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June 24, 2016

VIA E-MAIL

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: **Securities Exchange Act Release No. 34-77642 (April 18, 2016), 81 FR 23786 (April 22, 2016) (SR-NYSE-2016-11) (the “Proposal”)**

Dear Mr. Fields:

The New York Stock Exchange LLC (the “NYSE” or “Exchange”) appreciates the opportunity to respond to the comment letters submitted in connection with the Proposal to establish fees relating to certain end users and amend the definition of “affiliate,” as well as to amend the co-location section of the Exchange’s Price List to reflect the changes.¹ For the reasons set forth in the Proposal and in this response, the Exchange believes that its Proposal is consistent with Sections 6(b)(4) and 6(b)(5) of the Securities Exchange Act of 1934, as amended (the “Act”).²

¹ See Letter from Michael Friedman, General Counsel and Chief Compliance Officer, Trillium, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 13, 2016 (“Friedman Letter”), and Letter from Eero Pikat to Brent J. Fields, Secretary, Securities and Exchange Commission, dated, May 13, 2016 (“Pikat Letter”) (together, the “Comment Letters”). Capitalized terms that are not defined herein are used as defined in the Proposal.

² 15 U.S.C. 78f(b)(5). The Comment Letters do not address the proposed rule changes filed by the Exchange’s affiliates NYSE MKT LLC and NYSE Arca, Inc., which are substantially the same as the Proposal. However, the Exchange’s responses to the Comment Letters are also applicable to the filings made by NYSE MKT LLC and NYSE Arca, Inc. See Securities Exchange Act Release Nos. 77640 (April 18, 2016), 81 FR 2380 (April 22, 2016) (SR-NYSEMKT-2015-15) and 77641 (April 18, 2016), 81 FR 23773 (April 22, 2016) (SR-NYSEArca-2015-19).

Summary of the Proposal for Rebroadcasting User Fees

As described in the Proposal, information flows over existing Exchange network connections in two formats: multicast, a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast; and unicast, a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange. The Comment Letters address the Exchange's proposal to establish fees relating to certain end users that receive market data in multicast format.

As noted in the Proposal, as a general matter, market data is broadcast to Users³ in multicast format. Users can rebroadcast data they receive in multicast format to their customers if they choose.⁴ The Exchange proposes to add definitions of "Rebroadcasting User" and "Multicast End User" to its co-location Price List, as follows.

- A "Rebroadcasting User" would be a User that rebroadcasts to its customers data received from the Exchange in multicast format, unless such User normalizes the raw market data before sending it to its customers.⁵
- A "Multicast End User" would be a customer of a Rebroadcasting User, or a customer of a Rebroadcasting User's Multicast End User customer, to whom the Rebroadcasting User or its Multicast End User sends data received from the Exchange in multicast format, other than an Affiliate of the Rebroadcasting User.⁶ A

³ For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. A "Hosted Customer" is a customer of a Hosting User that is hosted in a Hosting User's co-location space. A "Hosting User" means a User that hosts a Hosted Customer in the User's co-location space. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40).

⁴ As used in the context of the proposed fees, the term "customer" refers to any person who has a contractual relationship with a User or the customer of a User for the provision to that customer of unicast or multicast services.

⁵ See Proposal, 81 FR at 23787.

⁶ The proposed definition of "Affiliate" of a Rebroadcasting User is any Multicast End User that is under common control with, controls, or is controlled by the Rebroadcasting User. For purposes of this definition, "control" means ownership or control of 50% or greater. See Proposal, 81 FR at 23788..

Multicast End User may be, but is not required to be, another User or a Hosted Customer.

A Rebroadcasting User may have more than one connection to a single Multicast End User. In addition, the multicast format permits a Multicast End User to rebroadcast the data received. Each of such customers is also considered a Multicast End User, irrespective of whether it receives the data from a Rebroadcasting User or another Multicast End User.⁷

The Exchange proposes to charge Rebroadcasting Users fees relating to each Multicast End User (the “Rebroadcasting Fees”) as follows:

- If the Rebroadcasting User has one or two connections, either directly or through another Multicast End User, to a Multicast End User, the Rebroadcasting User would be subject to a \$1,700 monthly charge.
- If the Rebroadcasting User has more than two connections to a Multicast End User, either directly or through another Multicast End User, the Rebroadcasting User would be subject to a \$1,700 monthly charge for the first two connections (in the aggregate) and \$850 for each additional connection.

As discussed below, based on comments and a further review of the support it provides to Rebroadcasting Users compared to Users that are not Rebroadcasting Users, the Exchange is filing an amendment to the Proposal that, among other things, would provide that no Rebroadcasting User fee would be assessed for a Rebroadcasting User’s first two Multicast End Users.

