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May 13, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Proposed NYSE Rule Change Establishing Fees Relating to End Users,
Release No. 34-77642, File No. SR-NYSE-2016-11

Dear Mr. Fields:

We appreciate the opportunity to respond to NYSE's proposal to impose a new \$1,700 monthly fee on end users of NYSE's "Multicast" feed (the "Fee Proposal"). For the reasons set forth below, we oppose the Fee Proposal.

Trillium is a diversified financial services firm operating three business lines: a proprietary intraday equities trading group; an investment management group; and Trillium Labs, a trading technology development group and the creator of Surveyor, a post trade analytics and market surveillance tool designed to detect and eliminate market manipulation. Trillium is headquartered in New York City, with trading floors in Chicago, Miami and Princeton.

Trillium is an existing user of NYSE's proprietary market data feeds. Because Trillium's traders base their trading decisions on, among other things, depth-of-book quote data, Trillium must consume NYSE's proprietary feeds, because depth-of-book quotes are not available from any other source. Similarly, because Trillium's Surveyor market surveillance platform detects manipulation events such as layering and spoofing by comparing its users' quotes with depth-of-book quotes in the market, Trillium Labs is also forced to consume NYSE's proprietary feeds. Trillium currently pays NYSE \$49,344 per month, before sales tax, for these market data feeds. This figure does not include additional fees Trillium pays to a 3rd party delivery vendor.

Trillium appears to fall under the definition of "Multicast End User" in the Fee Proposal, subjecting it to an additional \$1,700 per month fee. Trillium does not itself co-locate at NYSE's

data center, so the relevant stated purpose of the Fee Proposal as to Trillium is to “fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users.” Fee Proposal at 13-14.

Trillium objects to the Fee Proposal because it unfairly burdens industry participants such as Trillium who have no choice but to accept it. NYSE is able to impose new fees such as the Fee Proposal without being subject to competitive forces, and the Fee Proposal is therefore not “fair and reasonable” under the Exchange Act.

The absence of competitive forces mitigating the Fee Proposal is evident from (1) the opulent market data revenue increases consistently reported by NYSE and the other major exchange groups in their public earnings releases, including as recently as last week, and (2) the inability of market data customers to use alternative products, particularly when the details of recent spoofing and layering enforcement actions are considered.

In recent weeks, NYSE’s parent company ICE released earnings reports boasting to shareholders of substantial year-over-year growth in market data revenue, including at NYSE. In the first quarter of 2016, ICE enjoyed 9% growth in exchange data revenue, to \$128 million from \$117 million a year earlier.¹ The same release announced ICE’s plan to capitalize on “strong organic growth in data” as a 2016 Strategic Growth Opportunity.² In the same quarter, BATS Global Markets’ revenue from market data fees was up 22%³ and Nasdaq’s data products revenue was up 5%.⁴

NYSE has argued in other forums⁵ that consumers of depth-of-book data are free to say no and instead use less costly SIP feeds, with which they can still properly route orders in accordance with Reg NMS using the top-of-book quotes contained therein. While this argument may be true with respect to the *trading* operations of firms consuming market data, it is not true with respect to the *compliance* operations of the same firms.

The Commission requires all registered broker-dealers to monitor their customers’ order flow for potential manipulation, including spoofing and layering.⁶ To effectively detect

¹ <http://ir.theice.com/~media/Files/I/Ice-IR/quarterly-results/2016/first-quarter-2016/1q-16-earnings-presentation-v2.pdf> at 6.

² Id. at 11.

³ <http://www.businesswire.com/news/home/20160505006616/en/Bats-Reports-Quarter-Adjusted-Earnings%E2%80%A0-Growth-77>

⁴ <http://files.shareholder.com/downloads/NDAQ/2052176595x0x887985/8E0D4528-C391-4537-8756-43200DC31528/EarningsPressRelease1Q16FINAL.pdf>

⁵ In re Application of SIFMA, Admin. Proc. File No. 3-15350.

⁶ 17 CFR § 240.15c3-5.

these types of behavior, it is necessary for broker-dealers to compare their own firm's local order message traffic with the visible order book.

As prosecutors have alleged in the much-publicized ongoing "Flash Crash Spoofer" case against Navinder Sarao, in a layering scheme a trader seeks to deceive other investors by "creating a false appearance of market depth." See *U.S. v. Navinder Sarao*, No. 15 Cr. 75 (N.D. Ill. Feb. 11, 2015), Complaint at 6. Sarao's alleged layering entailed "typically plac[ing] his orders in the middle of the order book on the sell side, such as at levels 4 through 8" of the order book. *Id.* at 9. Sarao allegedly developed automated trading software to reprice his orders as the market moved, so that they would always remain several ticks above the best offer. *Id.* at 10. The only way to identify behavior of this sort – orders placed at levels 4 through 8 of the order book – is to know where levels 4 through 8 of the order book are. **The only way to know that is to consume depth-of-book market data.**

The Sarao case is hardly the only example of regulators referencing depth-of-book data to identify spoofing and layering. See, e.g., *U.S. v. Michael Coscia*, No. 14 Cr. 551 (N.D. Ill. Oct. 1, 2014) Indictment at 5 ("The quote orders would typically be the largest orders in the market within three ticks of the best bid or offer price, usually doubling or tripling the total quantity of contracts within the best bid or offer price")⁷; Proposed FINRA Rule 4554, 81 FR 11851, Mar. 7, 2016 (requiring ATs to report depth-of-book quote changes in order to "greatly enhance FINRA's ability to perform certain order-based surveillance, including layering, quote spoofing and mid-point pricing manipulation surveillance, by enabling FINRA to more fully reconstruct an AT's order book")⁸; Remarks of CFTC Commissioner Mark Wetjen, May 21, 2015 ("In order to detect other types of manipulation like spoofing, layering, and flipping, plus new types of gaming strategies, receiving order book and message data is necessary").⁹

Trillium's own work in developing and bringing to market its Surveyor platform has shown us first hand the necessity of using depth-of-book quote data to effectively detect spoofing and layering. For an example of our depth-of-book-based layering analysis, see Michael Friedman, "The Aleksandr Milrud Layering Examples," Trillium Industry Insights, Jan. 16, 2015.¹⁰

Because regulators now require market participants to monitor their trading for spoofing and layering, and because detection of spoofing and layering requires analysis of depth-of-book quotes, not consuming depth-of-book quotes as part of their compliance program puts firms at their own regulatory peril. It is no longer optional.

⁷ https://www.justice.gov/sites/default/files/usao-ndil/legacy/2015/06/11/pr1002_01a.pdf

⁸ <https://www.sec.gov/rules/sro/finra/2016/34-77269.pdf>

⁹ <http://www.cftc.gov/PressRoom/SpeechesTestimony/opawetjen-13>

¹⁰ <http://www.trilm.com/the-aleksandr-milrud-layering-examples/>

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For these reasons, Trillium urges the Commission to deny the Fee Proposal.

Very truly yours,

A handwritten signature in blue ink, appearing to read "MJF", with a long horizontal stroke extending to the left.

Michael J. Friedman
General Counsel & Chief Compliance Officer