

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CITY OF PROVIDENCE, RHODE ISLAND, et al.,	:	
	:	
Plaintiffs,	:	14-CV-2811 (JMF)
	:	
-v-	:	<u>MEMORANDUM OPINION</u>
	:	<u>AND ORDER</u>
BATS GLOBAL MARKETS, INC., et al.,	:	
	:	
Defendants.	:	
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JESSE M. FURMAN, United States District Judge:

As stated on the record during the teleconference held on May 1, 2020, the deadlines set forth in the August 16, 2019 Case Management Plan as amended on March 4, 2020, *see* ECF Nos. 329 & 408, are hereby EXTENDED by **three months**. In accordance with the Case Management Plan, the parties shall continue to submit joint status letters on a bi-monthly basis. *See, e.g.*, ECF No. 404. Further, unless and until the Court orders otherwise, the parties shall appear for a conference with the Court on **September 22, 2020, at 3 p.m.**

Upon review of the parties’ submissions, *see* ECF Nos. 413, 417, 419-21, and consideration of counsel’s arguments during the teleconference, Defendants’ motion to compel production of counsel’s communications with third parties relating to Plaintiffs’ trade data is DENIED. The Court does not doubt Defendants’ need for guidance in construing the data received from the third parties, but — putting aside the fact that Plaintiffs have the better of the argument over the scope of Defendants’ actual requests — the more appropriate means to obtain that guidance would be Rule 30(b)(6) depositions of those third parties.¹ Plaintiffs’ counsel’s communications may shed some light on the data, but it is likely to be hit or miss; that is, it is speculative — indeed, farfetched — to

¹ Plaintiffs’ counsel shall cooperate with defense counsel in identifying the topics and, if necessary, formulating questions for Rule 30(b)(6) depositions to ensure that they are effective.

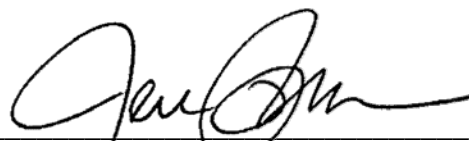
assume that disclosure of those communications would provide the guidance that Defendants actually need. Moreover, production of counsel's communications would be unduly burdensome, in no small part because it would undoubtedly lead to litigation over the propriety of redactions to shield Plaintiffs' trial strategy. Accordingly, Defendants' motion is denied, albeit without prejudice to more targeted requests after Defendants have exhausted other means, such as Rule 30(b)(6) depositions, to get the information and guidance they allegedly need.

Finally, for the reasons set forth in Defendants' opposition letter, *see* ECF No. 418, and articulated by defense counsel during the teleconference, Plaintiffs' motion to compel Defendants BATS Global Markets, Inc. and Direct Edge ECN, LLC to collect relevant documents from Plaintiffs' proposed list of additional custodians is DENIED. Plaintiffs have not made the requisite showing that Defendants' list of custodians, made pursuant to the parties' ESI Protocol, *see* ECF No. 401, is so "manifestly unreasonable" or deficient as to require judicial intervention at this juncture. *See, e.g., Mortg. Resolution Servicing, LLC v. JPMorgan Chase Bank, N.A.*, No. 15-CV-0293 (LTS) (JCF), 2017 WL 2305398, at *2 (S.D.N.Y. May 18, 2017). This denial is without prejudice to Plaintiffs renewing their motion after reviewing Defendants' initial production and/or making a sufficient factual showing that one or two of Plaintiffs' proposed custodians possess information that would not otherwise be discoverable from Defendants' identified custodians.

The Clerk of Court is directed to terminate ECF Nos. 413 and 415.

SO ORDERED.

Dated: May 6, 2020
New York, New York



JESSE M. FURMAN
United States District Judge