



April 15, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Comment on Concept Release on Equity Market Structure
File No. S7-02-10

Dear Ms. Murphy,

SAVVIS, Inc. ("SAVVIS") appreciates this opportunity to submit these comments on the Concept Release on Equity Market Structure published by the Securities and Exchange Commission (the "Commission") on January 14, 2010, Rel. No. 34-61358; File No. S7-02-10 (the "Concept Release"). SAVVIS is an information technology company founded in 1998 and headquartered in St. Louis, Missouri. We provide network and computer hosting services on an outsourced basis to a wide variety of businesses and government entities nationwide and around the globe. SAVVIS provides services that include managed hosting, utility and cloud computing, co-location/proximity hosting, managed security, network and professional services. We operate 28 data centers around the world with approximately 1.44 million square feet of gross raised floor space, and a Tier 1 internet backbone with over 17,000 miles of fiber. Our customers range across many sectors including airlines, media and entertainment, software, government agencies, and securities firms and markets. Through our state-of-the-art data centers located around the country and abroad, SAVVIS provides a location for clients to conduct their data processing in a secure and stable environment at an efficient cost.

SAVVIS is not a securities firm or market, and does not operate a trading market, place or accept orders or otherwise effect trades in securities. Instead, SAVVIS operates data centers at which securities firms and trading markets lease physical space for their own servers, or a SAVVIS-owned server, on which SAVVIS's customers -- using their own software and technical staffs -- conduct data processing and communications activities.

Accordingly, SAVVIS' comments are limited to Section IV-B(2) of the Concept Release. In these comments, we provide background information on the proximity hosting service of third-party vendors as a competitive check on the co-location service provided by exchanges and market centers, respond specifically to the questions posted by the Commission in Section IV-B(2) of the Concept Release, and state our views on certain of the issues associated with the co-location and proximity hosting service as it relates to market structure concerns.

As discussed more fully below:

- Co-location and proximity hosting are data services -- tools -- not trading practices;
- Low-latency data and telecommunications access has been broadly used across a variety of industries (not simply financial services) and made available by SAVVIS and other vendors at data centers here and abroad for many years;
- Co-location and proximity hosting are already broadly provided to make low-latency access occur on a low cost, non-discriminatory manner;
- Most of our data center customers are not interested in low latency, but instead are seeking to lower capital expenditures and operating costs through outsourcing their data sites;
- There are few barriers to entry into the data hosting business with active competition and a demanding customer base that forces vendors to provide high quality, highly secure, low cost servicing and hosting;
- Proximity hosting by third-party vendors provides a competitive check on the use of market power by licensed exchanges and market centers that might otherwise abuse the market power accorded by their licenses; and
- The Commission should be cautious in taking actions that might limit the ability of third-party vendors to provide this competitive check and guard against exchanges using their market power to expand aggressively into providing broader data hosting services.

Introduction

“Co-location” in the securities industry is the practice of securities exchanges and similar securities market centers of leasing space to securities dealers on the server used by the exchange or market center. An additional fee is charged by the exchanges for co-location. Dealers feel this siting allows faster and more error-free execution of trades for their customers and for the dealer’s proprietary trades (sometimes referred to as “low latency” trading). It is the electronic equivalent of a dealer leasing a space on the trading floor of a physical exchange.

“Proximity hosting” by data site providers is the practice of leasing server space at the same data site as is used by an exchange or similar securities market center (such as an inter-dealer broker), or at a data site located near the data site used by an exchange or similar market center. This is the electronic equivalent of a securities firm leasing space in a building in which or near where a physical securities exchange is located. Data site providers advertise this service to the securities industry on their websites and through marketing efforts. It is not secret, and its availability is not limited to a favored few. Access to proximity hosting is broadly offered and available. The fees for proximity hosting are typically less than those charged by an exchange for co-location. The lower fee is the result of competition among data center providers for business and the absence of a monopoly on access.

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Data center space or hosting services are available, at competitive prices, to anyone who wishes to lease them. Our financial customers range from national securities exchanges and large broker-dealers to small hedge funds and trading firms as well as long-term investors like mutual funds. Though some take advantage of the low latency connectivity available at the facility, many of our customers are taking advantage of the cost efficiencies that data center and IT outsourcing provides them. We believe that these lower costs are beneficial to all investors.

The market and demand for outsourced data centers has evolved over the past decade for reasons unrelated to low latency. There are strict requirements for data centers related to security, and continuous access to power and telecommunications links. Historically, many data systems used by the securities and financial services industry were located in lower Manhattan, and were moved to New Jersey or elsewhere in the aftermath of the September 11 terrorist attacks and an increased business and regulatory focus on business continuity and disaster recovery. Through scale efficiencies, outsourced data centers were also able to provide customers with greatly reduced operating and telecommunications expenses, which has played a large role in recent years in attracting customers from a variety of industries to data centers.

The great majority of our customers are not seeking -low latency, and instead are seeking the reduced operating costs associated with our data centers as contrasted to internal data centers. SAVVIS does not charge additional fees for those customers whose interest is -low latency, we do not sell preferred latency to some customers, and we do not monitor the types of use by our customers of the servers in our data centers.

As the Commission states in the Concept Release:

Many proprietary firm strategies are highly dependent upon speed – speed of market data delivery from trading center servers to servers of the proprietary firm; speed of decision processing of trading engines of the proprietary firm; speed of access to trading center servers by servers of the proprietary firm; and speed of order execution and response by trading centers. Speed matters both in the absolute sense of achieving very small latencies and in the relative sense of being faster than competitors, even if only by a microsecond. Co-location is one means to save micro-seconds of latency.

Co-location is a service offered by trading centers that operate their own data centers and by third parties that host the matching engines of trading centers. The trading center or third party rents rack space to market participants that enables them to place their servers in close physical proximity to a trading center's matching engine. Co-location helps

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minimize network and other types of latencies between the matching engine of trading centers and the servers of market participants.¹

There have always existed operational advantages that some market participants obtain as the result of technological advances and increased spending on such innovations. Thus, a trader with a faster computer and multiple monitors may obtain an advantage over a trader with less resources. Similarly, some market participants will try to obtain an advantage from proximity to market centers. As Frank Hatheway, Senior Vice President and Chief Economist, NASDAQ OMX, testified at the October 28 hearing on "Dark Pools, Flash Orders, High Frequency Trading And Other Market Structure Issues," proximity is why Wall Street and Threadneedle Street existed in the first place. You cannot prevent people from attempting to gain proximity.²

Seeking proximity is not unique to the securities industry. Over a decade ago, the Northern Virginia area in the corridor between Tysons Corner and Dulles, and Silicon Valley California, became business hubs for technology and internet businesses precisely because of the ability to locate servers and telecommunications links close to the Eastern and Western access points to the internet, that are known as Market Area Exchange East or "MAE East" and Market Area Exchange West or "MAE West." Additional linkage points are in Los Angeles, Miami and New York. Location close to the access point speeds communications and reduces communications costs, downtime, line noise and errors. Data site providers established data sites near MAE East and MAE West and leased computer server space to businesses. It is upon the same principle, but on a smaller scale, that co-location and proximity hosting operate when providing services to the securities industry.