Response to Comment Letters

The Comment Letters provide various arguments in opposition to the proposed Rebroadcasting Fees. For the reasons set forth below, the Exchange believes that the Comment Letters have not provided any credible argument why the Exchange’s Proposal is not consistent with the requirements of the Act.

The Proposed Rebroadcasting Fees Relate to Connectivity and Co-location Services

As explained above and in the Proposal, the proposed Rebroadcasting Fees would relate to connectivity and co-location services. They would not be for market data. Rather, Rebroadcasting Users would be charged based on the number of connections they have to

⁷ The Exchange is not aware of any customer of a Multicast End User that rebroadcasts data, but if such a relationship did exist, the customer would also be considered a Multicast End User.

Multicast End Users. Both Comment Letters mistakenly view the proposed Rebroadcasting Fees as market data fees, however, and therefore make arguments based on the fees' purported effect on market data revenue, which are not applicable to the Proposal.

First, the Pikat Letter states that the Rebroadcasting Fees are being proposed "solely for the purpose of protecting market data revenue, either by augmenting lost revenue from SFTI, or discouraging current customers from leaving or discouraging new customers from going to outside vendors other than SFTI."⁸ Contrary to these allegations, however, because the proposed Rebroadcasting Fees are not market data fees, charging them would not affect—or "protect"—market data revenue, and whether a market participant opted to receive Exchange market data as a Multicast End User or by becoming a User itself would have no impact on market data revenue.⁹ In fact, a market participant has additional options outside of co-location for connecting to Exchange market data: it can access Exchange market data through a number of third party rebroadcasters, or from the Exchange itself at any of the ten Exchange access centers outside of co-location.

Similarly, the Friedman Letter argues that "opulent market data revenue increases consistently reported by NYSE and the other major exchange groups" are evidence of the "absence of competitive forces mitigating the ... Proposal."¹⁰ It is not clear to the Exchange how the market data revenue of other exchanges and the Exchange's parent tie to a lack of competitive forces mitigating a proposed Exchange fee in relation to colocation and connectivity services. However, since the proposed Rebroadcasting Fees would not generate market data revenue, the point is moot.

In addition, the Friedman Letter cites a second factor as evidence of the "absence of competitive forces mitigating the ... Proposal," namely "the inability of market data customers to

⁸ Pikat Letter, at 1. For purposes of this letter, the Exchange interprets the references to SFTI in the Pikat Letter as references to the local area networks available to co-location Users. The Pikat Letter also disputes exchanges' intellectual property rights to market data. Intellectual property falls outside the scope of the Proposal.

⁹ For a discussion of factors relating to such a decision by a market participant, see notes 14-16, infra, and related text.

¹⁰ Friedman Letter, at 2. The Friedman Letter cites the earnings release of the Exchange's parent company Intercontinental Exchange, Inc. ("ICE"), which release includes ICE market data revenue. Such figure includes data from ICE's 11 global exchanges, not just the NYSE. See Intercontinental Exchange First Quarter 2016 Earnings Supplement (May 4, 2016), p. 9, at <http://ir.theice.com/~media/Files/I/Ice-IR/quarterly-results/2016/first-quarter-2016/1q-16-earnings-presentation-v2.pdf>.

use alternative products, particularly when the details of recent spoofing and layering enforcement actions are considered.”¹¹ Simply put, this letter alleges that, because broker-dealers are required to monitor their customers’ order flow for potential manipulation, including spoofing and layering, broker-dealers are effectively required to consume depth-of-book market data as part of their compliance programs.¹²

The Exchange does not agree that broker dealers are effectively required to receive depth-of-book data. However, even if we were to assume that was true, the Friedman Letter’s argument why the Exchange’s Proposal is not consistent with the requirements of the Act would still not be relevant, because market data customers have alternatives for connectivity to the data. Indeed, nowhere does the Friedman Letter contend that broker dealers are required to receive depth-of-book data *from co-located Rebroadcasting Users*. In reality, a broker dealer can receive depth-of-book data not only from a Rebroadcasting User, but also from a number of third party rebroadcasters, or from the Exchange itself at any of the ten Exchange access centers outside of co-location. The facts speak for themselves: if all broker dealers were required to receive depth-of-book data within co-location, either from Rebroadcasting Users or directly from the Exchange, the demand for such services would be substantially higher.

