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January 17, 2017

VIA E-MAIL

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

Re: **File No. SR-NYSE-2016-45 (the "Proposal")**

Dear Mr. Fields:

The New York Stock Exchange LLC (the "NYSE" or "Exchange") appreciates the opportunity to respond to the comment letters[1] submitted in connection with the Proposal to amend the co-location services offered by the Exchange and the November 15, 2016, Order Instituting Proceedings to Determine Whether to Disapprove the Proposal, as amended by Amendments Nos. 1 and 2.[2]

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[1] See Letter from Adam Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission ("Commission"), dated December 12, 2016 ("Citadel Letter"); Letter from Joe Wald, Chief Executive Officer, Clearpool Group, to Brent J. Fields, Commission, dated December 16, 2016 ("Clearpool Letter"); Letter from John Ramsay, Chief Market Policy Market Officer, Investors Exchange LLC, to Brent J. Fields, Commission, dated December 21, 2016 ("IEX Letter"); Letter from Melissa MacGregor, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Brent J. Fields, Commission, dated December 12, 2016 ("SIFMA Letter"); and Letter from David L. Cavicke, Chief Legal Officer, Wolverine Trading LLC, Wolverine Execution Services LLC, and Wolverine Trading Technologies LLC, to Brent J. Fields, Commission, dated December 23, 2016 ("Wolverine Letter"). Capitalized terms that are not defined herein are used as defined in the Proposal.

[2] See Securities Exchange Act Release No. 79316 (November 15, 2016), 81 FR 83303 (November 21, 2016) (SR-NYSE-2016-45) ("Order Instituting Proceedings").

The Exchange filed the Proposal with the Commission on July 29, 2016. It subsequently filed Amendments Nos. 1 and 2 to the Proposal on August 16, 2016, and November 2, 2016, respectively (as so amended, the "Previous Proposal"). On November 15, 2016, the Commission issued the Order Instituting Proceedings, which related to the Previous Proposal.

On December 9, 2016, the Exchange filed Amendment 3 to the Proposal, which superseded the original filing and Amendments 1 and 2 in their entirety (as so amended, the "Current Proposal").[3] The Current Proposal eliminates certain proposed revisions to the Price List and connectivity fees that had been in the Previous Proposal.

Due to the timing of the comment letters and Amendment 3, the majority of the comment letters were written with respect to the Previous Proposal and Order Instituting Proceedings and do not take the Current Proposal into account.[4] As a result, most of the comments made therein are not relevant to the Current Proposal. With respect to those comments that do relate to the Current Proposal, for the reasons set forth in the Previous and Current Proposal and in this response, the Exchange believes that the comment letters do not present any credible basis to conclude that the Current Proposal is not consistent with Sections 6(b)(4), 6(b)(5) and 6(b)(8) of the Securities Exchange Act of 1934, as amended (the "Act"), and that the Commission should therefore approve the Current Proposal.[5]

Summary of the Previous and Current Proposals

As more fully described therein, in the Previous Proposal the Exchange proposed, among other things, to revise the Price List to include:

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3 See Securities Exchange Act Release No. 79674 (December 22, 2016), 81 FR 96060 (December 29, 2017) (SR-NYSE-2016-45) ("Current Proposal").

4 Only the IEX Letter and the Wolverine Letter address the Current Proposal. See IEX Letter, at 1, and Wolverine Letter, at 3. In contrast, the Citadel Letter, the Clearpool Letter, and the SIFMA Letter have been largely mooted by the Current Proposal. Other than the Clearpool Letter and the IEX Letter, no comment letters addressed the proposed rule changes filed by the Exchange's affiliates, NYSE MKT LLC and NYSE Arca, Inc. ("NYSE Arca" and, together, the "Affiliate SROs"), which proposals are substantially the same as the Current Proposal. See Securities Exchange Act Release Nos. 79672 (December 22, 2016), 81 FR 96080 (December 29, 2017) (SR-NYSEMKT-2016-63) and 79673 (December 22, 2016), 81 FR 96107 (December 29, 2017) (SR-NYSEArca-2016-89). The Exchange's present response to the comment letters is also applicable to the filings made by the Affiliate SROs.

