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December 17, 2021

**Via Email**

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

Re: Securities Exchange Act Release Nos. 93518 (November 4, 2021) (Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F); and 11005 (November 4, 2021) (Updating EDGAR Filing Requirements)

Dear Ms. Countryman:

NYSE Group, Inc. (“NYSE Group”), on behalf of the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (together, the “NYSE Exchanges”) submits this comment letter to the above-referenced rule proposals (the “Proposals”).<sup>1</sup> In the Proposals, the Securities and Exchange Commission (“Commission”) proposes to amend existing rules and forms to mandate or allow the electronic submission of documents currently submitted in paper.

Despite the Proposals’ broad focus, they do not address any of the forms or submissions that national securities exchanges are required to make under the Securities Exchange Act of 1934 (“Exchange Act”).<sup>2</sup> The NYSE Exchanges

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<sup>1</sup> Securities Exchange Act Release Nos. 93518 (November 4, 2021), 86 FR 64839 (November 19, 2021) (Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F) (“First Proposal”); and 11005 (November 4, 2021), 86 FR 66231 (November 22, 2021) (Updating EDGAR Filing Requirements) (“Second Proposal”).

<sup>2</sup> In the First Proposal, the Commission proposes that applications for orders under the Investment Advisers Act of 1940, requests for confidential treatment for filings made under Section 13(f) of the Exchange Act, and Form ADV-NR be made electronically. See First Proposal, at 64839-64840. The Second Proposal proposes the electronic submission of documents under Regulation S-T, the annual report to security holders, and the certification that a security has been approved by an exchange for listing and registration. It also proposes to allow the electronic submission of certain foreign language documents. See Second Proposal, at 66231.

respectfully request that the Commission extend its electronic submission mandate to include such documents.

Specifically, the NYSE Exchanges propose that the following forms, requests, and reports, all of which self-regulatory organizations send on paper, be subject to electronic filing or submission requirements (together, the “SRO Forms”):

- Form 19b-4(e) (Information Required of a Self-Regulatory Organization Listing and Trading a New Derivative Securities Product Pursuant to Rule 19b-4(e) Under the Securities Exchange Act of 1934);
- Form 1 (Application For, and Amendments to Application for, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act) and the periodic and annual amendments thereto;
- requests for confidential treatment for materials submitted under Form 1 and amendments thereto; and
- monthly volume reports submitted pursuant to Rule 6a-3(b).

Recently, the Staff of the Division of Trading and Markets of the Commission issued guidance that temporarily allows SRO Forms to be submitted electronically (the “Guidance”), given the logistical issues raised by the coronavirus (“COVID-19”).<sup>3</sup> A review of the SRO Forms submitted under the temporary Guidance<sup>4</sup> shows the potential impact of the NYSE Exchanges’ request: they have forestalled mailing thousands of paper documents to the Commission, while ensuring that the Commission still received the information. For example, between April 1, 2020 and November 18, 2021, the NYSE Exchanges made 438 filings on Form 19b-4(e) electronically. Had those filings been on paper, the NYSE Exchange would have sent 4,380 documents to the Commission, since nine copies must be submitted along with each original filing.<sup>5</sup>

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<sup>3</sup> See *Division of Trading and Markets Staff Statement Regarding Requirements for Certain Paper Submissions in Light of COVID-19 Concerns*, at <https://www.sec.gov/tm/paper-submission-requirements-covid-19>. If the Commission elects not to extend its electronic submission mandate to include the SRO Forms, the NYSE Exchanges respectfully request that the effective period of the Guidance be extended.

<sup>4</sup> The NYSE Exchanges have submitted the SRO Forms using Kiteworks Secure File Transfer (“Kiteworks”), which allows NYSE Exchange staff to send encrypted information to Commission staff using a special electronic mailbox, or, less frequently, email. For more information regarding Kiteworks, see *SEC External Guide for Using Kiteworks Secure File Transfer*, at <https://www.sec.gov/files/kiteworksguide.pdf>.

<sup>5</sup> See Form 19b-4(e), at <https://www.sec.gov/files/form19b-4e.pdf>.

During the same period, the NYSE Exchanges electronically submitted 64 amendments to Form 1, most of which were more than 70 pages long, and 21 monthly volume reports.

