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February 5, 2020

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

Re: SR-NYSE-2019-46

Dear Ms. Countryman:

The Nasdaq Stock Market LLC (“Nasdaq”) is compelled to respond to Amendment No. 1 to SR-NYSE-2019-46¹ because Amendment No. 1 inaccurately stated that it addressed comments in the Commission’s Order instituting proceedings to determine whether to approve or disapprove the original filing.² To the contrary, the deficiencies that Nasdaq identified in prior comment letters,³ remain. NYSE’s proposal continues to improperly integrate access to its proprietary products with access to consolidated products, thereby imposing a burden on competition that is neither necessary nor appropriate under the Act. While Nasdaq supports the performance enhancements that NYSE proposes, NYSE’s pricing proposal raises concerns and for this reason the proposal must be disapproved.

¹ Securities Exchange Act Release No. 87927 (January 9, 2020), 85 FR 2468 (January 15, 2020) (SR-NYSE-2019-46) (Notice of Filing of Amendment No. 1 to Proposed Rule Change Amending the Exchange’s Price List Related to Co-Location Services in the Mahwah, New Jersey Data Center).

² Securities Exchange Act Release No. 87699 (December 9, 2019), 84 FR 68239 (December 31, 2019) (SR-NYSE-2019-46, SR-NYSE-2019-19, SR-NYSEArca-2019-61 and SR-NYSEAMER-2019-34) (New York Stock Exchange LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE American LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the Exchanges’ Co-Location Price Lists To Offer Co-Location Users Access to the NMS Network and Establish Associated Fees).

³ See Letter from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Securities and Exchange Commission (“Commission”) (October 24, 2019) and Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (November 25, 2019) (available at <https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946.htm>).

Amendment No. 1

NYSE's proposal continues to bundle connectivity fees for access to proprietary data feeds with fees for access to SIP data products.⁴ NYSE offers Users either a 10Gb LX connection, as the current 10Gb LCN is being eliminated,⁵ or a 40Gb LCN connection. Both the 10Gb LX and 40Gb LCN connections are assessed a \$22,000 monthly recurring fee. In the alternative, NYSE offers a 10Gb IP Network connection for a monthly fee of \$11,000 or a 40Gb IP Network connection for \$18,000 a month. The IP Network has slower latency as compared to the LCN connections.⁶ NYSE asserts in its amended proposal that because the NMS network would be included as part of the access to the 10Gb and 40Gb connection to either local area network, all Users would have a choice whether to use an IP network, LCN or NMS Network to connect to the NMS Feeds. NYSE's repackaged fees, however, remain contingent on a User purchasing access to NYSE's 10Gb or 40Gb LCN or IP Network connections, whether the User wants to or not. NYSE's amended proposal continues to eliminate choice, which is not reasonable or fair.

Burden on Competition Not Overcome

NYSE's proposal continues to package access to NYSE proprietary data with access to NMS feeds. This leveraging of separate classes of products to extract maximum connectivity revenue from market participants is inappropriate and inconsistent with the Act. NYSE market participants who currently pay for connectivity to NYSE proprietary data feeds can receive an NMS Network connectivity at no additional cost, but are forced to pay for this connectivity within the bundled price. New market participants that only want to receive NMS Feeds are effectively forced to pay the bundled proprietary connection fees. There are potentially market participants who pay NYSE

⁴ Amendment No. 1 permits a User to purchase a service that includes a 10Gb or 40Gb connection to access either local area network, which access would include a connection to the NMS network of the same size. Of note, NYSE recently amended its fees related to its 10GB offering in a separate rule change which eliminates the LCN 10Gb connection (which is currently \$14,000) in the first half of 2020. Users will be required to obtain the LCN 10Gb LX connection at an increased fee of \$22,000, with a faster connection, similar to the LCN 40Gb connection, as compared to the LCN 10Gb connection. The other alternative is to move to a slower IP Network with the 10Gb alternative at a reduced cost of \$11,000. NYSE also proposes other alternatives. *See* Securities Exchange Act Release No. 87694 (December 9, 2019), 84 FR 68252 (December 13, 2019) (SR-NYSE-2019-66) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List Related to Co-Location Services).

⁵ *See* note 4.