One of key reasons why many firms, even those who do not participate in high frequency trading, take advantage of third party hosting services is the large savings in telecommunications costs. A typical investment firm, regardless of their market bias, needs to connect to a large number of service providers, brokers and information vendors in order to conduct their daily business. Within a facility like SAVVIS', rather than deploying costly telecommunications lines to each of these various endpoints, firms can simply connect to a server or piece of network infrastructure within the same building. This eco-system of interconnected service providers, investors and vendors dramatically lowers operating costs for all participants, which in turn helps lower transaction costs for everyone.

¹ Concept Release at p.58.

² See transcript of Testimony of Frank Hatheway, Senior Vice President and Chief Economist NASDAQ OMX, at the Hearing on "Dark Pools, Flash Orders, High Frequency Trading and Other Market Structure Issues," held by the Securities, Insurance, and Investment Subcommittee of the Senate Banking, Housing and Urban Affairs Committee (Oct. 2009).

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We note that co-location and proximity hosting are not themselves markets or functions of a market. Nor are they trading practices. They are infrastructure, like office buildings and telecommunications facilities, that can be used by securities firms, investors, or other businesses. Proximity hosting should not be confused with the trading or market practices of investors, traders, markets or securities firms that are subject to Commission regulation.

Competitors in providing this service to the securities industry, in addition to SAVVIS include Equinix, Inc., Switch & Data, BT Global Services, Verizon and Telx. These providers operate over a dozen data centers in major financial centers including New York, Chicago, London, Frankfurt, Tokyo and Singapore. Additional data hosting vendors that could readily enter the data site hosting market for the securities industry include AT&T, Level 3 Communications, Global Crossing, IBM, and EDS.

Low Latency Access is Broadly Available through Proximity Hosting and Co-location and Does not Harm Markets or Investors

In the Concept Release, the Commission asks a number of questions regarding the fairness and impact on market quality of co-location which are set forth below in bold text, followed by our responses.

Does co-location provide proprietary firms an unfair advantage because they generally will have greater resources and sophistication to take advantage of co-location services than other market participants, including long-term investors?"

Co-location and proximity hosting, and the low latency that they make available to investors, do not create inequities among different categories of investors. All investors, large and small, short-term and long-term, are able to access the benefits of low latency either directly by contracting with a data site host or indirectly by having their brokerage or custody accounts at broker-dealers or custodian banks that contract for co-location or proximity hosting services. For some investors who trade infrequently and hold securities for long periods, low latency is less relevant to their investment strategies or investment returns. If a long-term investor plans to hold a stock for several years, a micro-second difference in the purchase or sale execution speed is not a relevant consideration, nor a part of the investment strategy that has an impact on long-term returns. This type of investor is interested in long-term appreciation of the stock, deferral of capital gains taxes and low portfolio transaction costs over time. Low latency trading is available to long term investors. The choice of an investor with a long-term investment strategy not to pursue the lowest available latency by building out its systems to take advantage of it is a rational choice made by the investor, not a disadvantage.

In addition, a hosting provider, like SAVVIS, greatly reduces the barrier of entry associated with the expensive IT infrastructure required in this space. Third party providers

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enable firms to share resources, network connections and data centers and can provide access to cutting edge servers and terabytes of data storage without the capital expenditure normally required. Within the data center ecosystem, firms can choose from a wide variety of software, information and service providers who are competing to provide them with the lowest cost and best service.

In contrast to flash orders, which as Chairman Schapiro has noted, “create a two-tiered market” by only giving certain participants access to information about the best available prices for securities,³ no one obtains an unfair informational advantage from co-location or proximity hosting. In contrast to dark pools of liquidity, proximity hosting does not result in operation of a private trading system that gives institutional investors the ability to engage in confidential trades without displaying quotations to the public. Thus, proximity hosting does not present issues of “fair access.” There are no discriminatory barriers to access to proximity hosting at data sites, nor any market power or license that would allow data site hosts to restrict access through competing vendors. Proximity hosting services are available to all securities industry participants who are willing to pay a data site provider for it, just like office space in lower Manhattan near the New York Stock Exchange is available to all industry participants that are willing to pay local landlords for it. In many cases, those who are located elsewhere do business through other industry participants that have better access to the market or more sophisticated services or personnel. Access to data systems is no different.

Do commenters believe that co-location services fundamentally differ from other respects in which market participants can obtain latency advantages, particularly if co-location services are not in short supply and are available to anyone on terms that are fair and reasonable and not unreasonably discriminatory?

Co-location services provided by an exchange and proximity hosting provided by a third-party vendor are fundamentally similar in most respects, including latency. Low latency access either by co-location or proximity hosting currently is not in short supply, nor is access to low latency services unreasonably discriminatory. One difference between services provided by an exchange or market center, as compared to third-party vendors, is exchanges or market centers have the ability to limit access to their own market because they operated within a government-granted monopoly to run that market. Third-party data vendors can limit access to their own services, but because they have no exclusive authority to provide the service cannot restrict access to the same service provided by their competitors.

³ See Press Release, *SEC Proposes Flash Order Ban*, Sept. 17, 2009, available at <http://www.sec.gov/news/press/2009/2009-201.htm>.

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To the extent that brokers or investors who invest in technology, such as faster and better computers, gain an advantage, they do not obtain an unfair benefit that others cannot obtain for themselves. Any investor can buy computers and subscribe to public data feeds. The same is true of co-location and proximity hosting. There is no evidence of which we are aware that proximity hosting providers have discriminated against particular brokers or investors. And if they do discriminate, some other data site hosting vendor will gladly sign that customer up for services. Any properly qualified investor or brokerage firm can obtain a lease from a proximity hosting data site. Therefore, fair access to proximity hosting sites is currently available.

