



April 3, 2020

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

Re: ***NYSE Rule Proposal to Amend the Schedule of Wireless Connectivity Fees and Charges to Add Wireless Connectivity Services; File No. SR-NYSE-2020-11***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ 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 (“NYSE”).² First, we agree with the Commission that the wireless market data connections are facilities of the exchange and that the NYSE proposed rule filing with the Commission is appropriate. Second, we believe NYSE failed to provide sufficient information for the Commission to determine whether the proposed fees for the wireless connectivity services meet the requirements of the Securities Exchange Act of 1934 (“Exchange Act”).³

Ice Data Services (“NYSE Affiliate”) offering of the wireless connectivity service with NYSE’s consent falls within the definition of an exchange facility, and therefore NYSE appropriately filed the proposed rule with the Commission. As noted in the proposal,⁴ 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 effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange).”⁵ The

¹ 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>.

² See Securities Exchange Act Release No. 88237 (Feb. 19, 2020) (“Proposal”).

³ See, e.g., 15 U.S.C. 78f(b)(4); 78f(b)(5); and 78f(b)(8).

⁴ Proposal at 7.

⁵ 15 U.S.C. 78c(a)(2).

relevant determining factor for whether the wireless connectivity services should be considered an exchange facility depends on whether the provider of such services operates a communication system that provides reports of transactions effected on the exchange with the consent of the exchange.⁶

The wireless connectivity offered by NYSE Affiliate should be considered the facility of NYSE because NYSE authorizes NYSE Affiliate to operate a communication system that provides reports of transactions effected on the exchange via exclusive wireless connectivity feeds, configured in a way that cannot be duplicated or matched by any other market participant. To receive market data from any exchange, a market participant must first enter into a contractual agreement with the exchange to pay for the market data and second enter into a separate contractual agreement to pay a connectivity charge for receiving the market data. Here, NYSE Affiliate operates, with NYSE's exclusive consent, a communication service that provides transaction reports of trades executed on the exchange via a wireless connection. In a sense, the wireless connectivity feeds are updated versions of the "ticker" system specifically referenced in the definition of "facility."⁷ Moreover, the feeds are being exclusively provided by NYSE to NYSE Affiliate and not to any other party. Given broker-dealers best execution obligations, they may be forced to sign-up for the NYSE Affiliate feeds that provide the fastest method to obtain NYSE market data. The Commission under the Exchange Act has deemed fiber optic connectivity feeds as facilities and should similarly consider wireless connectivity services as facilities of the exchange since both products deliver with the consent of the exchange the same market data feeds, albeit at different speeds.

NYSE fails to provide supporting evidence on how the proposed fees are reasonable. NYSE proposes to charge market participants an initial fee of \$10,000 per connection and recurring monthly fees of up to \$45,000 per month per connection for these Wireless Connections depending upon bandwidth and type of service.⁸ 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

⁶ 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.

⁷ 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.

⁸ Proposal at 14-15.

necessary information set forth in the recent Staff Guidance on SRO Rule Filings Relating to Fees,⁹ or another acceptable means.

Exchanges remain the exclusive purveyors of connectivity services, and therefore, no alternative products exist to constrain the prices of the connectivity fees through competitive forces. NYSE failed to show where a “competitor” could access this data without first paying NYSE or the NYSE Affiliate—increasing NYSE's revenue—for the right to connect to the market data feeds. Further, as indicated above, connecting to the exchange through another means, such as through fiber-optic cables or another connectivity service rather than the NYSE Affiliate wireless service, results in a slower connection that harms a broker-dealer's ability to provide best execution to clients. For regulatory and competitive reasons, most broker-dealers feel they must purchase the fastest connectivity services to remain in business. Thus, if approved, market participants would be forced to pay this substantial cost to NYSE Affiliate to meet regulatory obligations without regards to the price of the exchanges’ connectivity service offerings compared to alternatives.

In considering the proposal, the Commission should carefully consider whether NYSE provided sufficient evidence to satisfy the applicable statutory standards. To assist the Commission in determining whether the proposed fees are reasonable, NYSE should provide the number of likely purchasers of the wireless connectivity service, the latency differentials between NYSE Affiliate's connectivity offering compared to alternatives, and the anticipated revenues compared with costs to show NYSE or NYSE Affiliate would not have supracompetitive profits.

* * *

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).

Sincerely,



Ellen Greene
Managing Director

⁹ SEC’s Division of Trading and Markets, *Staff Guidance on SRO Rule Filings Relating to Fees* (“Staff Guidance”) (May 21, 2019).