5 15 U.S.C. 78f(b)(4), 78f(b)(5) and 78f(b)(8).

a. a more detailed description of co-location Users'[6] access to the trading and execution systems of the Exchange and the Affiliate SROs (the "Exchange Systems") and connectivity to certain market data products (the "Included Data Products") that Users receive with connections to the Liquidity Center Network ("LCN") and internet protocol ("IP") network, local area networks available in the data center; and

b. fees within co-location for connectivity to certain other market data products of the Exchange and the Affiliate SROs (the "Premium NYSE Data Products" and such proposed connectivity fee, the "Premium Connectivity Fee") within co-location.[7]

The Current Proposal, however, does not propose to revise the Price List as described in (a) above, or to implement the Premium Connectivity Fee in (b), above. Instead, the Current Proposal limits its proposed changes to the following fees in the Previous Proposal:

a. access within co-location to the execution systems of third party markets and other content service providers ("Third Party Systems");

b. connectivity within co-location to market data feeds from third party markets and other content service providers (the "Third Party Data Feeds");

c. connectivity within co-location to third party testing and certification feeds; and

d. connectivity within co-location to Depository Trust & Clearing Corporation ("DTCC") services.[8]

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6 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. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Affiliate SROs. See Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR-NYSE-2013-59).

7 See Securities Exchange Act Release Nos. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) and 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR-NYSE-2015-05).

8 See Current Proposal, supra note 3, at 96054. Like the Previous Proposal, the Current Proposal includes proposed fees for virtual control circuits between two Users within co-location. Id. Because no comment letters address or object to fees for virtual control circuits, they are not discussed herein.

Response to Order Instituting Proceedings and Comment Letters

The Questions Raised in the Order Instituting Proceedings are Moot

In the Order Instituting Proceedings, the Commission sought public comment on two issues related to the Premium NYSE Data Products and Included Data Products:

- whether Users would have viable alternatives to paying the Premium Connectivity Fee for the NYSE Premium Data Products; and

- whether charging Users a separate connectivity fee for the Premium NYSE Data Products while including connectivity to Included Market Data in the purchase price for a LCN or IP network connection would be consistent with Section 6(b)(4) of the Act.[9]

Because the Exchange is no longer proposing a Premium Connectivity Fee and the Current Proposal does not propose to address Included Data Products, the two questions posed in the Order Instituting Proceedings are moot.

The Proposed Connectivity Fees Would Not Be Market Data Fees

The comment letters frequently mistake the proposed connectivity fees, in particular the previously proposed Premium Connectivity Fee, for market data fees. Though the comments in respect to the previously proposed Premium Connectivity Fee are no longer relevant, the Exchange nonetheless believes it important to correct this mistake.

Simply put, the Premium Connectivity Fee and proposed fees for connectivity to Third Party Data Feeds would be *connectivity fees* applicable when a User opts to utilize connectivity services within co-location. These connectivity fees would not be market data fees any more than the proposed fee for connectivity to DTCC would be a DTCC fee, and such connectivity fees would not generate market data revenue for the Exchange, for the provider of a Third Party Data Product, or for anyone else.

The Exchange providing a User with connectivity is a different service than providing the content sent over the connection. The connectivity allows the User to receive content over the LCN or IP network. The content may be Exchange market data content or third party data content. The distinction between the connectivity service and the data service is underscored by the fact that a User would not be able to connect to a data product merely by requesting

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[9] See Order Instituting Proceedings, supra note 2, at 83307.

connectivity. Rather, a User must enter into an agreement with the data provider, pursuant to which the User would be charged a market data fee by the data provider. Only after that agreement is in place and the Exchange receives authorization from the provider of the data feed would the Exchange provide a User with connectivity to the provider's market data over the User's LCN or IP network port.[10]

A User that chooses to receive market data within co-location will incur several costs in addition to the cost a market data provider will charge for its data, including the costs associated with the LCN or IP network port, power, cross connects, and connectivity. However, the mere fact that a User needs to have equipment and connections in place in order to be able to receive a market data feed within co-location does not convert the costs of such equipment and connections into market data fees, or convert the Previous and Current Proposals into market data filings. By way of analogy, to view "Game of Thrones" one must buy a television and pay for a subscription to HBO, but that does not convert the cost of the television, or of any other necessary equipment or connection, into a fee for the HBO content.

