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May 3, 2019

VIA E-MAIL

Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: **File Nos. SR-NYSEArca-2019-07 (the "Proposal")**

Ladies and Gentlemen:

NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") appreciates the opportunity to respond to the comment letter from Douglas A. Cifu, Chief Executive Officer, Virtu Financial ("Virtu"),[1] submitted in connection with the Proposal to amend the co-location services offered by the Exchange to provide co-located customers with access to the execution system of Global OTC (the "Global OTC System").[2]

For the reasons set forth in this response and the Proposal, the Exchange believes that the Virtu Letter does not raise any new issues or present any credible basis to conclude that the Proposal is not consistent with Sections 6(b)(4), 6(b)(5) and 6(b)(8) of the Securities Exchange

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1 See Letter from Douglas A. Cifu, Chief Executive Officer, Virtu, to Eduardo A. Aleman, Deputy Secretary, U.S. Securities and Exchange Commission ("Commission"), dated April 25, 2019 ("Virtu Letter").

2 See Securities Exchange Act Release No. 85450 (March 29, 2019), 84 FR 13378 (April 4, 2019) (SR-NYSEArca-2019-07). The Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC and NYSE National, Inc. (together with the Exchange and NYSE Chicago, Inc., the "NYSE Exchanges"), submitted filings that are substantially the same as the Proposal. See Securities Exchange Act Release Nos. 85456 (March 29, 2019), 84 FR 13359 (April 4, 2019) (SR-NYSE-2019-07); 85451 (March 29, 2019), 84 FR 13339 (April 4, 2019) (SR-NYSEAmer-2019-03); and 85449 (March 29, 2019), 84 FR 13324 (April 4, 2019) (SR-NYSENAT-2019-03). The Exchange's present response to the Virtu Letter is also applicable to the filings made by Affiliate SROs.

Act of 1934, as amended (the "Act"), [3] and that the Commission should not suspend the Proposal.

Summary of the Proposal

As more fully described in the Proposal, the Exchange proposes to amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges (together, the "Fee Schedules") related to co-location[4] services offered by the Exchange.

The Exchange provides Users[5] connectivity to the execution systems of third party markets and other content service providers ("Third Party Systems").[6] Pursuant to the Proposal, the Exchange would provide Users with access to the Global OTC System, adding Global OTC to the list of Third Party Systems. As with connectivity to the other Third Party Systems, the Exchange would charge a monthly recurring fee for connectivity to the Global OTC System. The Proposal does not propose to change the current fee for connectivity to Third Party Systems.

Global OTC is an alternative trading system ("ATS") that facilitates transactions in over-the-counter equity securities.[7] The Exchange has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc. ("ICE"). For the reasons discussed below, the Exchange proposes that the Global OTC System be added to the list of Third Party Systems.

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

4 The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100).

5 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. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, 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 Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, and NYSE National, Inc. See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80).

6 See Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR-NYSEArca-2016-89). Connectivity to Third Party Systems is subject to any technical provisioning requirements and authorization from the provider of the data feed.

7 See 17 CFR § 242.300(a).

Response to the Virtu Letter

As described in more detail below, the Virtu Letter makes two arguments in response to the Proposal: first, it disagrees with the categorization of Global OTC as a third party system, and second, it draws mistaken conclusions regarding the proposed fees.

The Global OTC System is more properly categorized as a Third Party System than as an NYSE Exchange

The Virtu Letter objects to the proposed addition of Global OTC to the list of Third Party Systems, arguing that "[t]he Exchange provides no legal basis or authority for its proposal to treat Global OTC as a Third Party System."[8]

The Exchange is an affiliate of Global OTC,[9] but a review of Global OTC's regulatory status and the securities that trade on its market shows that it is not like, and therefore should not be grouped together with, the NYSE Exchanges. The NYSE Exchanges are national securities exchanges registered with the Securities and Exchange Commission ("Commission") under Section 6 of the Act.[10] Global OTC, on the other hand, is operated by a broker-dealer, a member of the Financial Industry Regulatory Authority and an ATS. Global OTC is not required to register as a national securities exchange because it operates under an exemption from the requirement to register as an exchange.[11] Accordingly, it is not arbitrary or inconsistent to classify Global OTC as a Third Party System, as Virtu asserts.

In fact, treating Global OTC the same as the Exchange's national securities exchange affiliates would be inappropriate because it would treat Global OTC differently than connectivity to the execution system of other ATSs. [12]

Moreover, as the Proposal points out, treating the Global OTC Systems as a third party is consistent with how the Exchange treats it elsewhere in co-location. Specifically, the Exchange also treats Global OTC as a third party with respect to Users' connectivity to data feeds from

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8 Virtu Letter, supra note 1, at 3.

9 See Securities Exchange Act Release No. 79673 (December 22, 2016), 81 FR 96107 (December 29, 2016) (SR-NYSEArca-2016-89), fn. 21.

10 15 U.S.C. 78f.

11 17 CFR § 240.3a1-1(a) and 17 CFR § 240.300 through 304.

12 Proposal, supra note 2, at 13380.

third party markets and other content service providers (the "Third Party Data Feeds").[13] Similarly, the list of Third Party Data Feeds includes the feeds of other Exchange affiliates.[14]

The Virtu Letter makes much of the fact that Global OTC is owned by a sister company of the NYSE Exchanges, not a "distant indirect affiliate." [15] In reality, where an affiliate resides in the greater ICE corporate structure does not determine whether it is comparable to, and should be grouped with, the NYSE Exchanges. Rather, it is what the affiliate does, how it is regulated, and how it interacts with the NYSE Exchanges that is relevant. As discussed above, the Exchange believes it is appropriate to treat Global OTC as a Third Party System.