⁶ NYSE notes a latency difference as between the LCN and IP connections in its recent filing. *See* Securities Exchange Act Release No. 87694 (December 9, 2019), 84 FR 68252 (December 13, 2019) (SR-NYSE-2019-66) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List Related to Co-Location Services).

for 40Gb connectivity at a cost of either \$22,000 a month for the faster LCN or \$18,000 a month for the slower IP Network and that do not require all the bandwidth for the NYSE proprietary data feeds; however, these market participants are unable to reduce their bandwidth as NYSE has bundled pricing based on the bandwidth.⁷

Moreover, because the OPRA feed is so large (larger than CTA and CQ,⁸ and larger than many NYSE proprietary data feeds), the NYSE bundling with OPRA has the effect of steering all market participants to consume larger bandwidths at higher cost. A market participant that desires to access the CTA and CQ data feed alone is forced to buy the NYSE connectivity bundle to consume extra bandwidth, at a higher profit to NYSE. When added to NYSE's recent fee increases, the economic pressure to consume excess bandwidth created by NYSE's proposed bundling of access to proprietary and SIP data feeds is particularly detrimental to newer and smaller firms that have not already purchased NYSE proprietary services.

NYSE can and should cure these deficiencies by separating its fees for connecting to the NYSE proprietary data feeds from the fees to connect to the NMS Feeds. The amended proposal imposes a high burden on competition created by the bundling of pricing and lack of true separation between NYSE as a self-regulatory organization and NYSE as SIP provider. Nasdaq's prior comment letter identified multiple ways that NYSE could eliminate bundled pricing, thereby alleviating the improper burden on competition.⁹ NYSE ignored all of the proposed suggestions and identified no other path to alleviate the burden on competition.

⁷ Market participants must elect the same bandwidth to connect to NYSE's proprietary data feeds as they use to connect to the NMS Feeds. For example if a market participant would like a 40Gb connection for OPRA, they must purchase a 40Gb connection for their NYSE proprietary data feeds. *See* note 4 above.

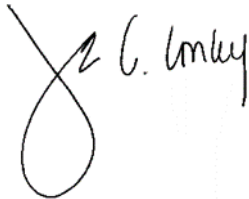
⁸ Data published by Securities Industry Automation Corporation ("SIAC") illustrates package peaks for CTS and CQS (https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/CTA_Capacity_Projections_Testing_Dates.pdf) as compared to OPRA. The data reflects that package peaks for OPRA are much higher in quantity as compared to CTS and CQS.

⁹ Nasdaq noted in its Comment Letter dated November 25, 2020, "The following are some ways that costs could be eliminated; however, these suggestions are not exhaustive. First, pricing for the NMS Network Connectivity could be separated from pricing for NYSE connectivity to its trading venue, including access to proprietary data feeds, so that the two connections are potentially equal or less than the proposed pricing for the proposed bundled pricing. In this scenario, market participants could select the bandwidth they require for NMS Network Connectivity as well as NYSE proprietary feeds, whereas the current filing requires market participants to receive the same bandwidth or lower for the NMS Network Connectivity that they choose for the NYSE proprietary network at the bundled price. Second, NYSE could price each NMS Feed connection separately, allowing market participants the opportunity to acquire any of the NMS Network Connections individually. Third, NYSE could separate the OPRA NMS Feed from the CTA/CQ NMS Feeds." *See* Letter from Joan C. Conley, Senior Vice President and

NYSE's proposal also undeniably continues to impose an anti-competitive burden on Nasdaq's (or any entity's) ability to compete to serve as the OPRA SIP. Market participants consuming CTA, CQ and OPRA data streams benefit only by purchasing NYSE's proprietary market data and connectivity services. As previously stated, this ability to bundle grants NYSE, as exclusive processor and the primary distributor of NMS Feeds, a competitive advantage in any bidding process for either OPRA or the CTA/CQ SIP and blocks competition for the SIP. Other exchanges or third-party technology providers with enhanced technology or other innovative offerings are unable to compete with NYSE's bundled solution, thereby allowing NYSE to continue to serve as the incumbent SIP lest a competitor raise industry costs in the event NYSE was replaced as the processor for any of the NMS Feeds.

While Nasdaq supports the performance enhancements that NYSE proposes, these enhancements should not come at a cost to competition. If NYSE's proposal is approved in its current form, the filing could be viewed as an endorsement of the bundling of proprietary data fees with SIP data. This view serves to entrench NYSE as SIP for CTA, CQ and OPRA and deny competitors the ability to compete with NYSE, notwithstanding enhanced technology or other innovative aspects that competition could bring to the SIP offerings.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan C. Conley". The signature is stylized, with a large loop at the bottom and a flourish at the top.

Joan C. Conley
Senior Vice President and Corporate Secretary

Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission
(November 25, 2019).