The Proposal Would Not Impose Any Burden on Competition that is Not Necessary or Appropriate

Both Comment Letters make competition-based arguments. The Pikat Letter states that “[t]o argue that adding this fee is not anti-competitive ignores that these fees are assigned only to vendors’ customers who buy data from ICE’s competitors.”¹³ The Friedman Letter contends that “NYSE is able to impose new fees such as the Fee Proposal without being subject to competitive forces, and the Fee Proposal is therefore not ‘fair and reasonable’ under the Exchange Act.”¹⁴ For the reasons set forth below and in the Proposal, the Exchange believes that the proposed

¹¹ Friedman Letter, at 2.

¹² See Friedman Letter, at 2-3.

¹³ Pikat Letter, at 1. The cited statement is incorrect. As noted above, the Exchange would charge Rebroadcasting Users the proposed fees, not vendors’ customers (Multicast End Users) as the Pikat Letter states. The Friedman Letter makes the same error. See Friedman Letter, at 1. The Exchange recognizes that it is reasonable to believe that a Rebroadcasting User may pass on some or all of the Rebroadcasting Fee to its Multicast End Users, but whether the Rebroadcasting User does so is not in the Exchange’s control and is a business matter between the Rebroadcasting User and its Multicast End Users.

¹⁴ Friedman Letter, at 2.

Rebroadcasting Fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

In claiming that the proposed fee is anti-competitive or that the Exchange is not subject to competitive forces, the Comment Letters are ignoring the basic fact that the Exchange voluntarily allows Rebroadcasting Users to provide services out of the Exchange's co-location facility. Although the securities laws did not require it to do so, the Exchange opened its doors to allow any market participant that requests co-location service to become a User.¹⁵ It did so knowing that such Users could include vendors.¹⁶ It would be illogical to argue, as the Pikat Letter seems to do, that just because Rebroadcasting Users provide services that overlap with services offered by the Exchange, the Exchange cannot charge the Rebroadcasting Users for the Exchange's services.

In fact, in the absence of the proposed Rebroadcasting Fees, the Rebroadcasting User would receive disproportionate benefits because no charges would be assessed related to the benefit that Multicast End Users receive from the Exchange's services through the Rebroadcasting User from whom they receive data. Accordingly, as noted in the Proposal, the Exchange believes that the proposed Rebroadcasting Fees would fairly and equitably allocate the costs associated with maintaining the data center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users, as well as applicable expenses incurred and resources expended by the Exchange in support of Rebroadcasting Users.

Further, it is important to note that Rebroadcasting Users are not direct competitors of the Exchange's co-location services. While both offer connectivity to Exchange market data, Rebroadcasting Users provide their customers services that the Exchange's co-location service does not—for example, the Exchange does not provide Users with hardware such as routers or switches, and does not offer fully managed services. As a result, several factors would weigh into a market participant's decision whether to connect to Exchange market data through a Rebroadcasting User or through co-locating with the Exchange itself, including not just cost, but also whether the market participant wanted to purchase, maintain and manage the equipment and infrastructure, including network connections, that co-location requires.

¹⁵ See Securities Exchange Act Release No. 65973 (December 15, 2011), 76 FR 79232 (December 21, 2011) (SR-NYSE-2011-53) (approval of rule change expanding the scope of potential Users of co-location services to include any market participant that requests to receive co-location services directly from the Exchange).

¹⁶ *Id.*, at 79233 (“...Users could therefore include member organizations, Sponsored Participants, non-member brokerdealers and vendors”).

In addition, as noted above, entities such as Trillium have several options for connecting to Exchange data, and could favor a competing venue if, for example, they deemed fee levels to be excessive or determined that another venue's service was more competitive than the Exchange's. Based on the information available to it, the Exchange believes that it would be less expensive for an entity that wanted connectivity for NYSE Integrated Feed or OpenBook data to become a Multicast End User than to co-locate with the Exchange—even if the Rebroadcasting User passed the entire proposed Rebroadcasting Fee on to the Multicast End User.

The Exchange Provides Support to Rebroadcasting Users

The Pikat Letter argues that the Exchange's claims relating to the costs of supporting Rebroadcasting Users "makes no technical sense." Instead, it contends,

[s]ubvendors, such as PICO, alleviate the load and technical resources that ICE would otherwise have to support. Technically, ICE has less work to do, and less resources to use[sic], as customers leave "direct" connections to SFTI, and go to "indirect" vendors such as PICO.¹⁷

The letter concludes by stating that the Proposal does not provide "evidence to support its claim that its costs are higher to support the customers of subvendors."¹⁸

The Pikat Letter's argument fundamentally misunderstands the Proposal. The Exchange does not contend that it provides more support to, or incurs higher costs supporting, customers of subvendors (Multicast End Users) than subvendors (Rebroadcasting Users). Rather, the Proposal compares the support the Exchange provides to Rebroadcasting Users *to the support required by Users that are not Rebroadcasting Users*.