Co-location data sites are not unique to the securities industry, nor is proximity hosting (or co-location) a secret in the industry. It is widely advertised and marketed to all industry participants. SAVVIS and its competitors all have public web-pages devoted to the topic, seeking additional institutions as customers for their data sites' proximity hosting services.⁴

Public investors are not disadvantaged by co-location. Retail investors can obtain access to both faster computers and co-located computers by transacting their trades through a broker-dealer that has such access without the need to directly invest in such technology. Thus, retail investors can obtain the same benefits as brokers and other traders without bearing the full costs of market infrastructure, including co-location or proximity hosting costs. Faster, more error-free execution benefits all market participants, especially retail investors whose orders are routed electronically by their broker-dealers to exchanges and similar market centers.

Brokers and traders do not uniformly execute trades with the same technology or speed of execution. Whether a broker, trader or retail investor chooses to use a particular product or service is entirely within their choice. As long as access to products and services, including co-location, is open on a non-discriminatory basis to all, then no one is unfairly disadvantaged. All traders and brokers have equivalent access to co-location and proximity hosting sites, and retail investors are free to select brokers that have expended resources to obtain such access and make use of it.

Investors, broker-dealers and traders that expend resources on co-location or proximity hosting have no more of an unfair advantage than those that expend funds on superior computer systems, data feeds, top-quality fundamental research, advanced trading strategies or more qualified personnel. There is no basis upon which to distinguish co-location and proximity hosting from other products or services that a trader may choose to obtain or that a broker may choose to offer its customers. As Commissioner Paredes noted in his remarks before a SIFMA

⁴ For examples of websites of data site hosting vendors, *see, e.g.*, savvis.net/en-US/Solutions/Pages/Proximity_Hosting.aspx; equinix.com/data-center-services/colocation/; rackspace.com/managed_hosting/managed_colocation/index.php; internap.com/data-center-services/colocation.

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Conference on September 24, 2009:

[e]xchanges and other trading venues need flexibility to innovate new products, services, and trading opportunities that advance the varied interests of market participants by affording them choice. Investors are the ultimate beneficiaries when innovation spurs robust competition among different trading venues. Markets become more efficient, execution improves, and trading costs fall.”⁵

Are brokers generally able to obtain and use co-location services on behalf of their customers?

SAVVIS believes that brokerage firms are readily able to obtain and use co-location or proximity hosting on behalf of their customers. As discussed above, SAVVIS and other data site providers broadly advertise and market our service to the securities industry. Access to proximity hosting is broadly offered by SAVVIS and our competitors to any appropriately qualified securities firm. The fees charged by SAVVIS and other data site hosting services for proximity hosting generally are lower than fees charged by securities exchanges for co-location access. Competition among data centers for business and the lack of barriers to entry or a monopoly on access help keep data site co-location service fees low.

Are long-term investors harmed by not being able to use co-location directly?

SAVVIS believes that long-term and other investors are not harmed by not being able to use co-location directly, because the benefits of low latency are available to them through securities broker-dealers and custodians that have ready access to co-location or proximity hosting services. Indeed, SAVVIS and our competitors provide proximity hosting to investors, that then are able to link quickly to their broker-dealers at or near the site. Thus, the premise in the question, that investors do not have access to proximity hosting, is flawed. As discussed above, long-term investors may simply choose not to seek out low-latency services or build out their systems to make use of it because it is not relevant to their investment strategies. Micro-seconds do not matter when you hold stocks for years.

Investors generally access the securities markets through broker-dealers that accept and process their orders, or through custodian banks, investment managers and investment funds that generally place securities purchase and sales orders through broker-dealers. The broker-dealers, in turn, either execute these orders internally or through the securities markets. SAVVIS and similar firms in the data center hosting industry are not broker-dealers, custodians, investment

⁵ See Commissioner Troy A. Paredes, *Remarks Before SIFMA's 14th Annual Fixed Income Legal & Compliance Conference*, Sept. 24, 2009, available at <http://www.sec.gov/news/speech/2009/spch092409tap-sifma.htm>.

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managers, investment funds or securities markets. We do not accept orders or process orders. We do not have customer accounts or access to customer funds or securities.

We lease space on servers to securities firms and markets, or lease space in our data hosting sites at which securities firms and markets locate their own servers. We welcome investor entities that lease space in our facilities (directly or through their broker-dealer or custodian) and access their accounts at a securities broker-dealer also leasing space on our facilities. We are a vendor -- essentially a landlord -- to securities firms and others, including other types of financial and non-financial customers. We have neither the capability nor the broker-dealer licenses necessary to accept orders from investors. Nor do we have any interest in entering the securities business.

Are co-location fees so high that they effectively create a barrier for smaller firms?

In the case of proximity hosting services provided by firms such as SAVVIS that are not themselves exchanges or trading markets, we believe that fees are quite modest and do not create a barrier for smaller firms. This is one of several key benefits provided by firms such as SAVVIS. As a result of competition for business, we keep fees low, and quality of access and services high. We lease space to large and small customers. The minimum space that we lease is quite small (six inches of space) and very affordable. This provides an opportunity for operational cost savings for small firms, as well as large and medium sized customers. Essentially, we build and maintain infrastructure that smaller firms could not afford to build or maintain on their own and offer this infrastructure at modest prices for use by securities firms and others, which in turn are able to make low-latency access broadly available to their own customers. As such, we believe that our presence in the market, as well as that of our competitors, helps ensure that these capabilities are broadly available to all.

The co-location services provided by the markets themselves essentially is access granted by a government-licensed entity. The time and costs associated with the licensing process for national securities exchanges and ATS's, and the deliberative process by which such licenses are granted, have the unintended effect of creating a barrier to entry that provides an element of market power to those licensed exchanges and markets, which if extended to the proximity hosting service could harm competition for data site hosting services, resulting in higher costs and unfair access. Proximity hosting by data site providers is an alternative that provides an important market check on the price, quality and access requirements of the licensed exchanges and ATS's. We respectfully suggest that the Commission's actions in addressing the area of co-location and proximity hosting be carefully crafted to continue to draw upon the quality and cost benefits derived for investors and the markets by data hosting firms continuing to be able to provide proximity hosting services without undue restrictions on competition or regulatory barriers.

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SAVVIS and Other Providers of Proximity Hosting Provide Critical Investment in Market Infrastructure Without Creating Barriers to Entry

Does co-location offer benefits to long-term investors? For example, do co-location services enable liquidity providers to operate more efficiently and thereby increase the quality of liquidity they provide to the markets? Please quantify any harm or benefits, if possible. Is it fair for some market participants to pay to obtain better access to the markets than is available to those not in a position to pay for or otherwise obtain co-location services? Aside from physical proximity, are there other aspects of services offered by exchanges to co-location participants that may lead to unfair access concerns?

