court for good cause shown . . ." S.D.N.Y. L.R. 54.1(a). "Final disposition" is not defined in the Local Rules and the case law is unclear whether it refers to the date of affirmance or the date on which the mandate issues. *See Hickey v. City of New York*, 241 F.R.D. 150, 152 (S.D.N.Y. 2006).

The Federal Circuit issued its decision affirming this Court's judgment on January 27, 2014, but has not yet issued a mandate. If the Federal Circuit's January 27, 2014 affirmance is deemed to be "the final disposition of the appeal" of this matter for purposes of Local Civil Rule 54.1(a), then Defendants' Notices of Taxation of Costs and accompanying affidavits and bills

February 20, 2014 Page 3

would be due on February 27, 2014. Defendants submit that a short extension of this date is warranted until the Federal Circuit issues its mandate to give the Defendants more time to coordinate their efforts and streamline their submissions to the Court.

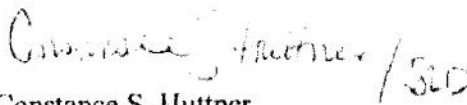
Accordingly, Defendants propose that the Court enter an Order directing the parties to brief attorneys' fees motions and submit their Notices of Taxation of Costs in accordance with the following schedule:

File/Serve Motions for Attorneys' Fees and Notices of Taxation of Costs and accompanying papers	Within 30 days after issuance of the Federal Circuit's mandate
File/Serve Oppositions to Motions for Attorneys' Fees and Objections to Notices of Taxation of Costs	Within 60 days after issuance of the Federal Circuit's mandate
File/Serve Replies to Oppositions to Motions for Attorneys' Fees	Within 90 days after issuance of the Federal Circuit's mandate
File/Serve Amounts Sought in Attorneys' Fees and supporting documentation	Within 30 days of this Court's decision on liability for attorneys' fees

We have conferred with counsel for Plaintiff, Dirk Thomas, and Plaintiff has no objection to this schedule.

We are available to discuss the proposed schedule at Your Honor's convenience.

Respectfully submitted,


Constance S. Huttner

cc: Counsel of record

US 2284695v.1

Ordered
Application granted. Briefing
as set forth herein.
2/25/14 ← B. Jones
USDJ