As explained in the Proposal, the Exchange believes that not charging Rebroadcasting Users end user fees allows them to receive disproportionate benefits from co-location services provided by the Exchange. Based on its experience, the Exchange generally provides more direct support to Rebroadcasting Users than other Users. The Exchange typically provides such support in the form of network support for the services that Rebroadcasting Users provide their Multicast End Users.¹⁹ Typically, when an issue arises, the Exchange and the applicable

¹⁷ Pikat Letter, at 1. The Exchange notes that the Proposal is made by the Exchange, a self-regulatory organization under the Act, and not by its parent company Intercontinental Exchange, Inc. ("ICE").

¹⁸ Pikat Letter, at 1.

¹⁹ See Proposal, 81 FR at 23788. For example, if a Multicast End User had an issue such as a loss of connection to the multicast service or dropping packets of data (i.e. portions of

Rebroadcasting User would conduct a review to determine the cause of an issue, sometimes with the participation of the relevant Multicast End User. Based on its experience, the Exchange finds that when the User is a Rebroadcasting User, pinpointing the issue and providing the needed network support becomes more complicated because each entity involved has its own infrastructure and administration.²⁰ As a result, as a general matter the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users than other Users.

For example, the Exchange reviewed customer calls for assistance between June 1, 2015 and June 7, 2016. The Exchange compared the number of calls by Users it believes to be Rebroadcasting Users to the number of calls by a representative sample of other Users. A comparison of calls by the larger Rebroadcasting User showed that the larger Rebroadcasting User made between 3.8 and 4.25 times as many calls as Users with similar power usage, and 4.25 to 8.5 times as many calls as Users with similar numbers of cabinets. Indeed, such Rebroadcasting User made 20 more calls than the five largest Users combined.

However, the comparison of customer calls for assistance between June 1, 2015 and June 7, 2016, suggested that, although they require network support, Rebroadcasting Users that have only one or two Multicast End Users do not typically require more support than other Users. Accordingly, based on the information available to it, the Exchange believes that Rebroadcasting Users that have only one or two Multicast End Users are an exception to the general statement that the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users. The Exchange is filing an amendment to the Proposal that would provide that no Rebroadcasting User fee would apply for a Rebroadcasting User's first two Multicast End Users.

The Exchange also incurs indirect expenses in connection with the support of Rebroadcasting Users, including costs associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of co-location, there have been numerous network infrastructure improvements performed and administrative controls established. Additionally, the Exchange has automated retransmission facilities for most of its Users that receive multicast transmissions. These facilities benefit Rebroadcasting Users by reducing their operational costs associated with retransmissions to Multicast End Users that are also Users. The network infrastructure has been expanded to keep pace with the increased

the data are dropped), the Exchange would work with the Rebroadcasting User to determine the issue and, if it was related to Exchange services, remedy it. Id.

²⁰ The Exchange notes that in its experience not all Users have detailed monitoring for their networks, and some Rebroadcasting Users do not troubleshoot within their own networks to see where the cause lies before asking the Exchange for support.

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number of services available to Users, including Rebroadcasting Users, which, in turn, has increased the Exchange's administrative and operational costs associated with delivery by Rebroadcasting Users to their Multicast End Users.

Finally, the Pikat Letter describes the proposed Rebroadcasting Fees as "pure inventions, out of pure air, that would be in addition to vendor/subvendor fees, as well as an already existing direct and indirect vendor fee." The proposed fees are not "pure inventions," but follow a similar example set by the Nasdaq Stock Market, which has been charging its Extranet Access Fee for a decade.²¹ Nor are they "out of pure air" – the amount of the proposed fees was set by the Exchange based on its analysis of its costs and other relevant factors, as are any fees charged by a business. In addition, unlike fees set by a Rebroadcasting User, the proposed fees must meet the requirements of the Act. Finally, the Exchange does not play a role in, or receive any share of, vendor and subvendor fees. The fact that other parties charge for a service they render does not preclude the Exchange from doing the same.

The Exchange appreciates the opportunity to respond to the Comment Letters and respectfully requests the Commission approve the Proposal, as amended.

Very truly yours,



²¹ See Nasdaq Stock Market Rule 7025 and Securities Exchange Act Release No. 74040 (January 13, 2015), 80 FR 2460 (January 16, 2015) (SR-NASDAQ-2015-003). Extranet providers that establish a connection with Nasdaq to offer direct access connectivity to market data feeds are assessed a monthly access fee of \$1,000 per recipient Customer Premises Equipment ("CPE") Configuration. A CPE Configuration is any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Nasdaq market data feeds to a recipient's site. No extranet access fee is charged for connectivity to market data feeds containing only consolidated data.