The Virtu Letter fundamentally misunderstands the related fee

The second argument in the Virtu Letter is that the Proposal "claims that the proposed re-classification of Global OTC will **not result** in a change to the current fees" but that, in fact, a connectivity fee is charged "on a **per exchange** basis."[16] In so arguing, the Virtu Letter fundamentally misunderstands the Proposal and how the fee would work.

The Proposal does not claim that there will be no fee for connectivity to Global OTC. Rather, it repeatedly states that a fee would apply.[17] At the same time, it does not discuss the calculation of the potential fee, because the Exchange does not propose to change it. The same price structure applies to all connectivity to Third Party Systems: a User that opts to connect to

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13 See 81 FR 96107, supra note 9, at 96109-96110.

14 The Third Party Data Feeds of other Exchange affiliates are the ICE Data Global Index, ICE Data Services Consolidated Feed, ICE Data Services Consolidated Feed Shared Farm, ICE Data Services PRD, ICE Data Services PRD CEP, and Intercontinental Exchange (ICE). See id., and 82 FR 15763, supra note 6.

15 Virtu Letter, supra note 1, at 3-4. Global OTC is operated by Archipelago Trading Services, Inc., which is a broker-dealer subsidiary of NYSE Group, Inc. ("NYSE Group"). NYSE Group is also the parent company of the Exchange.

16 Id., at 4. Emphasis in original.

17 See, e.g., Proposal, supra note 2, at 13379 ("[a]s with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to the Global OTC System"); 13380 ("[a]ll Users that voluntarily selected to receive Access [to the Global OTC Systems] would be charged the same amount for the same service"); and 13381 ("[t]he Exchange believes the fees for Access [to the Global OTC Systems] are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users Access while providing Users the convenience of receiving such Access within co-location, helping them tailor their data center operations to the requirements of their business operations").

a Third Party System is subject to a monthly recurring fee, charged per connection (not per exchange). The amount of the fee is based on the bandwidth the User requires. A table in the Fee Schedules sets forth the amount of the fee for each connection, organized by bandwidth.[18]

The Virtu Letter goes on to claim that the monthly fee could be as high as $140,000 per month, but a User would not be able to know the specific amount:

> For example, a firm that already has connectivity to Global OTC over a 40Gb LCN cross-connect with the Exchange could be charged a new additional fee under the Proposal ranging anywhere from the minimum $200 for 1Mb to $140,000 for 40Gb per month, with no way of knowing the precise new fee from the Exchange's own pricing documents.[19]

This is not how it works. Whether the User has a 1 Gb, 10 Gb or 40 Gb connection to the local area network is completely irrelevant: all that matters is what the User wants to do. A User that opts to connect to a Third Party System decides (a) how much bandwidth it wants to allocate to each connection, and (b) how many connections it wants. If it does not believe it will send a high volume of order messages to the relevant Third Party System, it will allocate a smaller amount of bandwidth to the connection. If it needs multiple connections, it dictates how many. In other words, the decisions are completely in the hands of the User, and so the User will determine precisely what fee it incurs. [20]

Using the example in the Virtu Letter, if a User that has a 40 Gb LCN circuit connects to Global OTC, it is likely to choose a low bandwidth for the connection: Global OTC is a small market and therefore a User is unlikely to send it a high volume of orders.[21] Accordingly, the Exchange expects that Users connecting to the Global OTC System will choose the minimum 1 Mb bandwidth connection. As set forth in the Fee Schedules, a 1 Mb bandwidth connection would incur a $200 monthly charge. Under this scenario, if the User decides it wants a second connection, it would incur a $400 monthly charge ($200 x 2 connections). Currently the maximum number of connections to the Global OTC System that any User has is five. In other words, no User's fees under the Proposal are expected to be even 1% of the $140,000 per month the Virtu Letter erroneously claimed was possible.

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18 See 82 FR 15763, supra note 6, at 15765.

19 Virtu Letter, supra note 1, at 4.

20 As the Virtu Letter itself notes, the table of fees is publicly available on the Exchange's Fee Schedules. Id.

21 Based on the Exchange's review of current usage, a 1 Mb bandwidth connection would be sufficient for each of the Users' current connections to the Global OTC System.

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In the end, the Virtu Letter is not making an argument based on whether the Proposal is consistent with Act. Rather, it is objecting to the fact that the Proposal would result in a $200 connectivity fee. The Virtu Letter is clear in stating that it does not want to pay to access the Global OTC System.[22] What the letter ignores is that, should the Commission suspend the Proposal, by operation of law, the Exchange would be required to cease offering Users access to the Global OTC System. Global OTC provides publicly displayed, firm, auto-executable prices in the over-the-counter securities marketplace, and it would not be in the public interest to limit market participants' ability to access the ATS within the datacenter in which it is located.

The Exchange believes that such a result would impose a burden on competition. It is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System, and the Exchange is not aware of any impediment to additional third parties offering such access. Allowing Users to connect to the Global OTC System pursuant to the Proposal would increase the variety of options available to Users, allowing them to tailor their connectivity to their specific business needs.

For the reasons set forth in this response and the Proposal, the Exchange believes that the Virtu Letter does not raise any new issues or provide 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 Act.

The Exchange appreciates the opportunity to respond to the Virtu Letter, and respectfully requests the Commission not suspend the Proposal.

Very truly yours,

cc: David Shillman, Associate Director, Division of Trading and Markets
Heidi Pilpel, Senior Special Counsel, Division of Trading and Markets

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22 Virtu Letter, supra note 1, at 3-4.