Various comment letters use the Previous Proposal as a departure point to discuss broader issues related to market data. While some of the comments focus on the alleged effect of exchanges' market data fees on market participants and broker dealer use of exchange market data (without including any data or other evidence), other issues raised include the fees for information not provided by the Securities Information Processor ("SIP"), Commission recommendations and proposals to improve Rule 605 and 606 reports, rebates for posted liquidity, and alleged "exchange monopolies as a consequence of the current equity market structure."[11]

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[10] See id., at 83305.

[11] Citadel Letter, at 3; see also Clearpool Letter, at 2-5, and IEX Letter, at 3. The Exchange notes that the Citadel Letter encourages the Commission to subject new exchange fee proposals to close scrutiny, using the NYSE Best Quote and Trades ("BQT") feed as an example of exchange fees, although Citadel does not subscribe to the BQT feed. Citadel Letter, at 2. As an initial matter, the Citadel Letter fails to acknowledge the level of review that the Commission already undertakes. Taking the BQT feed as an example, before it was approved, the proposal to establish the BQT feed was published for comment, received two comment letters, had the time for Commission action extended, and was amended. See Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40). In turn, the proposed rule change establishing the fee for the BQT feed was published and comment invited. The published notice set forth why the Exchange believes that each of the components of the fees paid for the BQT, which the Citadel Letter outlines, is consistent with the Exchange Act. See

All of these comments are irrelevant, because the Current Proposal does not establish any market data fees or relate to market structure. Accordingly, the Exchange will not address them in the present response. Indeed, even if the Exchange had proposed new market data fees, many of the issues raised would be irrelevant, as they encompass market data and market structure issues well beyond the scope of any fees one exchange might propose.

Users Have Viable Alternatives for Access and Connectivity

As stated in the Previous Proposal, the Exchange provides access to the Exchange Systems and Third Party Systems (together, "Access") and connectivity to Included Data Products, Premium NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC (collectively, "Connectivity") as conveniences to Users. Use of Access or Connectivity in co-location is completely voluntary. Several other access and connectivity options are available to Users based on their own determinations of what best fits their self-selected business models. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through:

- another User,
- a connection to an Exchange access center outside the data center,
- a connection to a third party access center, or
- a connection to a third party vendor.

A User has the following alternatives in how to make such connection:

- a third party telecommunication provider,
- third party wireless network,
- the Secure Financial Transaction Infrastructure ("SFTI") network, or
- a combination thereof.

Each of these choices is solely up to individual Users based on their individual business judgments.

Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64).

In addressing alternative access and connectivity options they concede are available, several comment letters erroneously equate "alternative" with "equivalent." For example, the Citadel Letter claims that "for an alternative means of access to the Premium NYSE Data Products to be an equivalent substitute, the alternative means should result in the same level of latency as accessing the products directly from the Exchange."[12] Because using an alternative means of access would introduce additional latency and the User would have to pay the provider for the service, the Citadel Letter argues, there is "no readily available substitute or equivalent means of access to the Premium NYSE Data Products."[13] For its part, the IEX Letter suggests that the Exchange "provide data on the expected latency (or range of latencies) in receiving data or transmitting orders directly from NYSE, compared to the expected latency for (or range) for firms that rely on a third party access center."[14] But IEX ignores that (i) third parties are not obligated to provide the Commission or the Exchange with latency data and (ii) the Exchange would have to know how each User's system was configured in order to determine their specific latency—information Users are also not required to provide the Exchange. The IEX Letter thus sets up a deliberately impossible requirement to which it seeks to hold the Exchange.

The Current Proposal does not include a Premium Connectivity Fee or other fees relating to the receipt of data from, or transmittal of orders to, the Exchange, making these

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12 Citadel Letter, at 3; see also Wolverine Letter, at 3.

