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[redacted]

September 7, 2021

Via Email

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Amend the Fee Schedules Related to Co-Location (Securities Exchange Act Release No. 91790)

Dear Ms. Countryman:

The New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the "Exchanges") respectfully submit this comment letter in response to the above-referenced order[1] by the Securities and Exchange Commission (the "Commission"). This comment letter supplements the comment letter dated June 21, 2021 ("June Letter").[2]

The Order suspended proposed rule changes[3] that would provide co-located Users with access to the systems, and connectivity to the data feeds, of various additional third parties, and instituted proceedings to determine whether to approve or disapprove them. In the Order, the Commission noted that the Filings stated that the proposed fees "are constrained by competition, and allow the Exchanges to defray or cover the costs of offering the services" but questioned "whether the Exchanges have provided sufficient information to demonstrate that the

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1 See Securities Exchange Act Release No. 91790 (May 7, 2021), 86 FR 26242 (May 13, 2021) (SR–NYSE–2021–15, SR–NYSEAMER–2021–13, SR–NYSEArca–2021–15, SR–NYSECHX–2021–04, SR–NYSENAT–2021–05) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the Fee Schedules Related to Co-Location) ("Order").

2 See letter from Elizabeth King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, Exchanges, to Ms. Vanessa Countryman, Secretary, Commission, dated June 21, 2021.

3 See Securities Exchange Act Release Nos. 91386 (March 23, 2021), 86 FR 16410 (March 29, 2021) (SR–NYSE–2021–15); 91387 (March 23, 2021), 86 FR 16417 (March 29, 2021) (SR–NYSEAMER–2021– 13); 91388 (March 23, 2021), 86 FR 16433 (March 29, 2021) (SR–NYSEArca–2021–15); 91390 (March 23, 2021), 86 FR 16424 (March 29, 2021) (SR– NYSECHX–2021–04); and 91389 (March 23, 2021), 86 FR 16403 (March 29, 2021) (NYSENAT-2021-05) (collectively, the "Filings"). Capitalized terms not otherwise defined herein are used as defined in the Filings.

proposals, including in particular the fees for connectivity to the Proposed Third Party Systems and Proposed Third Party Data Feeds, are consistent with the Act."[4] Ultimately, the Exchanges believe that the Filings provided sufficient information demonstrating that the proposed rule changes are consistent with the Act, but provided the information in the June Letter, and are providing the information in the present letter, nonetheless.

Presently, Users may purchase access to the execution systems of third party markets and other content service providers ("Third Party Systems") and connectivity to data feeds from third party markets and other content service providers ("Third Party Data Feeds").[5] The Filings propose to add new options to the 23 Third Party Systems and 43 Third Party Data Feeds to which Users can already connect.

The Staff of the Commission has asked what portion of Users currently purchase access to Third Party Systems or connectivity to Third Party Data Feeds (together, the "Existing Services").[6] As of June 30, 2021, 42% of Users purchased access to Existing Services. The fact that 58% of Users do not purchase access to any Existing Services is plainly evidence of the level of competition that the Existing Services face. If the purchase of any of the Existing Services were necessary for a User to trade on the Exchanges, more Users would have purchased them. In addition, as of the same date, Users with Existing Services, on average, had six connections. Again on average, those Users purchased 3.4 Existing Services, out of the 66 available.[7] In fact, most of the Existing Services had few purchasers. Only 52% of the Third Party Systems and 56% of the Third Party Data Feeds had any customers at all, as of June 30, 2021. This information is further evidence of the strength of the competitive environment for the Third Party Systems and Third Party Data Feeds.

In the June Letter, the Exchanges noted that a User that is more latency sensitive, such as a market maker, and wants to connect to a third party exchange is more likely to purchase access or connectivity in the third party access center that hosts that User's equipment used for trading on that exchange.[8] This makes sense: because third party markets are all located in facilities other than the Mahwah Data Center, it is axiomatic that the access or connectivity to third party markets that is offered in co-location in the Mahwah Data Center is higher latency than access or connectivity directly at the locations of the third party sources.

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4 Order, supra note 1, at 26244. See 15 U.S.C. 78s(b)(1).

5 The Commission first approved the rule changes to provide and establish fees for connectivity to Third Party Data Feeds and Third Party Systems in 2017. See Securities Exchange Act Release Nos. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR-NYSE-2016-45); 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR-NYSEMKT-2016-63); and 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR-NYSEArca-2016-89).

6 Telephone conversation between Commission staff and representatives of the Exchanges, August 2, 2021.

7 In many cases a User accesses a single Existing Service using multiple connections, causing the total number of connections to be greater than the number of Existing Services.

8 June Letter, supra note 2, at note 23.

The Staff of the Commission asked whether such a latency-sensitive User is likely to purchase access or connectivity in both the third party access center and the Exchanges' co-location.[9] Based on anecdotal evidence, the Exchanges believe that in many cases a latency-sensitive User may buy an Existing Service as a backup to its primary access or connectivity located in the relevant third party data center. In such a case, the User makes use of its presence in co-location to create the backup, but the primary access or connectivity would be in the third party data center in which the relevant markets' trading engines are located. The Exchanges cannot verify this information because they do not know what connections Users purchase in third party data centers or what their purpose is in purchasing a given service.

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For the reasons set forth in the Filings, June Letter and herein, the Exchanges believe that they have provided the Commission sufficient information to demonstrate that the proposed rule changes, including the proposed fees for access to the Proposed Third Party Systems and connectivity to the Proposed Third Party Data Feeds, are consistent with the Act.

Respectfully submitted,

Elizabeth K. King

cc: Honorable Gary Gensler, Chair
Honorable Hester M. Peirce, Commissioner
Honorable Elad L. Roisman, Commissioner
Honorable Allison Herren Lee, Commissioner
Honorable Caroline A. Crenshaw, Commissioner
David Saltiel, Acting Director, Division of Trading and Markets

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[9] Telephone conversation between Commission staff and representatives of the Exchanges, August 2, 2021.