



August 14, 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE., Washington, DC 20549

Re: ***SIFMA Supplemental Comment Letter on Request for Information and Additional Comment on a Proposed Rule Change to Establish Fees for the NYSE National Integrated Feed: File No. SR-NYSE-NAT-2020-05 (“Proposal”)***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to the U.S. Securities and Exchange Commission (“Commission”) to supplement our prior comments in response to the Commission's request for additional information (“RFI”) on the Proposal to establish market data fees by NYSE National, Inc. (“NYSE National”).² SIFMA previously submitted a comment letter on July 10, 2020 on the RFI (“July 10 Letter”) and subsequently spoke with the Commission staff in the Division of Trading and Markets on July 14, 2020 regarding our comment letter.³ Based on that discussion, SIFMA is providing additional information that further supports our position that the Commission should not approve NYSE National’s Proposal to establish market data fees for the exchange’s market data.

NYSE National’s Platform Competition Argument is Flawed

As we noted in our July 10 Letter, SIFMA does not agree that exchanges are platforms for market data and transaction services and competition for order flow on the trading side of the platform acts to constrain the pricing of market data on the other side of the platform. The actions of broker-dealer consolidators of order flow are but one example of why this platform theory put forward by the exchanges is flawed. In particular, direct feeds from individual exchanges are not fungible and broker-dealers feel obligated to obtain direct feeds across

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See, Securities Exchange Act Release No. 89065 (June 12, 2020) 85 FR 37123 (June 19, 2020).

³ See, Memorandum from the Division of Trading and Markets regarding a July 14, 2020, meeting with representatives of the Securities Industry and Financial Markets Association.

multiple exchanges to have the most robust view of the market, regardless of a given exchange's market share. While not explicitly mandated by regulation to use direct feeds, a large number of broker-dealers feel that this is necessary for competitive and/or best execution reasons. On the competitive front, many investment managers require that the broker-dealers handling their order flow must subscribe to each exchange's proprietary feed. In this regard, a representative of a large investment fund manager stated during the Commission's 2018 Roundtable related to market data that:

If a broker is routing using SIP data, they are not routing my flow. They can route someone else's but they're not eligible to get my flow, period. That's not negotiable.⁴

This competitive reality also is evidenced by the public disclosures of the order routing practices of many broker-dealers that indicate their use of the proprietary data feeds from all exchanges, including NYSE National, in connection with routing client orders.⁵ To choose to do otherwise could result in the loss of client order flow to competitors.

Similarly, a number of broker-dealers feel that they cannot ignore the NYSE National's Integrated Feed and solely rely on SIP data from the exchange to meet their best-execution obligations. In this regard, data indicates that NYSE National, despite having a small overall market share, has quotations at one side of the NBBO 37.7% of the time and at both sides of the NBBO 7.76% of the time (i.e., NYSE National has quotations at one or both sides of the NBBO 45.46% of the time).⁶ In addition, odd lot trades represented 36.6% of total trades at NYSE National, which indicates an active odd-lot market at the exchange.⁷ The only way to see these odd-lot quotes is to subscribe to the NYSE National Integrated Feed.

⁴ See, SEC Roundtable on Market Data Products, Market Access Services, and their Associated Fees, October 25, 2018, available at <https://www.sec.gov/spotlight/equity-market-structure/roundtables/roundtable-market-data-market-access-102518-transcript.pdf>, ("If a broker is routing using SIP data, they are not routing my flow. They can route someone else's but they're not eligible to get my flow, period. That's not negotiable," Mett Kinak, Head of Global Equity Market Structure and Electronic Trading, T. Rowe Price)

⁵ See, e.g., U.S. Order Handling Guidelines, Credit Suisse Securities (June 2020) available at <https://www.credit-suisse.com/media/assets/sites/aes/doc/aes-us-order-handling-guidelines.pdf>; Guide to Cash Equities Electronic Trading Services for US Markets, BofA Securities (2020) available at https://www.bofam.com/content/dam/boamlimages/documents/articles/C1_062/guide_to_us_cash_equities_electronic_trading_services_final.pdf; U.S. Cash Equity Order Handling & Routing Practices Frequently Asked Questions, Morgan Stanley (May 2020) available at https://www.morganstanley.com/assets/pdfs/sales_and_trading_disclosures/MS_US_Cash_Equity_Order_Handling_and_Routing_FAQs.pdf; Barclays, FAQs: Equities Electronic Order Handling (April 2020) available at https://www.investmentbank.barclays.com/content/dam/barclaysmicrosites/ibpublic/documents/investment-bank/equities/Barclays_FAQs%20Equities%20Electronic%20Order%20Handling_US_April%202020.pdf

⁶ See, IEX, Market Quality Statistics (Jun. 2020) available at <https://iextrading.com/market-quality/>.