13 Citadel Letter at 3. The Exchange does not believe that the fact that a User would have to pay an alternate provider for that provider's services is relevant to the question of whether an alternative exists. If it were, no alternative would ever be considered viable, because third party providers would have no reason to provide such services for free.

14 IEX Letter, at 2. The Exchange notes that the IEX Letter raises questions relating to the Exchange's costs of operating the data center, and how such costs impact the justification for the fees in the Current Proposal. Its argument is similar to those that IEX raised in its September 23, 2016 letter regarding the Proposal. See Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Brent J. Fields, Commission, dated September 9, 2016 ("September 9, 2016 IEX Letter"). As the Exchange stated in its response to the September 9, 2016 IEX Letter, in focusing on cost to the exclusion of all other factors, the IEX Letter is suggesting an inquiry that ignores (without disputing) all other factors set forth in the Current Proposal, including the benefits Users realize from the proposed services in light of their individual choices of (i) business models and (ii) how to implement those models. See Letter from Martha Redding, Associate General Counsel, Assistant Secretary, New York Stock Exchange, to Brent J. Fields, Commission, dated September 23, 2016. Because the IEX Letter raises no substantive new arguments on this point, the Exchange stands on its previous response.

comments moot. Nonetheless, the Exchange wishes to state its disagreement with the comment letters' position.

Simply put, the Act does not require that there be at least one third party option available that has *exactly the same characteristics* as a proposed service before a national securities exchange can impose or change a fee for a service. Indeed, such a requirement would be untenable, as every exchange would have to have an exact duplicate before it could charge a fee. Rather, the relevant question is whether a proposed fee would be "an equitable allocation of reasonable dues, fees, and other charges among Users in the data center; does not unfairly discriminate between customers, issuers, brokers, or dealers; and does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act."[15]

Accordingly, the Exchange does not represent in either the Previous or Current Proposal that the various alternatives for Access and Connectivity available to co-located Users, including alternatives for connectivity to NYSE Premium Data Products, are exactly the same as the Access and Connectivity that the Exchange offers. Rather, it shows that *co-located Users have the option to receive the same data, or make the same trades, in other manners*. The alternatives offer distinct services and pricing structures that some Users may find more attractive than those proposed by the Exchange, and each User is free to conduct its own analysis of the relative benefits of those alternatives and choose whichever it deems most beneficial to it.[16] Contrary to the IEX Letter, the fact that not every User will find the alternatives equally attractive does not mean that the alternatives are not real.[17]

Indeed, the Clearpool Letter directly illustrates this point, because Clearpool is not a co-location customer of the Exchange. As such, it would not have been subject to the Premium Connectivity Fee and would not be subject to any of the fees in the Current Proposal. Rather than the argument it seeks to make, what the Clearpool Letter actually demonstrates is that market participants can and do avail themselves of alternatives for connecting to Included Data Products and Premium NYSE Data Products outside of co-location.

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15 Order Instituting Proceedings, supra note 2, at 83307. See also 15 U.S.C. 78f(b)(4), 78f(b)(5) and 78f(b)(8).

16 For example, the cited comment letters focus exclusively on latency. However, Users with different investment strategies or business models may focus on other characteristics, including redundancy, resiliency, cost, and the services that third parties offer but the Exchange does not, such as managed services.

17 See IEX Letter, at 2.

In claiming that there are no real alternatives for Access and Connectivity available to Users, the comment letters also ignore that there are at least six Users within the co-location hall that offer other Users or hosted customers[18] access to trading or connectivity to market data, including the two other exchanges that are co-located with the Exchange,[19] as well as the fact that Users may contract with any of the 15 telecommunication providers—including five third party wireless networks—available to Users to connect to third party vendors. These alternatives are possible in part because the Exchange voluntarily allows Users to provide services to other Users and third parties out of the Exchange's co-location facility—that is, to compete with the Exchange using the Exchange's own facilities. 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.[20] It did so knowing that such Users could include vendors that provide services in competition with the Exchange.[21]