Customers have been pleased with the resources made available by proximity hosting firms and the quality of services provided. Proximity hosting provides investors, traders and brokers with market efficiencies and cost benefits. If a securities firm (broker-dealer, bank dealer department, hedge fund, investment manager etc.) and its computer server are sited nearby a market center's computer server, its trading signals reach the market center faster and are executed faster, with less risk of downtime or errors, than if they are located at a further distance. If a business's computer is closer to customers, counterparties or markets, the result is faster communications, lower communications costs, less risk of downtime, less line interference, etc. Shorter wires and fewer telecommunications relays and switches are the reason.

Broker-dealers and investment management firms certainly could build their own data sites near market centers, and some of the larger ones have done so from time to time. But it is far more expensive and less efficient, and involves a significant capital commitment for them to buy land, build a building, lease computers and arrange for security and telecommunications access than simply leasing space in the data sites that we and other data site hosting firms provide. We reduce costs by operating a data site facility that can be used simultaneously by many customers. As a result, third-party vendors benefit broker-dealers and investment managers and their customers by lowering their costs and providing high quality, secure data hosting services.

SAVVIS has spent a great deal of money on its data centers. During the years ended December 31, 2008 and 2007, SAVVIS spent \$143.9 million and \$225.8 million, respectively, for the development of ten new data centers that were opened as part of its global data center expansion plan.

Investment in critical infrastructure is an important component of keeping our securities markets and our economy competitive with foreign capital markets, such as London, Zurich, Tokyo, Singapore, Dubai, and Shanghai. In March 2007, the U.S. Chamber of Commerce released a report and recommendations of a bipartisan Commission on the Regulation of the U.S. Capital Markets in the 21st Century, which found that technological, economic, and regulatory

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advancements made in foreign markets over the past decade, including development of the technological infrastructure of foreign market centers comparable to that found in the United States, has been an important factor strengthening the competitiveness of such foreign capital markets.⁶

Further, in January 2007, New York City Mayor Michael Bloomberg and Senator Charles Schumer (D-NY) released a bipartisan, joint report entitled "Sustaining New York's and the U.S.'s Global Financial Services Leadership," based on research by McKinsey & Company, which reached the conclusion that New York is in danger of losing its status as a world financial center within 10 years without a major shift in regulation and policy. The report found, among other things, that "technology, trading markets, and communication infrastructures are evolving to make real-time interactions and transactions possible and affordable from virtually anywhere, thus reducing some of the benefits of physical co-location in major financial centers such as New York."⁷ The report comments on the many benefits of co-location to U.S. markets:

The financial services sector still exhibits a natural clustering effect despite advancement in remote work. Once a certain critical concentration of financial services businesses exists in a given area, the value to other financial services businesses of co-location begins to outweigh some of the potential drawbacks associated with that location, such as high occupancy costs. A high concentration of financial services businesses tends to be correlated with a similarly high concentration of clients and providers of support services, which creates the potential for additional business opportunities and more efficient operation. Furthermore, as discussed earlier in this report, this clustering of business has the additional benefit of creating a large pool of highly-qualified workers, which is a key differentiator in financial services. As the largest financial services center in the world, New York benefits from the positive clustering effect described above to a greater extent than any of its direct competitors. As the economic and employment trends described in this report indicate, however, that advantage alone is not sufficient to ensure the City and State's indefinite leadership.⁸

Although SAVVIS and other proximity hosting providers obtain benefits from their investment in critical infrastructure, there is nothing unfair about it. Anyone can do the same.

⁶ See Commission on the Regulation of U.S. Capital Markets in the 21st Century, *Report and Recommendations*, Mar. 2007, at 16-7, available at http://www.capitalmarketscommission.com/NR/rdonlyres/eozwwssfrqzdm3hd5siogqhp6h2ngxwdpr77qw2bogptzvi5weu6mmi4plfq6xic7kjonfpg4q2bpks6ryog5wwh5sc/0703capmarkets_full.pdf.

⁷ See Michael R. Bloomberg and Charles E. Schumer, *Sustaining New York's and the US' Global Financial Services Leadership*, at 42, available at http://www.nyc.gov/html/om/pdf/ny_report_final.pdf.

⁸ *Id.*, at 121.

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Proximity hosting is not new, and there are no substantial barriers to entry in constructing a data site. It is essentially a large secure building, full of computer and telecommunications equipment, with extensive power and network connectivity located at an appropriate business site for the business being serviced. Any technology-savvy company with sufficient funding can acquire land in the right spot, get telecomm hookups, and create a site. No government monopolies are issued. If you have a quality facility and reputation, and consistently deliver quality data site services, at or above the quality of competitors and at a competitive price, you can do business. Closer proximity to the markets is not, as one Senator would have it, the moral equivalent of steroids in baseball. It is the equivalent of better seats at the ballpark. When you are taking your clients there—which is effectively what investment managers and broker-dealers are doing when they pay for co-location or proximity hosting—you want good seats.

SAVVIS does not discriminate against a short-term biased financial firm that wants to host a trading application, a long-term biased fund that wants to host their email systems or a publishing company which has selected the data center for its convenient location near their corporate offices. All of these firms would pay roughly the same price for the same amount of space, power and services.

Since the market is a competitive one, a firm faced with above market pricing or sub-standard service can quite easily move to another provider. National securities exchanges that host with third party providers have tremendous leverage to ensure that pricing remains fair, since they, as well, can very easily move to another facility.

Disclosures Regarding Latency

Latency can arise from a variety of sources, such as cable length and capacity, processing capabilities, and queuing. Is it possible for trading centers to guarantee equal latency across all market participants that use comparable co-location services? Should the Commission require latency transparency – the disclosure of information that would enable market participants to make informed decisions about their speed of access to an exchange or other trading center? Such disclosures could include, for example, periodic public reports on the latencies of the fastest market participants (on an anonymous basis), as well as private reports directly to individual market participants of their specific latencies. If latency disclosure should be required, what information should be disclosed and in what manner?

SAVVIS and similar providers compete vigorously on providing our customers with access to low latency connectivity to market centers. The total latency consists of a number of elements- propagation latency, or the amount of time it takes a signal to travel from the sender to receiver over a medium, serialization latency, or the amount of time it takes a computer or

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network device to create a bitstream on a network and processing latency, or the amount of time it takes a network device to examine and route traffic across a network.

