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September 9, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release No. 34-78556; File No. SR-NYSE-2016-45

Dear Mr. Fields:

Investors Exchange LLC ("IEX") appreciates the opportunity to comment on the referenced rule filing (the "Connectivity Filing") by the New York Stock Exchange ("NYSE") regarding the fees related to certain co-location services provided in its data center.[1] The filing proposes a comprehensive set of fees charged for connectivity to various data products, third party systems, third party data feeds, and Depository Trust and Clearing Corporation clearing services, as well as fees for virtual control circuits between two individual users. The Connectivity Filing also adds additional detail to the NYSE Price List that describes "included data products" that users who are directly connected to NYSE systems through its Liquidity Center Network and internet protocol network can select.

IEX supports full transparency and additional detail by exchanges on co-location access and related fees, and the Connectivity Filing will help to further that purpose. At the same time, we believe NYSE should be more transparent about the origin and evolution of these charges. In order to allow market participants to evaluate the charges and constructively comment on the filing, we think it would be useful for NYSE to clarify several points.

Transparency About the History of Charges and Related Costs

Because the Connectivity Filing often uses the present tense to describe categories of fees, it suggests that many of these fees are already in effect. We suggest that NYSE clarify when each fee was first imposed and, for any fee that has previously existed, state how the fees changed over time, including the dates and amounts of each change.

NYSE argues that the connectivity fees and services meet the standards for approval under the Securities Exchange Act of 1934 ("Exchange Act") because the fees are used to defray or cover costs of providing the services and maintaining the data center. In order to properly understand the need to charge for such services, the relative amount of each charge and whether they meet standards for approval under the Exchange Act, we believe that NYSE should provide additional

[1] Securities Exchange Act Release No. 78556 (August 11, 2016), 81 FR 54877 (August 17, 2016). NYSE filed an amendment to the filing on August 17, 2016, avail. at https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-1.pdf.

information based on actual experience as to the increasing costs of maintaining the data center and providing co-location compared to any related fee revenue. This additive transparency is increasingly important for members to evaluate the ever-rising fixed costs of exchange membership and whether the fees being charged are applied to members in an equitable manner.

Alternative Means of Access

NYSE also makes the argument that its connectivity fees meet the standards of the Exchange Act because users have alternatives other than co-location to access its market. For example, NYSE offers the following justification:

> If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location.[2]

Broker-dealers of all types are required to have effective access to exchanges in order to meet best execution responsibilities and compete in a market environment in which performance can be critically impacted by sub-millisecond differences in access to exchange systems and market data. In that environment, various participants, especially market makers, attempting to compete effectively are faced with a difficult choice in deciding whether to trade from "outside" the exchange if other participants are paying to trade "inside" via co-location. In addition, some broker-dealers trading for clients, because of the nature of their business, may be practically required to buy and consume proprietary market data feeds directly from exchanges in order to provide competitive products for those clients.[3] This trading environment imposes a form of trading tax on all members by offering different methods of access to different members.

We question whether there are any true alternatives that are practically available to various types of participants who are seeking to compete with those who are paying exchanges for co-location and data services. At a minimum, we think NYSE should provide some information and analysis showing how their ability to set fees of this type is constrained by true market forces for a ***comparable*** product.

Conclusion

IEX believes that the capital markets should allow for market participants, including exchanges, to make their own investments in technology in ways that allow for vigorous competition. Those participants who make investments in technology should have the opportunity to capitalize on

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[2] 81 FR at 54866.

[3] See, e.g., Written Statement of Brett W. Redfearn, J.P. Morgan Securities LLC, Comments to the SEC's Equity Market Structure Advisory Committee on the Regulatory Structure of Trading Venues (October 27, 2015), avail. at https://www.sec.gov/comments/265-29/26529-43.pdf.

short-term inefficiencies in the stock market that do not harm the interests of long-term investors. However, when exchanges become one of the largest vendors of relative speed in the marketplace, their ability to set the terms and costs of access can have a distortive effect by allocating trading advantages to those willing and able to pay the exchange, and creating a tax on all others who are attempting to compete. In this model, the exchanges' incentive to increase profits may, at times, directly conflict with their role as self-regulatory organizations and gatekeepers for markets that participants are required by regulation to access.

Exchanges have an outsized influence on constantly rising trading costs. IEX does not believe that blanket statements about the exchanges' own costs or the ability of participants to use alternatives are sufficient justification by themselves. We think that more light in this area is called for, and this proposal would be a good place to start.

Sincerely,

John Ramsay
Chief Market Policy Officer

cc: The Hon. Mary Jo White, Chair
The Hon. Kara M. Stein, Commissioner
The Hon. Michael S. Piwowar, Commissioner
Stephen Luparello, Director, Division of Trading and Markets