The Current Proposal includes fees for access to Third Party Systems and connectivity to Third Party Data Feeds, third party testing and certification feeds, and DTCC. The viability of the alternatives to such services is underscored by the Wolverine Letter, which explicitly states that it does not object to the proposed fees for access to Third Party Systems in the Current Proposal on the basis that firms may "contract with other parties or contract directly with network providers."[22] As the letter notes, Wolverine implements connectivity to Third Party Systems internally using a proprietary network because it finds the Exchange's fees "out of line," which directly illustrates the existence of the competitive environment.[23] Indeed, it is the Exchange's understanding that a User could access Third Party Systems and connect to Third

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18 Hosted customers do not have a contractual relationship with the Exchange for co-location services, but rather are the customers of the hosting User. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40).

19 The Exchange does not have more specific information, as Users are not required to inform the Exchange whether they provide access or connectivity to other Users.

20 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).

21 Id., at 79233 ("…Users could therefore include member organizations, Sponsored Participants, non-member brokerdealers and vendors").

22 Wolverine Letter, at 3.

23 Id.

Party Data Feeds, third party testing and certification feeds, and DTCC using one or more of the listed alternatives without increasing its latency levels – and, in many cases, the alternatives would offer lower latency.[24]

Market Participants Are Not Required to Co-locate with, or Subscribe to Proprietary Market Data Products from, an Exchange

Some of the comment letters contend that market participants effectively are required to co-locate with, or to subscribe to proprietary market data products directly from, an exchange. For example, the Wolverine Letter starts by stating that Wolverine Trading LLC is a proprietary trading firm and registered market maker, Wolverine Execution Services LLC is a registered broker dealer, and Wolverine Trading Technologies LLC is a technology provider, and continues by saying that "[a]s such, Wolverine is required to subscribe to the lowest latency NYSE market data products and services."[25] The Wolverine Letter then treats all its costs– including the optional cage surrounding its cabinets, power, cross connects, network ports and connectivity—as costs related to market access.[26] However self-servingly it tries to characterize them, these listed costs, like rent and employee compensation and benefits, are simply costs associated with Wolverine's business activities. These business activities and Wolverine's business judgment—not the Exchange—determine the most effective way for Wolverine to select the products and services it uses.[27]

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[24] For example, a User that wished to receive Nasdaq market data could connect directly to the Nasdaq server within co-location.

[25] Wolverine Letter, at 1.

[26] See Wolverine Letter, at 2 and 3.

[27] The Exchange rejects the Wolverine Letter's contention that Wolverine's monthly market data costs have increased by over 700% over eight years. See Wolverine Letter, at 2. According to the Wolverine Letter, in 2008 Wolverine subscribed to NYSE Openbook, NYSE Trades and ArcaBook. Rather than compare the 2008 and current cost of these feeds, however, Wolverine tries to compare the cost of the three feeds it received in 2008 to the costs for the new and more comprehensive integrated feeds to which it currently subscribes—which did not exist in 2008. That is a false comparison. If Wolverine wants to compare the fees it paid in 2008 to anything, then the relevant comparison is between the 2008 access fees of $7,250 that the Wolverine Letter cites for NYSE Openbook, NYSE Trades and ArcaBook and the current access fees of $8,500 for those feeds, a 17% increase over eight years. Non display fees (category 1) were introduced after 2008. Including such fees would add an additional $14,000, for a total monthly cost of $22,500 for the three feeds – less than half of the $52,800 the Wolverine Letter uses for its "comparison." See NYSE Market Data Fees, January 2017, at

As a second example, the Clearpool Letter incorrectly asserts that broker-dealers are required to purchase all exchange market data products and pay whatever fees the exchanges charge, contending in this case that broker-dealers are required to do so to meet their best execution obligations.[28] It has long been clear, however, that there is no such requirement. The Commission itself has stated that broker-dealers do not have to purchase depth-of-book data in order to meet their best execution obligations.[29] The only other even potentially relevant regulatory guidance merely instructs that a broker-dealer that purchases exchange proprietary market data for its own trading purposes also must use that data when determining best execution for customer orders.[30] Thus, a broker-dealer that chose to purchase only one exchange's proprietary market data would accordingly not have to buy any additional exchange's market data; and a broker-dealer that chose not to purchase any such product for its own use would not have to purchase any such product to satisfy its customer obligations.