Propagation latency can be calculated by *distance / wave propagation speed*. Fiber optic cable, typically composed of aluminosilicate or germanosilicate (silica glass, or SiO₂, doped with Germanium Dioxide, GeO₂, or Aluminum Dioxide, Al₂O₃) reflects light along the axis of its cylindrical dielectric waveguide core. In this medium, the wavefront propagates at around two-thirds *c*, the speed of light, or about 200,000Km/s. This means that within the limited, closed space of a data center, propagation delay is not a major contributor to latency. While it would take around 100 microseconds (.0001 seconds) for light to travel 20km, it could cross a 200meter data center in around 1 microsecond (one millionth or .000001 second).

Since most firms within a data center are connected directly to each-other via copper or fiber optic cable, the latency within the data center is simply not very significant. The average latency for the fastest market centers to fill or acknowledge an order is around 200 microseconds. Mandating equal cable lengths would simply add costs, complexity and time to firms who are located within a facility, while solving a problem that does not really exist. As mentioned before, SAVVIS does not charge a price premium for a customer who is in the data center to take advantage of low latency when compared to a customer who is using the data center for convenience to their home office. In addition, we do not charge a premium for an area of the data center that is adjacent to a matching engine, compared to space on another floor.

In addition, between what two points should latency be disclosed? What if one firm is using a faster algorithm or faster computer than another? In addition, many exchanges or execution venue trading platforms process quotes and trades at varying latencies, will there be a mandate to normalize latency for all execution platforms so no one market has an advantage? Moreover, there are not at present generally accepted standards for calculating and disclosing latency.

In sum, there are many factors not related to the data center itself that are inherent in the customer's own systems and data back-up locations, internal resiliency in linkages and external telecommunications routing and other variables, that greatly affect latency and that make it difficult to compare and disclose latency in a standard way that would not further confuse the matter.

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Subjecting Data Centers to Regulation as “Facilities of an Exchange” Would Be Inappropriate, Harm Competition and Increase Risks to Markets

The Commission also requests comment on exchanges and other trading centers that place their trading engines in data facilities operated by third parties. Such parties are not regulated entities subject to the access and other requirements of the Exchange Act and Commission rules. Could this disparity create competitive disadvantages among trading centers? Should the third party data centers be considered facilities of the exchange or trading center?”

We do not believe the use by some regulated exchanges or market centers of data site services creates a regulatory gap or competitive disadvantage. The Commission regulates the exchange itself and imposes many requirements, including access requirements, on the exchange or market center, that are not avoided by the exchange or market center leasing space at which the exchange or market center conducts its own activity.

SAVVIS does not believe it would be appropriate to regulate data hosting services as “facilities of an exchange.” We are not owned or operated by an exchange or market or its members. We do not operate a market or have unique access to a market. We do not have any sort of monopoly or market power. There are relatively low barriers to entry. We provide a secure physical site near a market (as other providers can and do), with redundant power and telecommunications connections, at which market participants can choose to locate their own servers or lease space on our servers.

We and our competitors provide data site hosting services to a wide range of business, not simply regulated securities markets or the securities industry. Regulating data hosting site providers as “facilities of an exchange” would be analogous to the Commission regulating landlords in lower Manhattan on the theory that many of their tenants are securities firms.

Should the Commission require trading centers to obtain contractual commitments from third parties to provide any co-location services on terms consistent with the Exchange Act and Commission rules?

SAVVIS does not believe it would be appropriate for the Commission to require such contractual commitments. Such a requirement would unnecessarily burden the process by which private parties obtain data center services. SAVVIS and other data centers do not charge additional fees for low latency and do not allocate latency differently to different customers. Most of our customers have no need for or interest in -low latency. To impose new regulatory requirements on contracts in this respect assumes an access problem at data centers when in fact none exists.

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We note that customers who feel it would be useful to seek contractual commitments on those aspects of data center services that are relevant to the particular customer are already able to negotiate terms with data centers. The Commission regulates and oversees investment advisers and securities exchanges and both the Commission and FINRA regulate and oversee broker-dealers and ATSS. As part of that oversight, requirements have been imposed on the data systems that the regulated firms use.⁹ These requirements include system security, an obligation on the regulated firm to have a back-up site and business continuity plans, privacy controls, up-time requirements, and various other prudential standards.

Because a regulated firm generally receives services from multiple vendors, chooses what to outsource and what to perform in house, and which vendor will provide what portions of a function, it is not possible for the regulator to preordain which vendors must comply with what aspects of the regulated entity's regulatory obligations. When a regulated firm contracts for data hosting services, it conducts diligence and imposes its own requirements upon us, so that it can meet its regulatory obligations to the Commission and FINRA, and their contractual obligations to its own customers. We answer to our clients, and they in turn answer to the Commission and their own customers. That has been an extraordinarily efficient means of assuring high quality and highly secure data services at an efficient price.

In light of these regulatory requirements applicable to the parties directly subject to Commission jurisdiction, and the ability of the regulated entities require their vendors to provide services in a manner that allows the regulated entity to meet its regulatory obligations, we do not believe it is necessary for the protection of investors to subject data site hosting providers to additional Commission regulatory requirements, or worse yet, to regulation and oversight by our competitors for co-location services at the exchanges and market centers.

In the absence of a problem, documented in the administrative record, of fair access within third-party data centers to co-location and low latency, and the potential impact on small business users of data centers of new and burdensome contracting requirements regarding access to co-location and low latency, we question whether there is a basis under the Exchange Act to impose such requirements or any likelihood of establishing a factual basis in the procedural record under the Administrative Procedure Act to adopt rules imposing such requirements.¹⁰

⁹ See, e.g., Regulation ATS, 17 CFR 242.300 et seq. (requirements for alternative trading systems); FINRA Rule 4370 (business continuity); FINRA/NASD Membership Rules 1013, 1014 (standards for membership approval, including facilities and systems review); NASD Rule 3010, NASD Notice to Members 05-48, and FINRA Written Supervisory Procedures Checklist (member oversight of vendors).

¹⁰ *Chamber of Commerce of the United States v. Securities and Exchange Commission*, 443 F.3rd 890, 902-07 (D.C. Cir. 2006) (rulemaking decisions required by Section 553 of the Administrative Procedure Act to be based upon facts in the administrative record); *St. James Hospital v. Heckler*, 760 F.2d 1460 (7th Cir.), cert. denied 474 U.S. 902 (1985); *National Black Media Coalition v. Federal Communications Commission*, 791 F.2d 1016 (2nd Cir. 1986);

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If commenters believe that co-location services create unfair access to trading, should the Commission prohibit or restrict exchanges, and other trading centers, such as ATs, from offering co-location services?