These temporary measures demonstrate that the Commission is able to receive the SRO Forms, and the NYSE Exchanges are able send them, electronically. This is not surprising: for more than 15 years the national securities exchanges have been submitting filings on Form 19b-4 electronically, using the Electronic Form 19b-4 Filing System.<sup>6</sup> The NYSE Exchanges do not believe that there is any reason to continue to treat the SRO Forms differently than filings on Form 19b-4. All should be electronically submitted.

#### Electronic Submission of the SRO Forms Would Yield the Same Benefits Cited by the Proposals

Electronic filing improves the Commission's ability to "promote efficiency, transparency, and operational resiliency by modernizing the manner in which information is submitted . . . and, where appropriate, disclosed to the public."<sup>7</sup> The NYSE Exchanges believe that the electronic filing or submission of the SRO Forms would yield the same benefits that are cited in the Proposals, leading to improved ability to conduct regulatory oversight.<sup>8</sup>

First, the electronic filing and submission of SRO Filings would decrease the amount of time that Commission staff requires to receive and process paper submissions, while facilitating compliance with retention requirements. As stated in the First Proposal,

[t]he current process surrounding paper submissions is manual in nature, requiring processing by various staff as a filing is received and subsequently routed to the appropriate staff members within the Commission for review. . . . Electronic filings are also easier than paper filings for the Commission to maintain in accordance with the

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<sup>6</sup> See Securities Exchange Act Release No. 50486, 69 FR 60287 (October 8, 2004) (Proposed Rule Changes of Self-Regulatory Organizations). The Electronic Form 19b-4 Filing System is a secure website operated by the Commission.

<sup>7</sup> First Proposal, at 64840.

<sup>8</sup> The proposed additions would also have the more general benefit of making the EDGAR system more comprehensive. See Second Proposal, at 66233 (noting that "[s]ince our implementation of EDGAR, we have increasingly sought to make the system more comprehensive by including more filings in the mandated electronic filing category").

Commission's record retention requirements because they are easier to store, easier to access, easier to search, and easier to track.<sup>9</sup>

Second, the transition to electronic filings and submissions of the SRO Forms and the resulting reduction in the delays attendant to paper submissions would lead to a more streamlined and timely Commission review: it would "increase[ ] efficiency in the staff review process by reducing staff processing time, increasing quality assurance, and improving the ability to review and analyze information contained in electronic submissions."<sup>10</sup> Whether the NYSE Exchanges used the Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") or Kiteworks, Commission staff would gain immediate access to searchable filings on Form 19b-4(e), amendments to Form 1, or other SRO Form, rather than waiting for the paper to be mailed to the Commission and then manually processed.

With respect to requests for confidential treatment, expediting Commission review of the request through electronic submission could reduce the period of de facto confidential treatment that accrues pending review, and ultimately allow for the quicker public dissemination of information if the request is denied.<sup>11</sup> It is not a theoretical difference in timing. As the Commission noted in the First Proposal, "the COVID-19 pandemic . . . resulted in delays in receiving paper filings and, ultimately, in granting or denying 13(f) Confidential Treatment Requests filed with the Commission in paper."<sup>12</sup> There is precedent for electronic submission: the Commission has permitted or required the electronic submission of other confidential treatment requests.<sup>13</sup>

Third, not just Commission staff would benefit from new electronic submission requirements. Investors, national securities exchanges, and other market participants all would be able to immediately access the information contained in the SRO Forms, as "publicly filed electronic submissions are more readily available on [the Commission's] website in easily searchable formats, which benefits both investors and the asset management industry."<sup>14</sup>

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<sup>9</sup> First Proposal, at 64853. See also Second Proposal, at 66234.

<sup>10</sup> First Proposal, at 64840.

<sup>11</sup> See id., at 64847.

<sup>12</sup> Id., at 64846.

<sup>13</sup> Id., at 64847. See also id. at note 79.

<sup>14</sup> Id., at 64840. See also Second Proposal, at 66234.