Indeed, the Exchange notes that the firms that insist they have no choice but to co-locate with, or to subscribe to proprietary market data products directly from, an exchange include some of the most successful firms in the market. As the Citadel Letter acknowledges, Citadel Securities "accounts for approximately 15 percent of U.S. listed equity volume, 19 percent of U.S. listed equity option volume, and more than 35 percent of all retail U.S. listed equity volume."[31] For its part, SIFMA represents market participants that manage more than $67 trillion in assets for individual and institutional clients.[32] Considering just one of SIFMA's members, in 2014 Bloomberg had worldwide revenue from its sale of market data of approximately $8.5 billion, with roughly $3.5 billion of that revenue coming from the

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http://www.nyxdata.com/nysedata/Default.aspx?tabid=518. See also Securities Exchange Act Release Nos. 74128 (Jan. 23, 2015), 80 FR 4951 (Jan. 29, 2015) (SR-NYSE-2015-03) (establishing the NYSE Integrated Feed); 74127 (Jan. 23, 2015), 80 FR 4956 (Jan. 29, 2015) (SR-NYSEMKT-2015-06) (establishing the NYSE MKT Integrated Feed); and 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR-NYSEArca-2011-78) (establishing the NYSE Arca Integrated Feed).

28 See Clearpool Letter, at 3.

29 See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) (setting aside action by delegated authority and approving proposed rule change relating to ArcaBook depth-of-book data) (the "2008 Approval Order"), at 74779 and 74788.

30 See FINRA Regulatory Notice 15-46 (November 2015).

31 Citadel Letter, at 1, n.1.

32 SIFMA Letter, at 1, n. 1.

Americas.[33] Like Wolverine, these firms have chosen to build business models based on speed. The Exchange finds it interesting that such firms and SIFMA object to exchange fees, which are subject to Commission review and the requirements of the Act, but by and large do not disclose how much profit they or their members make from being co-located and using exchange market data products.

The SIFMA Letter Does Not Raise Any Credible Basis to Conclude that the Proposed Connectivity Fees are Not Consistent with the Act

The SIFMA Letter raises a different issue than the other comment letters. It contends that the proposed fees "should be denied because the fees are inconsistent with the decision of the United States Court of Appeals for the District of Columbia Circuit" in *NetCoalition v. Securities and Exchange Commission*.[34]

NetCoalition I was a challenge in the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") to the Commission's approval in the 2008 Approval Order of the first market data fees charged for the ArcaBook proprietary market data product.[35] *NetCoalition I* upheld the Commission's market-based approach but remanded the 2008 Approval Order to the Commission because the D.C. Circuit concluded that the then-existing record did not support the Commission's conclusions regarding the application of the market-based approach. After *NetCoalition I*, NYSE Arca filed a new proposed rule change on Form 19b-4 proposing fees for the receipt and use of ArcaBook depth-of-book data, which rule change became immediately effective.[36] SIFMA challenged the 2010 ArcaBook Proposal, and in *NetCoalition II* the Court of Appeals held that it lacked jurisdiction to consider that challenge. SIFMA then filed

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33 See generally Burton-Taylor International Consulting LLC, "Financial Market Data/Analysis Global Share & Segment Sizing 2015," at 12, available at ; http://www.sifma.org/broker-dealer-members/#B (last visited January __, 2017); http://www.sifma.org/uploadedfiles/education/sifma_foundation/about%20the%20sifma%20foundation%20-%20brochure.pdf.

34 SIFMA Letter, at 2. See NetCoalition v. Securities and Exchange Commission, 615 F.3d 525 (D.C. Cir. 2010) ("NetCoalition I"); and NetCoalition and Securities Industry and Financial Markets Association v. Securities Exchange Commission, NASDAQ OMX PHLX LLC, et.al, 715 F.3d 342 (D.C. Cir. 2013) ("NetCoalition II").