SAVVIS does not believe that co-location services offered by exchanges and other market centers currently create unfair access to low-latency trading, in large part because data site hosting providers, such as SAVVIS, provide a competing alternative which keeps fees down and access to low latency trading readily available. The Commission should be circumspect in how it chooses to proceed in this area. If third party vendors are hobbled in their ability to compete, the Commission's task of overseeing the co-location services provided by the exchanges becomes more difficult.

Should exchanges and other trading centers be subject to specific requirements to help assure that all participants are treated in a manner that is not unfairly discriminatory?

We believe that exchanges under Sections 3(a)(27) and 6 of the Exchange Act and Rule 19(b) thereunder already are subject to such an obligation, and it may be useful to reiterate that obligation.

Imposing a similar obligation upon data site hosting services, however, serves no purpose. Securities exchanges have a provisional exemption from certain of the anti-trust laws, and a government-granted license and rulemaking authority which gives them a degree of market power and monopoly over access to their systems and trading market. As with any utility that is granted a measure of monopoly power, the Commission must regulate fees and terms of access, because there are no competitors to do so in the specific market. Without regulatory oversight, their contracts are contracts of adhesion. As a result, the Exchange Act imposes fair access requirements upon securities exchanges. Data hosting vendors such as SAVVIS that provide proximity hosting services have no such exemption from the anti-trust laws, no market power, no monopoly or license, and no regulatory power or other authority to restrict access to any market. Consequently there is no reason to impose fair access requirements upon such vendors.

We note that the securities exchanges are playing a dual role in this policy debate, which should not be overlooked. As practitioners of co-location, they are mounting a strong and

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Penobscot Indian Nation v. United States Department of Housing and Urban Affairs, 539 F. Supp.2d 40 (D.D.C. 2008); *National Telephone Cooperative Association v. Federal Communications Commission*, 563 F.3d 536 (D.C. Cir. 2009) (rulemaking must consider impact upon small businesses).

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articulate defense of the practice. But as regulated entities, that are both customers of data centers, and competitors of data centers, they appear to be seeking to impose Commission regulation upon data centers. The motivation of some may in part be to impose barriers to entry and to restrict competition that may undermine their ability to charge higher fees to securities firms for co-location.

At least one national securities exchange is reportedly seeking to expand into the data site business. As part of this move, and to protect their co-location revenues from the similarly low-latency access available through proximity hosting, the exchanges appear to be seeking to restrict existing competition from data site providers by imposing barriers to entry and additional regulatory restrictions on data sites. They appear to be seeking to leverage their government-granted control over trading markets to muscle into the data site hosting business.

It should be noted that the competitive environment for these exchanges is quite different than that of third-party data center providers. While the relatively low cost of migrating to another provider ensures that third-party providers like SAVVIS keep their costs low, exchanges that own and run their own data centers have no such incentive. In fact, as the exchanges expand into other business areas including providing market data, trading systems, execution capabilities and other services, they can restrict, or make it difficult, for their co-located customers, who are essentially captive within the data center, to access alternate service providers. This is the equivalent of the National Highway Administration, by dint of the government's ownership stake in GM, mandating that Interstate 95 is only open to cars manufactured by GM.

In a September 21, 2009 letter to SEC Chairman Mary Schapiro and CFTC Chairman Gary Gensler, NYSE Euronext stated that it offers co-location "on a fair and equitable basis, consistent with the fair access requirements" of the Securities Exchange Act of 1934 ("Exchange Act"). The letter further stated that the SEC is currently reviewing the way exchange-owned and controlled co-location space is charged and "when done by an exchange, will require that co-location charges be filed as with any other exchange pricing." The letter continued:

It is particularly important that regulation to ensure fair access in connection with co-location be structured to prevent both anticompetitive results for regulated exchanges and gaps in oversight regarding co-location by third parties. It is impossible to prevent third parties from obtaining space close to an exchange data center and then subletting it to trading firms. Third party data center operators – acting on their own or on behalf of market centers – are under no obligation currently to ensure fair access. As a result, not all markets are regulated equally, which creates competitive disadvantages among marketplaces offering co-location. In addition, not all markets offer co-location in the same manner (e.g., we will own our U.S. equities co-location space and control the entire data center housing the matching engines for our European derivatives exchanges, subjecting

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us more directly to regulation, but our competitors might provide it via third parties, taking it out of the realm of regulation simply by virtue of the structuring of the offering). This could result in an extremely tilted playing field based on real estate proximity.

The underlying message is clear—certain exchanges want the Commission to regulate their competitors, the data hosting services:

The CFTC and SEC should ensure that entities offering exchange co-location develop fair allocation methodologies that treat similarly situated participants equitably and at reasonable fees. To level the playing field, we think that third parties acting on behalf of exchanges or in collaboration with exchanges (e.g., rebate or revenue sharing arrangements) should be deemed facilities of that exchange and thereby subject to the same requirements regarding fair and equitable allocation.

This argument essentially seeks a “solution” to a problem it perceives with restrictive access by third party data vendors where the alleged problem does not in fact exist at data vendors. The exchange’s proposal is intended to restrict competition from third party data vendors that currently serves as a competitive check on their own low-latency co-location services.

If adopted by the Commission, the exchange’s proposal could have significant consequences for the existing business model of proximity hosting providers. The NYSE letter by implication suggests that an exchange be given supervisory authority over proximity hosting services with which it competes to with which it contracts for services. Because a stock exchange has authority over its facilities, this proposal would give the exchange regulatory authority over the proximity hosting providers from which it obtains services and with which it competes, a conflict of interest that could result in unsound and inequitable regulations that advantage the exchanges over their direct competitors.

In the Concept Release, the Commission recognizes that: “the co-location services offered by registered exchanges are subject to the Exchange Act. Exchanges that intend to offer co-location services must file proposed rule changes and receive approval of such rule changes in advance of offering the services to customers. The terms of co-location services must not be unfairly discriminatory, and the fees must be equitably allocated and reasonable.” Concept Rel. at 58 (footnotes omitted). As the Concept Release further notes, “[s]ection 3(a)(27) of the Exchange Act defines “rules of an exchange” as, among other things, a stated policy, practice, or interpretation of the exchange that the Commission has by rule determined to be rules of the exchange. Rule 19b-4(b) under the Exchange Act defines “stated policy, practice, or interpretation” to mean, in part, [a]ny material aspect of the operation of the facilities of the self-regulatory organization.” [citing Sections 6(b)(4) and (5) of the Exchange Act.] The

Commission views co-location services as being a material aspect of the operation of the facilities of an exchange.” Concept Rel. fn 76.