⁷ *Id.*

Further, as shown in the attached charts,⁸ despite a relatively small overall market share, NYSE National has a significant market share for certain stocks and exchange-traded products (“ETPs”). Notably, once trading volume associated with the opening and closing auctions is excluded, the data indicates that NYSE National holds a larger market share for certain types of securities during regular trading hours. To highlight a few important points, of the stocks that trade on NYSE National, in the 30-days ending July 17, 2020, over 22% were small-cap stocks, and with regard to 35% of those small-cap stocks, NYSE National had a continuous market share of between 2% and 5%. In addition, with regard to 6% of those small-cap stocks, NYSE National had a continuous market share of between 5% and 10%. Similarly, over 26% of the stocks traded on NYSE National were mid-cap stocks, and with regard to 27% of those mid cap stocks, NYSE National had a continuous market share of between 2% and 5%. In addition, with regard to 8% of those mid-cap stocks, NYSE National had a continuous market share of between 5% and 10%. During the same period, NYSE National also had significant market share in certain smaller, less liquid ETPs. And for at least some individual common stocks and ETPs, NYSE National had a market share of greater than 10%. Moreover, there were significant changes in the stocks and ETPs that had the highest market shares on NYSE National in the 30-days ending July 17 and May 17. Given these considerations, many broker-dealers feel obligated to subscribe to the NYSE National Integrated Feed despite its relatively small overall market share.⁹

Moreover, given that market data fees are charged on a monthly as opposed to per-transaction basis, they are not one of the best execution factors used by broker-dealers when routing client orders. Under the current regulatory environment, broker-dealers lack the flexibility to route away from an exchange that had decided to significantly increase its market data feeds. Thus, best execution considerations are yet another factor as to why the exchange’s platform theory is flawed.

Conclusion

This additional information further demonstrates that competition does not constrain the proposed fees for the NYSE National Integrated Feed. SIFMA accordingly believes that given the overall lack of competition for market data, exchanges must provide information on the cost to produce and distribute the market data to show the fees meet the requirements of the Exchange Act. Absent additional cost information provided by NYSE National, we request that the Commission reject the proposed rule to establish fees for the NYSE National Integrated feed.

⁸ Bloomberg Finance L.P.

⁹ See, Cboe Global Markets, U.S. Equities Market Volume Summary, *available at* https://markets.cboe.com/us/equities/market_share/ (For June 2020, NYSE National had 1.5% share of executed volume of equity trades).

Ms. Vanessa Countryman, Securities and Exchange Commission
SIFMA Letter on NYSE National Market Data Fee Filing
August 14, 2020
Page 4

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SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact me (at 212-313-1287 or egreene@sifma.org).

Sincerely,



Ellen Greene
Managing Director
Equities & Options Market Structure

NYSE National is Significant (by Market Share) to Traders Engaged in Some Specific Stocks

30 Day Average Ending July 17

Common Stocks					
Market cap	Market Share*				
	0%	<2%	2-5%	5-10%	10-14%
micro	51.9%	82.7%	17.3%	0.0%	0.0%
small	21.5%	59.3%	34.8%	5.9%	0.0%
mid	33.5%	63.9%	27.2%	8.2%	0.6%
large	46.1%	87.1%	11.3%	1.6%	0.0%
mega	62.5%	100.0%	0.0%	0.0%	0.0%

30 Day Average Ending May 17

Common Stocks					
Market cap	Market Share*				
	0%	<2%	2-5%	5-10%	10-12%
micro	52.6%	86.8%	13.2%	0.0%	0.0%
small	17.2%	58.2%	36.9%	4.9%	0.0%
mid	32.7%	64.0%	32.0%	3.3%	0.7%
large	66.0%	89.7%	9.1%	1.2%	0.0%
mega	100.0%	100.0%	0.0%	0.0%	0.0%

* Based on Continuous Market Volume (excludes primary exchange opening and closing auction volume)

Common Stocks Top 10 Share July

Ticker	Share *	Primary
SLM	14%	NASDAQ GS
SIRI	8%	NASDAQ GS
ISBC	8%	NASDAQ GS
HBAN	7%	NASDAQ GS
PBCT	7%	NASDAQ GS
MDRX	7%	NASDAQ GS
SWN	7%	New York

Common Stocks Top 10 Share May

Ticker	Share *	Primary
SLM	12%	NASDAQ GS
RRC	7%	New York
HBAN	7%	NASDAQ GS
SIRI	7%	NASDAQ GS
VLY	7%	NASDAQ GS
RF	7%	New York
MDRX	6%	NASDAQ GS

NYSE National is Significant (by Market Share) to Traders Engaged in Some Specific ETFs

ETPs						ETPs					
Market Share*						Market Share*					
AUM Size	0%	<2%	2-5%	5-10%	10-17%	AUM Size	0%	<2%	2-5%	5-10%	10-16.5%
micro	21.4%	64.3%	14.3%	21.4%	0.0%	micro	42.9%	92.9%	7.1%	0.0%	0.0%
small	23.3%	50.0%	23.3%	25.0%	1.7%	small	30.8%	61.5%	21.2%	17.3%	0.0%
mid	21.8%	53.8%	39.7%	6.4%	0.0%	mid	22.1%	61.8%	32.4%	5.9%	0.0%
large	27.2%	61.7%	32.1%	6.2%	0.0%	large	35.4%	67.1%	29.1%	3.8%	0.0%
mega	N/A	N/A	N/A	N/A	N/A	mega	N/A	N/A	N/A	N/A	N/A

* Based on Continuous Market Volume (excludes primary exchange opening and closing auction volume)

ETPs Top 10 Share July		
Ticker	Share *	Primary
IYE	17%	NYSE Arca
TWM	10%	NYSE Arca
DBO	9%	NYSE Arca
KBE	9%	NYSE Arca
XLF	8%	NYSE Arca
BKLN	7%	NYSE Arca
PSQ	7%	NYSE Arca

ETPs Top 10 Share May		
Ticker	Share *	Primary
IYE	9%	NYSE Arca
ITB	8%	Cboe BZX
KBE	8%	NYSE Arca
XME	7%	NYSE Arca
XRT	7%	NYSE Arca
XLF	7%	NYSE Arca
EWU	6%	NYSE Arca