



September 2, 2020

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

Re: ***NYSE Rule Proposals to Amend the Schedule of Wireless Connectivity Fees and Charges to Add Wireless Connectivity Services; File Nos. SR-NYSE-2020-11, SR-NYSE-2020-05, SR-NYSEAMER-2020-10, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-15, SR-NYSEArca-2020-08, SR-NYSECHX-2020-05, SR-NYSECHX-2020-02 NYSEAT-2020-08, NYSEAT-2020-03***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to comment on the above-referenced filing submitted to the U.S. Securities and Exchange Commission (“Commission”) to add wireless connectivity services and charge applicable fees by New York Stock Exchange LLC,<sup>2</sup> NYSE American LLC,<sup>3</sup> NYSE Arca, Inc.,<sup>4</sup> NYSE Chicago, Inc.<sup>5</sup> and NYSE National, Inc.<sup>6</sup> (collectively, “NYSE”). First, we support the Commission’s finding that Ice Data Services (“NYSE Affiliate”) offering wireless market data connections are facilities of the exchange. Second, while the NYSE’s amendment is designed to provide a level playing field for competition to connect to the exchanges’ exclusive market data feeds via

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<sup>1</sup> 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>.

<sup>2</sup> See Securities Exchange Act Release Nos. 89458 (Aug. 3, 2020), 85 Fed. Reg. 48045 (Aug. 7, 2020); 88168 (Aug. 3, 2020), 85 Fed. Reg. 47992 (Aug. 7, 2020).

<sup>3</sup> See Securities Exchange Act Release Nos. 89459 (Aug. 3, 2020), 85 Fed. Reg. 48052 (Aug. 7, 2020); 89454 (Aug. 3, 2020), 85 Fed. Reg. 48002 (Aug. 7, 2020).

<sup>4</sup> See Securities Exchange Act Release Nos. 89460 (Aug. 3, 2020), 85 Fed. Reg. 48017 (Aug. 7, 2020); 89455 (Aug. 3, 2020), 85 Fed. Reg. 48035 (Aug. 7, 2020).

<sup>5</sup> See Securities Exchange Act Release Nos. 89461 (Aug. 3, 2020), 85 Fed. Reg. 48039 (Aug. 7, 2020); 89456 (Aug. 3, 2020), 85 Fed. Reg. 48024 (Aug. 7, 2020).

<sup>6</sup> See Securities Exchange Act Release Nos. 89457 (Aug. 3, 2020), 85 Fed. Reg. 47997 (Aug. 7, 2020); 89457 85 Fed. Reg. 47997 (Aug. 7, 2020).

wireless connectivity services, the Commission should continue to ensure NYSE does not engage in other practices that would give the NYSE Affiliate an advantage over competitors. Third, the Commission should clearly note that the competition for wireless connectivity services remains distinct from whether the fees charged for the exclusive market data meet the requirements of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>7</sup>

In determining whether the proposed rule changes are consistent with applicable statutory requirements under the Exchange Act, the Commission should ensure the proposed fees are (i) reasonable, (ii) equitably allocated, (iii) not unfairly discriminatory and (iv) not an undue burden on competition. NYSE must provide sufficient information upon which to base a determination that the fees are consistent with the requirements of the Exchange Act. The information may follow the examples of necessary information set forth in the Staff Guidance on SRO Rule Filings Relating to Fees,<sup>8</sup> or another acceptable means.

*NYSE Affiliate’s Wireless Connectivity Services are Facilities of the Exchange*

We support the Commission finding that NYSE Affiliate offering the wireless connectivity service with NYSE’s consent falls within the definition of an exchange facility. As noted in our previous comment letter,<sup>9</sup> the definition of an exchange includes the “market facilities maintained by such exchange.” Part of the definition of “facility” under the Exchange Act includes “any right to the use of such premises or property or any service thereof for the purpose of . . . reporting a transaction on an exchange (including any system of communication . . . from the exchange . . . maintained . . . with the consent of the exchange).”<sup>10</sup> As noted, the definition of “facility” appropriately captures systems of communication operated by or with the consent of an exchange that provide transaction reports in securities listed on the exchange as such transactions reports are critical pieces of information for investors seeking to effect transactions in securities listed on the exchange. Accordingly, we applaud the Commission’s determination that the wireless connectivity services should be considered an exchange facility as NYSE permits its service provider NYSE Affiliate to operate a communication system that reports exchange transaction information.

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<sup>7</sup> See, e.g., 15 U.S.C. 78f(b)(4); 78f(b)(5); and 78f(b)(8).

<sup>8</sup> SEC’s Division of Trading and Markets, *Staff Guidance on SRO Rule Filings Relating to Fees* (“Staff Guidance”) (May 21, 2019).

<sup>9</sup> See Letter from Ellen Greene, SIFMA to Vanessa Countryman, SEC dated April 3, 2020. The NYSE should not be allowed to avoid the Exchange Act requirements regarding fees charged by exchanges merely by shifting the operation of a communication system that conveys market data to an affiliate. Moreover, although the analysis above focuses the third part of the definition of “facility,” SIFMA is not conceding that the wireless connectivity feeds involved here do not meet other parts of the definition of facility. For instance, the tower that disseminates the market data wirelessly from the exchange’s Mahwah, New Jersey data center could be considered the premises of the exchange.