35 See 2008 Approval Order, supra note 29.

36 See Securities Exchange Act Release No. 63291 (November 9, 2010), 75 FR 70311 (November 17, 2010) (notice of filing and immediate effectiveness of proposed rule change relating to fees for ArcaBook depth-of-book data) ("2010 ArcaBook Proposal").

denial of access proceedings with the Commission regarding the 2010 ArcaBook Proposal and numerous other market data fee filings. The ArcaBook proceeding was consolidated by the Commission with a similar challenge to a Nasdaq Stock Market LLC proprietary market data fee filing.[37] That consolidated proceeding was referred to the Chief Administrative Law Judge for an initial decision. Following a week-long trial, the Chief Administrative Law Judge issued her initial decision on June 1, 2016, finding that both the 2010 ArcaBook Proposal and the Nasdaq filing complied with the Act as interpreted by the D.C. Circuit in *NetCoalition I*. [38] SIFMA has appealed that initial decision to the Commission, but that appeal has not yet been decided.

SIFMA is now attempting to re-argue the issues decided by the Chief Administrative Law Judge about proprietary market data fees in a comment letter about co-location fees. More specifically, the SIFMA Letter argues that the Exchange has "failed to demonstrate that these new connectivity fees are subject to any competitive forces" as it contends is required by the *NetCoalition* decisions.[39] However, the *NetCoalition* decisions were about the standards governing proprietary market data fees, and, as set forth above, the Previous and Current Proposal do not include market data fees. In any event, as demonstrated above, there is significant competition for the connectivity relevant to the Current Proposal. Thus, even if the *NetCoalition* standard did apply, the Current Proposal satisfies it.

Moreover, the SIFMA Letter highlights that the Order Instituting Proceedings does not mention that SIFMA contested the Previous Proposal, as it has other proposed exchange fee changes, by filing denial of access petitions with the Commission pursuant to Section 19(d) of the Act.[40] The SIFMA Letter contends that such petitions should not be ignored. In so contending, the SIFMA Letter goes against SIFMA's own requests that its denial of access petitions be held in abeyance pending a decision in the *NetCoalition* follow-on proceedings, requests the Commission has granted. Based on SIFMA's own requests, the Commission should not consider its petitions in the Order Instituting Proceedings, and SIFMA has no basis to

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37 See Order Establishing Procedures and Referring Applications for Review to Administrative Law Judge for Additional Proceedings, Release No. 72182, at (May 16, 2014).

38 See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations, Initial Decision Release No. 1015, File No. 3-15350 (June 1, 2016).

39 SIFMA Letter, at 2. See also IEX Letter, at 2 (stating agreement with SIFMA Letter) and Wolverine Letter, at 3 (affirming agreement with SIFMA Letter and Citadel Letter).

40 See SIFMA Letter, at 4.

demand otherwise.[41] It is important to note that SIFMA has filed denial of access petitions with the Commission purporting to contest *hundreds* of fee filings, *all of which* (like this one) it has asked the Commission to hold in abeyance pending the resolution of the *NetCoalition* follow-on proceedings.

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With respect to the comments that relate to the Current Proposal, for the reasons set forth in the Previous and Current Proposal and in this response, the Exchange believes that the comment letters have not provided any credible basis to conclude that the Current Proposal is not consistent with Sections 6(b)(4), 6(b)(5) and 6(b)(8) of the Securities Exchange Act of 1934, as amended (the "Act").[42]

The Exchange appreciates the opportunity to respond to the comment letters and Order Instituting Proceedings, and respectfully requests the Commission approve the Current Proposal.

Very truly yours,

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41 See, e.g., In the Matter of: The Application of Securities Industry and Financial Markets Association For Review of Action Taken by Certain Self-Regulatory Organizations Listed in Exhibit A Annexed Hereto, Admin. Proc. File No. 3-17738, para. 6.

42 15 U.S.C. 78f(b)(4), 78f(b)(5) and 78f(b)(8).