



March 12, 2020

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: Notice of Filing of Proposed Rule Change to Establish a Schedule of Wireless Connectivity Fees and Charges with Wireless Connections (Release No. 34-88168; File No. SR-NYSE-2020-05) & Similar Affiliate Filings¹

Dear Ms. Countryman,

IMC Chicago, LLC d/b/a IMC Financial Markets (“IMC”) appreciates the opportunity to submit comments to the Securities & Exchange Commission (“Commission”) regarding the New York Stock Exchange LLC (“NYSE” or “Exchange”) proposal (and similar proposals by affiliated exchanges) to establish a schedule of fees for wireless connections in third party data centers located in (i) Carteret, New Jersey, (ii) Secaucus, New Jersey, and (iii) Markham, Canada (the “Third Party Data Centers”) that connect to the Exchange’s data center located in Mahwah, New Jersey (the “Wireless Connections”). For the reasons identified below, we write in support of the comment letter submitted by McKay Brothers LLC and urge the Commission to disapprove the above referenced proposed rule changes (the “Proposal”).

Background

IMC is part of a global firm with approximately 730 employees worldwide and affiliates trading in Chicago, Amsterdam and Sydney. IMC operates as a proprietary trading firm and registered broker-dealer, engaging in the U.S. financial markets as a bona-fide market maker and providing

¹ See Notices of Filing of Proposed Rule Change to Establish a Schedule of Wireless Connectivity Fees and Charges with Wireless Connections, New York Stock Exchange LLC (Release No. 34-88168; File No. SR-NYSE-2020-05), NYSE Arca, Inc. (Release No. 34-88170; File No. SR-NYSEArca-2020-08), NYSE American LLC (Release No. 34-88169; File No. SR-NYSEAMER-2020-05), NYSE Chicago, Inc. (Release No. 34-88172; File No. SR-NYSECHX2020-02), NYSE National, Inc. (Release No. 34-88171; File No. SR-NYSEAT-2020-03) (Feb. 11, 2020). See Also Notices of Filing of Proposed Rule Change to Amend the Schedule of Wireless Connectivity Fees and Charges to Add Wireless Connectivity Services, New York Stock Exchange LLC (Release No. 34-88237; File No. SR-NYSE2020-11), NYSE Arca, Inc. (Release No. 34-88239; File No. SR-NYSEArca-2020-15) NYSE American LLC (Release No. 34-88238; File No. SR-NYSEAMER-2020-10), NYSE Chicago, Inc. (Release No. 34-88240; File No. SRNYSECHX-2020-05), NYSE National, Inc. (Release No. 34-88241; File No. SR-NYSEAT-2020-08) (Feb. 19, 2020).

liquidity on nearly every listed equities and derivatives market in the United States. IMC is a Lead Market Maker in over 500 option classes and over 150 ETFs, and is one of five Designated Market Makers on the New York Stock Exchange. IMC is also a consumer of competitive wireless connection services between exchanges and data centers, as a means to both facilitate and enhance our market making capabilities. IMC is a minority investor in McKay Brothers LLC (“McKay”) and its affiliate Quincy Data LLC (“Quincy”) (collectively referred to herein as “McKay”), a leading telecom service provider committed to offering equal access to all subscribers. As such, IMC is acutely aware of the complexities associated with wireless transmission services and thus well positioned to assess the likely anticompetitive impact the Proposal will have on participants if approved.

Several Critical Concerns Raised by McKay

McKay correctly identifies several critical concerns with the Proposal warranting its disapproval. As described in their letter dated March 10, 2020, McKay correctly notes that:

- the Wireless Connections are facilities of the Exchange, in that they use the Exchange’s tangible and intangible property and are used for effecting or reporting a transaction; and
- the Proposal fails to offer sufficient details justifying why the exclusive geographic latency advantage posed by the Wireless Connections is consistent with the Securities Exchange Act of 1934 (the “Exchange Act”), does not unfairly discriminate against market participants and does not impose an undue burden on competition.

On this second point, IMC is particularly concerned that the inherent geographic latency advantage of the Wireless Connections combined with the exclusive nature of the offering and its limited availability raises significant access issues for participants. In this regard, McKay correctly notes that it is appropriate to consider where an exchange’s facilities begin; in this case, one need look no further than the NYSE Pole where the Wireless Connections start and stop—on NYSE’s premises. A contemporary version of walking through an exchange’s door leading to a trading floor, the NYSE Pole offers direct access to its data center and thus its matching engine for purposes of transmitting data or orders. Unfortunately, it is a self-described exclusive access point with limited availability, thereby threatening to leave participants on the outside looking in or using a slower entrance. In a market where equidistant cabling is required for connections between a participant’s co-located equipment to the Exchange’s matching engine, NYSE’s suggestion that the 700 foot difference between the NYSE Pole and others outside their premises is immaterial is ludicrous. Permitting an exchange to operate a facility on such an exclusive, materially advantaged and limited availability basis seems counter to Sections 6(b)(8) and 6(b)(5) of the Exchange Act.

Finally, IMC supports McKay’s call for transparency and disclosure. Without details regarding magnitude of the latency advantage, availability, and impact to participants who are unable to avail themselves of the service, among other items, the Commission and marketplace will be unable to reasonably determine whether this Proposal or any similar proposal does not unfairly discriminate against market participants or unduly burden competition.

Conclusion

For the foregoing reasons, IMC supports the letter submitted by McKay and we respectfully urge the Commission to disapprove the Proposal. Should you have any questions in connection with our comments, please feel free to contact me at 312-244-3355.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Andrew Stevens', with a large, stylized flourish extending to the right.

Andrew Stevens
General Counsel