<sup>10</sup> 15 U.S.C. 78c(a)(2).

*NYSE's Amendment is Designed to Address the Potential Latency Advantage NYSE Affiliate Would Have over Competitors*

SIFMA supports NYSE's proposed requirement that is designed to address the potential latency advantage the NYSE Affiliate would have based on its physical proximity to NYSE's matching engine.<sup>11</sup> Providing the NYSE Affiliate with a geographical advantage would harm the ability for competitors to provide similar services because most broker-dealers would feel compelled to purchase the connectivity service with the geographical and latency advantage. However, NYSE's amendment should provide other wireless connectivity service providers with the opportunity to compete with NYSE Affiliate by requiring that the connections between NYSE Affiliate's wireless pole ("Data Center Pole") and competitor's wireless pole ("Commercial Pole") be the same length. Further, despite NYSE proposing to charge market participants significant initial fee and recurring monthly fees per wireless connection,<sup>12</sup> the fact that competitors can offer the same level of wireless connectivity services should constrain the price for NYSE's wireless connectivity services.

In particular, SIFMA believes NYSE's amendment to require that "the length of the connection between (a) the base of the Data Center Pole and (b) the point inside the Data Center where Exchange market data is produced, would be no less than the length of the connection between (x) the base of the closet Commercial Pole and (y) the point inside the Data Center where Exchange market data is produced"<sup>13</sup> and that "the length of the connection between (a) the base of the Data Center Pole and (b) the network row in the space used for co-location in the Data Center, would be no less than the length of the connection between (x) the base of the closet Commercial Pole and (y) the network row in the space used for co-location in the Data Center"<sup>14</sup> is designed to limit NYSE Affiliate's geographical advantage.

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<sup>11</sup> SIFMA requests that the Commission revisit the decision to allow Nasdaq to be the only wireless provider on its rooftop at its Carteret data center. See Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013). As market participants have become more familiar with wireless technology, there is a greater understanding of the latency advantages associated with being closer to a matching engine. As part of the premises of the exchange, Nasdaq's roof is a facility of the exchange and therefore its usage is subject to the requirements in Section 6(b) of the Exchange Act, including the requirement in Section 6(b)(8) that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

<sup>12</sup> See Securities Exchange Act Release Nos. 88238 (Feb. 19, 2020), 85 FR 10776, 10780 (Feb. 25, 2020); 88237 (Feb. 19, 2020), 85 FR 10752, 10756 (Feb. 25, 2020); 88239 (Feb. 19, 2020), 85 FR 10786, 10800 (Feb. 25, 2020); 88240 (Feb. 19, 2020), 85 FR 10795, 10799 (Feb. 25, 2020); and 88241 (Feb. 19, 2020), 85 FR 10738, 10742 (Feb. 25, 2020).

<sup>13</sup> Release No. 89458, *supra* note 2, at 48048; Release No. 89459, at *Supra* note 3, at 48055; Release No. 89460, *supra* note 4, at 48020; Release No. 89461, *supra* note 5, at 48042; Release No. 89457, *supra* note 6, at 48000.

<sup>14</sup> Release No. 88168, *supra* note 2, at 47995; Release No. 89454, *supra* note 3, at 48005; Release No. 89455, *supra* note 4, at 48038; Release No. 89456, *supra* note 5, 48027; Release No. 89457, *supra* note 6, at 48000.

*The Commission Should Monitor for Other Unfair Competitive Practices by NYSE*

In collaboration with the DOJ Antitrust Division,<sup>15</sup> the Commission should continue to assess the competitive landscape to ensure NYSE does not unduly burden competition by providing the NYSE Affiliate with other unfair competitive advantages. While the amendment appears to address concerns with NYSE Affiliate's geographical advantage, SIFMA urges the Commission to continue to monitor for other restrictions or conditions that would give its NYSE Affiliate an advantage over competitors and consequently affect the ability for market participants to choose competing wireless connectivity services. For example, SIFMA would oppose NYSE rule filings that reverse the restriction on utilizing the NYSE Affiliate's geographical advantage, offer group discounts to undercut competitors' pricing or otherwise impose a burden on competition through other practices that cannot be copied by competitors.

*The Commission Should Clearly Note that any Finding Related to Wireless Connectivity Fees Does Not Address Whether the Fees for NYSE's Market Data Meet the Requirements of the Exchange Act*

If the Commission finds NYSE provided sufficient evidence to satisfy the applicable statutory standards, the Commission should not conclude that the competition for wireless connectivity services results in competition in the production and selling of market data. NYSE, and other exchanges, remain exclusive purveyors of market data, and competition for order routing and other services do not constrain the prices for market data. Considering there is no alternative to purchasing the data directly from the exchange, market forces alone will not constrain the cost of market data. Accordingly, we ask the Commission to require exchanges to provide public transparency into the cost to produce market data in the appropriate rule filings.

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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](mailto:egreene@sifma.org)).

Sincerely,



Ellen Greene  
Managing Director  
Equity and Options Market Structure

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<sup>15</sup> See U.S. Dep't of Justice, Antitrust Division-SEC, Memorandum of Understanding (June 22, 2020)