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VIA EMAIL June 30, 2011

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

RE: Release No. 34-64506; File No. SR-NYSE-2011-20

Dear Ms. Murphy:

The purpose of this correspondence is to respond to your request for comment regarding the NYSE's Proposed Rule Change to "Add New Section 907 to the Listed Company Manual that Sets Forth Certain Complimentary Products and Services that are offered to currently and newly Listed Issuers".

Conspicuous by its absence is a single comment letter from an issuer - the community most affected by the proposed rule. Rather, fourteen of the fifteen responses to date have been from vendors who argue that they would likely be placed at a competitive disadvantage if the rule were approved as drafted. The fifteenth response is from the NYSE rebutting the claims of the other fourteen. Given our commitment to issuer advocacy, we have discussed the proposed formula-based allocation of premium services with numerous NYSE and Nasdaq listed companies and have presented, herein, a collective issuer perspective on the proposal. An overwhelming percentage of those with whom we have discussed the proposed rule disagree with various aspects of it. Their reasoning differs greatly from the self-preservation arguments put forth by the vendors in their letters to the Commission. Below you will find an Executive Summary representing a consensus issuer viewpoint. More detailed observations follow this summary and support the basis for the consensus position herein presented.

Executive Summary

While well intended, the NYSE proposal fails to accomplish its objective of providing transparency with respect to "complimentary services" to issuers. Rather it institutes a service cap that restricts competition for listings. It also raises the fundamental question: why do issuers pay any listing fees at all in the new world of high frequency trading? There are numerous arguments in support of this position to include:

- The historical basis upon which the fee schedule was determined is no longer valid as a result of Reg NMS
- Contrary to the terminology used in the filing, there is nothing complimentary about these services as issuers pay dearly for them
- While attempting to create transparency, the program has the effect of limiting the exchanges' service offerings via a cap
- In certain instances, restrictions in terms of qualified service providers preclude selected issuers from participating
- The proposal makes it increasingly difficult for issuers to unlock the real value of their market listing – i.e., trading fees
- The transformation of the exchanges to publicly traded entities requires that a pure competitive service model take precedence over the proposed service cap methodology
- True competition will always produce a superior solution to any formula based service allocation mechanism imposed by regulatory fiat
- The time has come to raise the question: given the substantial sums of money made by the exchanges from the issuer listings, why do issuers pay any listing fees at all?

Details in support of each of these comments follow in the section entitled "Detailed Observations".

Recommendations:

We recommend that the SEC disapprove this filing and request that both listing exchanges fully evaluate the idea of free listings. With the SEC's concerns regarding the discounting of listing fees no longer an issue, a major impediment to expanding the respective exchanges' service offerings will have been eliminated.

Alternatively, we recommend that the SEC require increased disclosure to them by both exchanges of the respective listing benefit packages granted to their issuers. This would address SEC concerns about transparency while not limiting the respective service offerings (caps).

As a final alternative, we propose that the SEC commission an independently selected task force comprised of issuers from both markets to recommend a model that will permit the respective exchanges to provide value added services while not limiting service offerings, thereby ensuring maximum competition between the exchanges.

We salute the efforts of the NYSE to bring forth greater transparency. Surely, there are ways to do this without restricting competition as herein detailed.

Detailed Observations

The impact of Reg NMS on the value proposition of exchanges:

In short, Reg NMS mandated faster markets and radically changed the historical price discovery mechanism of the exchanges, especially the NYSE. It also had the unintended consequence of dramatically reducing the NYSE's market share from roughly 85% to approximately 25% today (excluding Arca, its electronic platform). To be fair, Nasdaq also saw a decline in its market share as electronic markets (to include High Frequency Traders and Dark Pools) garnered more business. As a further byproduct of Reg NMS, issuers lost the highly valued services of the specialist who committed capital and endeavored to add liquidity while reducing volatility in his/her stock. This role also served to provide keen insights into potential buyers and sellers. These important benefits were a vital component of the premium fees charged (and approved by the SEC) to issuers and disappeared in the post-Reg NMS environment. Despite this material change in the respective exchanges' value proposition, there was no commensurate reduction in listing fees. Why?

Rather than realign their fee structure with Post Reg NMS realities, the NYSE commenced a partnership with selected IR service providers to attempt to bridge the fee gap between their fees and those of their chief rival, Nasdaq. The simple reality is that the historical basis upon which the exchanges' fee schedules were originally established is no longer valid.

<u>"Complimentary Products and Services" vs Service Caps:</u>

Issuers take exception to the term "complimentary" in this filing. There is nothing complimentary about these services. They are restricted to companies that pay premium listing fees that can be five times higher than those of their closest competitor. Make no mistake about it – issuers pay dearly for these premium services. In fact, this proposal has the intended consequence of limiting services for those defined in the filing.