Section 6 of the Exchange Act provides that an exchange shall not be registered as a national securities exchange unless the SEC determines that the “[t]he rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.” Thus, if proximity hosting providers that both provide services to and compete with securities exchanges were to be deemed “facilities” of such exchanges, they could face a host of regulations on matters ranging from fees to the levels of access that they grant to traders, SEC and SRO inspection, regulation, supervision and administrative enforcement powers, and public comment and SEC review and approval of system operating and access rules. Regulation of the proximity hosting providers by the exchanges with which they directly compete is unsound on its face. It would be analogous to Major League Baseball allowing the New York Yankees to supervise the management of the Boston Red Sox and make trading and roster decisions for them. That may sound like an excellent idea to the Yanks, but would be a controversial call for those who worship at Fenway. One competitor for a service should not be given power to regulate its other competitors -- particularly when the first competitor has market power in access to a trading market and is seeking to move into other lines of business provided by the other competitors. Allowing the designated monopoly market to regulate the data hosting vendors with which the exchange is competing for low latency data site hosting will have negative consequences for competition in the data hosting industry which would be detrimental to the customers of proximity hosting providers and our markets.

Regulation of proximity hosting providers by the exchanges would reduce needed competition in the co-location and proximity hosting industry. In the same way that NASDAQ and ECNs brought needed competition to the exchanges’ floor-based model of trading, the competition that proximity hosting providers bring to co-location brings improvements in technology and greater efficiencies in trading, including cost efficiencies, that is beneficial for investors and our markets. By providing traders and brokers with a choice of co-location and proximity hosting providers, customers have more options and can choose which option is right for them based on the quality of the services provided and the attendant costs. Proximity hosting providers have been able to provide lower fees for proximity hosting than exchanges charge for co-location due to competition in the industry and the lack of a monopoly on access.

Data site providers supply proximity hosting for a lower charge than the NYSE and other securities exchanges charge industry participants for “co-location.” It is almost as close to the market center’s site, but for a lot less money. But unlike securities exchanges, data site providers do not have a monopoly. Unlike market centers, data centers do not effect transactions in securities or receive securities transaction-based compensation.

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Section 11A(a)(1)(C) of the Exchange Act specifically sets forth the Congressional finding that it is “in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure...economically efficient execution of securities transactions.” The Congressional objective of protecting investors and maintaining fair and orderly markets that assure the economically efficient execution of securities transactions would be harmed if national securities exchanges were granted regulatory control over the proximity hosting providers with which they compete.

The technology supporting trading activities is complex and must keep pace with the fragmented nature and rapid evolution of today’s markets. By partnering with proximity hosting providers, customers are able to drive down the costs of acquiring and managing IT infrastructure and can achieve operational efficiencies, allowing them to focus their resources on their core business while the provider ensures the performance of their IT infrastructure. The IT strategy of many businesses has been increasingly focused on data center outsourcing in an effort to reduce costs. Imposing additional regulatory requirements on proximity hosting providers would unnecessarily raise costs for their customers without providing discernible benefits to the market.

If a national securities exchange is permitted to use its power, granted for the purpose of the trading of securities on an exchange, to also gain control over its direct competitors in the data site business, this would impose an unnecessary and inappropriate burden on competition. In the 1975 amendments to the Exchange Act,¹¹ Congress specifically directed the SEC to remove existing burdens on competition and to refrain from imposing any new regulatory and competitive burden unless necessary to effect the Exchange Act’s goals.¹² Section 6(b)(8) of the Exchange Act states that an exchange shall not be registered as a national securities exchange unless the SEC determines that the rules of the exchange “do not impose any burden on competition not necessary or appropriate” in furtherance of the Act. Granting the exchanges regulatory authority over proximity hosting providers would be precisely the sort of unnecessary burden on competition the Exchange Act seeks to avoid.

¹¹ See Pub. L No. 94-29, 89 Stat. 97 (June 4, 1975).

¹² See *H.R. Conf. Rep. No. 229, 94th Cong., 1st Sess. 94 (1975)* (directing the Commission “to remove existing burdens on competition and to refrain from imposing, or permitting to be imposed, any new regulatory burden ‘not necessary or appropriate in furtherance of the purposes’ of the Exchange Act.”). See also Jonathan R. Macey and David D. Haddock, *Shirking at the SEC: The Failure of the National Market System*, 1985 U. Ill. L. Rev. 315 (“the SEC would seem to have a legal obligation to require the removal of all artificial barriers to the creation of a system that allows * * * gravitation to [a more efficient market] to occur”); *Business Roundtable v. SEC*, 284 U.S. App. D.C. 301, 905 F.2d 406, 1990 U.S. App. LEXIS 9357, Fed. Sec. L. Rep. (CCH) P 95291 (D.C. Cir. 1990) (cornerstone in Congress’s 1975 desire to establish a national market system was ‘to break down the unnecessary regulatory restrictions * * * which restrain competition among markets and market makers.’ 1975 Senate Report at 12-13”).

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To sum up, regulation of proximity hosting providers, whether by the exchanges with which they compete or by the Commission or FINRA, is unnecessary and is likely to raise costs for customers of both proximity hosting providers (due to the costs of compliance with unnecessary regulations) and the exchanges (due to weakened competition). Such regulation is likely to hamper needed competition and to hinder the improvements in technology and greater trading and cost efficiencies that proximity hosting providers bring to investors and our markets.

National Securities Exchanges Should Not Be Permitted to Unfairly Compete Against Proximity Hosting Providers

If exchanges and other trading centers were no longer permitted to provide the [co-location] services, would third parties, who may be outside the Commission's regulatory authority, be encouraged to obtain space close to an exchange's data center and rent such space to market participants?

We do not think at this point that a ban on exchanges or markets providing co-location services is appropriate or necessary. Data hosting services such as SAVVIS provide an important competitive check on the price, quality and access to low-latency trading.

In addressing the current situation, however, it is important that the Commission not allow national securities exchanges to use their existing market power and exclusive license to operate a trading market to expand broadly into data hosting or other services using tying arrangements or other methods to induce their members and investors to use co-location and data site hosting services that the exchanges own and operate.