At present, third parties wanting to review SRO Forms submitted on paper must wait for Commission staff to scan and post the SRO Form onto EDGAR, go to the Commission public reference room, or subscribe to an information service that will scan the document.<sup>15</sup> Clearly, a document that a market participant could immediately read and search would be much more useful to it. Further, to the extent that a market participant utilizes the SRO Form in making decisions, electronic submission would allow it to incorporate a greater amount of information or make faster decisions.<sup>16</sup>

Fourth, national securities exchanges themselves would benefit, because their burden to submit the SRO Forms would be reduced. For example, once the text of an amendment to Form 1 is finalized, the work of the NYSE Exchange staff is not done: it has to obtain a physical signature, have the form notarized, and mail it to the Commission. Similarly, once a Form 19b-4(e) is finalized, the NYSE Exchange staff must obtain a signature and make nine copies before mailing all ten documents to the Commission. Electronic filing would require an electronic signature and push of a button. The relative inefficiency of the paper filings and submissions is self-evident. In addition, the national securities exchanges would reap the benefit of having information disseminated to the Commission and the markets faster than presently.

Fifth, as the First Proposal states, “converting paper submissions to electronic submissions would allow the Commission, and those persons filing the submissions, to more effectively and efficiently navigate any future disruptive events—like COVID-19—that make the paper submission process unnecessarily burdensome, impractical, or unavailable.”<sup>17</sup> The NYSE Exchanges have demonstrated during COVID-19 that the SRO Filings can be made electronically. Indeed, as the Commission notes, “electronic filing capabilities have proved to be an effective measure in addressing certain of the logistical and operational issues raised by the spread”<sup>18</sup> of COVID-19. Mandating electronic submission of the SRO Forms would increase the preparedness of the Commission and the national securities exchanges for future disruptive events.

In addition, requiring electronic submissions would reduce the carbon footprint associated with producing paper document and delivering these physical SRO

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<sup>15</sup> Id., at 66234. Scanning is not always limited to the actual form; scans of amendments to Form 1 can include cover letters as well, potentially confusing market participants. See, e.g., <https://www.sec.gov/Archives/edgar/vpr/2100/21009320.pdf>.

<sup>16</sup> See Second Proposal, at 66239.

<sup>17</sup> First Proposal, at 64840.

<sup>18</sup> Id.

Forms to the Commission. As noted above, during the time the Guidance has been in effect, electronic submission has forestalled mailing thousands of paper documents to the Commission, including 4,380 filings on Form 19b-4(e).

### Form 1 and its Amendments Should Not Be Required to be Notarized

In order for Form 1 and its amendments to be electronically filed, the current notarization requirement would have to be removed. The First Proposal offers a model for this, as it proposes to remove the requirement for notarizations of applications under the Advisers Act.<sup>19</sup> It notes that in a 2008 release the Commission “removed the corresponding requirement for applications for an order under the Investment Company Act, and [the Commission has] not had significant issues or concerns with the removal of notarizations in that context.”<sup>20</sup>

In place of the notarization requirement, the NYSE Exchanges propose that a system similar to that cited by the Commission in the First Proposal be made to the requirements for filing Form 1 and its amendments. Under such a system,

each signatory to an electronic filing [must] manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form in the electronic filing. This document must be executed before or at the time the electronic filing is made, must be retained by the filer for a period of five years, and must be made available to the Commission upon request. . . . Moreover, filers must submit a notarized authentication to the Commission when submitting a Form ID to gain initial access to the EDGAR filing system.<sup>21</sup>

Like the Commission, the NYSE Exchanges believe that such requirements would “provide sufficient assurance of the legitimacy of signatures contained in the electronic filings so that notarization of each application and each amended application is unnecessary.”<sup>22</sup> Given that, as noted above, 64 amendments to Form 1 have been submitted by the NYSE Exchanges under the temporary Guidance, it is clear that removing the notarization requirement would allow the Commission and market participants to reap real benefits from electronic filing.

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<sup>19</sup> See id., at 64844.

<sup>20</sup> See id., citing Securities Act Release No. 8981 (Oct. 29, 2008), 73 FR 65516 (November 4, 2008) (Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E).

<sup>21</sup> See First Proposal, at note 39.

<sup>22</sup> See id.

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For the reasons set forth above, the NYSE Exchanges respectfully request that the Commission extend its electronic submission mandate to include the referenced forms and reports that national securities exchanges are required to make under the Exchange Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M-3', with a small dot above the final flourish.

Martha Redding

cc: Haoxiang Zhu, Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Markets  
David Saltiel, Deputy Director, Division of Trading and Markets