<u>Limited Selection:</u>

The program restricts issuers by forcing them to select from a narrow list of service providers. Numerous issuers have been unable to take advantage of the program because their preferred service provider (in some cases a service owned by Nasdaq) is not on the NYSE list, thereby requiring the issuer to incur additional cost.

<u>The Road Ahead</u>:

Compelled by the economics of the modern market place, BATS has already announced its intention to enter the listing business. Obviously, BATS sees the opportunity to garner greater revenues (both listing and trading). Hidden from the open view of issuers, however, is the real economic value of their listing – trading fees. It is inevitable, we believe, that companies will increasingly seek to quantify the hidden value of their listings and will discover that the real value is a multiple of their annual listing fee. They will demand an enhanced value proposition. Unfortunately, the service constraints inherent in the proposed service allocation methodology will significantly reduce their ability to unlock the real economic value of their market listing.

<u>The US Exchanges as Publicly Traded Entities</u>:

When the current caps on listing fees were approved by the SEC, all of the US exchanges were member organizations rather than publicly traded companies. They operated on a cost recovery model rather than a shareholder/profit model. Hence, any excess revenue streams (both listing and trading) will now accrue to the benefit of shareholders rather than being reflected in a lower cost to members and issuers. This is an unintended consequence of the exchanges becoming publicly traded enterprises in a post-Reg NMS environment.

Competition vs Regulatory Fiat:

As evidenced by the DOJ's recent rejection of Nasdaq's bid for the NYSE, competition for listings is vital. While we disagree with the spirit of the vendor comment letters submitted to date, we do agree with certain trepidations regarding competition as expressed by the vendors. This proposal results in the equivalent of a maximum service cap and will be used by the exchanges as a justification for limiting their service offerings. We've heard it already: "We would like to do more to keep your business but are limited as to what we can do by the SEC rules." SEC approval of this proposal will have the effect of setting the SEC up as a de facto scapegoat. We strongly believe that services caps via regulatory fiat should be replaced by hard-nosed, head-to-head competition. True competition will always produce a superior solution to any formula based service allocation mechanism.

Transparency vs Formula-Based Service Caps:

The SEC has expressed its desire for transparency and ensuring that there are no "secret deals" that are tantamount to a stealth reduction of listing fees. In attempting to comply with the SEC's request for transparency, the NYSE logically turned to a formula to avoid such perceptions. Unfortunately, formula-based service caps are, by definition, limitations. We do not believe that such limitations are what the SEC had in mind in terms of transparency. Hence, some form of periodic disclosure by the exchanges to the SEC of their service arrangements to issuers would provide the requisite transparency without promoting service limitations.

Free Listings:

Based upon the aforementioned issuer feedback, we believe the time has come to raise the obvious question: why are issuers paying any listing fees at all? As the above arguments indicate, the basis for charging listing fees has dissipated – similar to and parallel with the decline in the role of the specialist. History tells us that rules such as those herein proposed tend to restrict competition. One need look no further than Rule 500 which was repealed in favor of increased competition. With the exchanges now having transformed their trading platforms into annuity machines and their corporate structures into public profit centers, the true economics of the listing business require commensurate reengineering. Without the benefit of the shares being listed by the issuer community, none of this would be possible. Shouldn't the exchanges be paying the issuers for their listings instead of the other way around?

Conclusion

Again, we mean no disrespect to the NYSE's efforts to bring forth greater transparency to its issuer services menu. In fact, we salute their efforts and respect the fact that this policy has already been in effect for quite some time. Regrettably, this program is far too restrictive and limiting to garner our support and those of the issuer community we represent. Further, the topic of reduced issuer fees in a post-Reg NMS era has yet to be broached by either exchange.

We give the SEC very high marks for its impressive achievements in reshaping the markets in a post-Reg NMS environment. These enhancements are many - from Symbol Portability to the recently enacted individual stock circuit breakers in response to the Flash Crash. We are confident that the competitive challenges as set forth in our response will give rise to a fair and equitable resolution under your guidance.

We thank you again for the opportunity to comment and stand prepared to be of assistance in any manner you or the exchanges may require.

Kindest regards,

PJH

***Patrick Healy is CEO of Issuer Advisory Group, corporate America's leading issuer advocate and market expert. Mr. Healy serves on the Board of Directors of Direct Edge (the country's fourth largest stock exchange, which trades but does not list stocks). He holds a CPA and an M.B.A. and spent eight years on the faculty of the Georgetown University McDonough School of Business*.**