National securities exchanges should not be permitted to expand into lines of business outside the core business of operating a securities marketplace. Some of the obvious harms that would result from such a business expansion include: (a) conflicts of interest between the role of operating and setting and policing the rules of a securities market as a self-regulatory organization ("SRO") on the one hand, and seeking business from fee-paying exchange members on the other; (b) unfair competition and unfair business practices such as "tying" market access and market services to the condition or requirement or level of data site and other services acquired by securities firms, and leveraging a government-granted monopoly to operate and regulate a market into market power in data site and other services used by market participants; and (c) the unsafe and unsound expansion of what should be a narrowly-focused and highly solvent exchange mechanism into other lines of commerce, exposing the exchange mechanism and the economy to unnecessary risks.

Entry of securities exchanges into data site hosting business creates obvious conflicts of interest between their role as market operator and regulator, and their new role of purveyor of fee-based services to market participants. Will they regulate and operate their markets in a sound, fair and unbiased way, or will they take into account opportunities to maximize new fee income streams? Horizontal expansion into data site business essentially moves the exchanges from providing a fair and open market place where traders meet into the business of being a fee-based host and back-office service provider for securities firms. Examples of the conflicts associated with one party wearing multiple hats in financial dealings are well known: analysts touting issuers in research reports written to gain business for their affiliated underwriters; asset originators acting as syndicators and sales forces for securitized assets, and as trusted advisors for investors who bought those securitized assets; and rating agencies that relaxed their rating standards to get fees from issuers. The same types of conflicts will necessarily appear if exchanges are allowed to expand into related data site hosting and other lines of business.

Without restrictions, the reported plans of some exchanges to expand into data site hosting and other businesses would result in risks to the economy and allow exchange-owned businesses to engage in unfair practices to unfairly compete against proximity hosting providers. This could lead to a lack of competition in the industry and permit the exchanges to gain monopoly power in this area.

Section 6(b)(5) of the Exchange Act provides that an exchange shall not be registered as a national securities exchange unless the Commission determines that the rules of the exchange are designed:

to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.¹³

If the national securities exchanges were to build their own data centers as outsource provider to securities firms and investors, not only would this not “promote just and equitable principles of trade...with respect to...facilitating transactions in securities,” or “remove impediments to...a free and open market and a national market system,” it would harm investors and be against the public interest. In addition, it would limit customer choice. It would represent

¹³ 15 U.S.C.A. § 78f.

an attempt to regulate the proximity hosting industry for a reason other than “the administration of the exchange.” It is one thing for an exchange to engage in data processing related to the administration of the exchange or exchange data, and another for an exchange to use its powers, granted by the SEC, to expand into ancillary businesses.

If an exchange were to use its self-regulatory powers, access granting authority, and market dominance to impose certain conditions on access to co-location or data hosting services, or were to discount the price of various services for members of an exchange that purchase co-location services, such actions could also result in “unfair discrimination between customers.” The Commission may wish to consider a set of restrictions on tying arrangements that Congress and the Federal Reserve Board imposed on banking organizations to address the potential competitive harms as they began to expand into data services. In 1970, Congress enacted new anti-tying laws that apply to banks and bank holding companies (12 U.S.C. 1971 et seq.), at a time when banks were expanding into data processing and other nontraditional services. The FDIC states in its Risk Management Manual of Examination Policies:

Essentially, the anti-tying provisions prohibit a bank from conditioning the availability or price of any of its products or services upon the customer obtaining some other product or service from the bank or an affiliate, or upon the customer providing some other product or service to the bank or an affiliate. These provisions also preclude a bank from tying its products or services to a requirement that the customer not obtain some product or service from a competitor of the bank or an affiliate. The purpose of these provisions is to prevent banks from using their ability to offer financial products, credit in particular, in a coercive manner to gain a competitive advantage in markets for nonbanking products and services. For example, a bank may not require as a necessary condition to obtaining a loan or extension of credit that the prospective borrower lease personal property or equipment from the bank’s holding company or a subsidiary thereof or that the prospective borrower provide the bank, its holding company or any subsidiary thereof with office supplies or equipment.¹⁴

Finally, if exchanges were to move into the data site and other businesses, they are exposing the market mechanisms that they operate to the risks associated with those businesses. Exchanges should be bankruptcy remote, highly solvent, and isolated from other businesses and risks attendant to those businesses. As we have seen in the recent economic downturn, entry of

¹⁴ See Section 4.3 of the FDIC Risk Management Manual of Examination Policies, at Section 4.3, available at <http://www.fdic.gov/regulations/safety/manual/Section4-3.html>. There has also been litigation in this area brought by data processors associations challenging rulings made by the Comptroller and the Federal Reserve Board. See *Assn. of Data Processing Service Organizations v. Camp*, 397 U.S. 150 (Mar. 3, 1970) and *Assn. of Data Processing Service Organizations v. Board of Governors of the Federal Reserve System*, 745 F.2d 677 (DC Cir Oct. 2, 1984).

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what were intended to be narrow-purpose regulated financial firms into broad lines of commerce caused two major problems: (1) it exposed those financial firms to unnecessary risk, and (2) it created financial services companies that were critical to economic stability, triggering a Hobson's choice for the government to either step in and bail them out at great cost and public dissent (Bear Stearns) or allow them to fail and disrupt the markets (Lehman Brothers). Exposing securities exchanges to commercial risks has the potential to unnecessarily create risk to stable, liquid financial markets.

Conclusion

Proximity hosting and co-location services currently are provided in a cost-effective and secure manner that allows access to any appropriately qualified market participant on a non-discriminatory basis. Vendors such as SAVVIS provide important benefits to customers and indirectly to customers of our customers, and to the markets, through state-of-the-art secure, high quality data hosting services. We provide a competitive counterweight to co-location services provided by securities exchanges and market centers that help keep access equal, fees low and service quality at a high level.

The conflicts of interest created by the entry of securities exchanges into the data site hosting business should not be overlooked. Exchanges should not be permitted to use their power to grant or control the price or terms of market access to extend their government-granted franchise into other lines of business. The Commission should not take actions that permit the expansion of exchanges into the data center business, and should instead adopt provisions that preclude tying or other methods to expand the business of operating a market into the business of providing data hosting services. Such expansion, or the grant of supervisory authority to the exchanges over data hosting services on the theory that they are "facilities of an exchange," poses conflicts of interest between the exchanges' role as an SRO and the exchanges' interest in maximizing their revenues from the data site business.

We thank you for the opportunity to comment on the Concept Release and for your consideration of these views.

Sincerely,



Gene DeFelice
Senior Vice President, General Counsel & Secretary

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cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
James A. Brigagliano, Division of Trading and Markets
Arisa Tinaves, Division of Trading and Markets
Gary M. Rubin, Division of Trading and Markets