



Martha Redding
Associate General Counsel
Assistant Secretary

New York Stock Exchange
11 Wall Street
New York, NY 10005
T + 1 [REDACTED]
F + [REDACTED]
[REDACTED]

September 23, 2016

VIA E-MAIL

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: **Securities Exchange Act Release No. 34-78556 (August 11, 2016), 81 FR 54677
(August 17, 2016) (SR-NYSE-2016-45) (the "Proposal")**

Dear Mr. Fields:

The New York Stock Exchange LLC (the "NYSE" or "Exchange") appreciates the opportunity to respond to the comment letter submitted by Investors Exchange LLC in connection with the Proposal to amend the co-location services offered by the Exchange (the "Comment Letter").¹ In the Proposal, the Exchange proposes to provide additional information regarding the services provided to Users² and establish fees relating to such services, with such services and fees to be reflected by changes to the Exchange's Price List. For the reasons set forth in the Proposal and in this response, the Exchange believes that the Proposal is consistent

¹ See Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission ("Commission"), dated September 9, 2016. Capitalized terms that are not defined herein are used as defined in the Proposal.

² For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC ("NYSE MKT") and NYSE Arca, Inc. ("NYSE Arca" and, together with NYSE MKT, the "Affiliate SROs"). See Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR-NYSE-2013-59).

with Sections 6(b)(4) and 6(b)(5) of the Securities Exchange Act of 1934, as amended (the “Act”).³

Summary of the Proposal

As more fully described in the Proposal, the Exchange proposes to revise the Price List to include a more detailed description of Users’ access to the trading and execution systems of the Exchange and its Affiliate SROs (the “Exchange Systems”) and connectivity to certain market data products (the “Included Data Products”) that Users receive with connections to the Liquidity Center Network (“LCN”) and internet protocol (“IP”) network, local area networks available in the data center.⁴

In addition, the Exchange proposes to revise the Price List to include fees for connectivity or access to:

- certain other market data products of the Exchange and its Affiliate SROs (the “Premium NYSE Data Products” and, together with the Included Data Products, the “NYSE Data Products”);
- execution systems of third party markets and other content service providers (“Third Party Systems”);
- market data feeds from third party markets and other content service providers (the “Third Party Data Feeds”);
- third party testing and certification feeds; and
- Depository Trust & Clearing Corporation (“DTCC”) services.

³ 15 U.S.C. 78f(b)(4)-(5). The Comment Letter does not address the proposed rule changes filed by the Affiliate SROs, which are substantially the same as the Proposal. However, the Exchange’s response to the Comment Letter is also applicable to the filings made by NYSE MKT and NYSE Arca. See Securities Exchange Act Release Nos. 78629 (August 22, 2016), 81 FR 58992 (August 26, 2016) (SR-NYSEMKT-2016-63) and 78628 (August 22, 2016), 81 FR 59004 (August 26, 2016) (SR-NYSEArca-2016-89). As the Comment Letter does not address the proposed fees for virtual control circuits between two Users, such proposal is not discussed herein.

⁴ See Securities Exchange Act Release Nos. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) and 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR-NYSE-2015-05).

Response to Comment Letter

The Exchange does not believe that the Comment Letter's points in opposition to the Proposal are credible and believes that the Proposal is consistent in all respects with the requirements of the Act. We address each point of the Comment Letter below.

Transparency About the History of Charges and Related Costs

First, the Comment Letter inappropriately asserts that the Exchange should "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 amount of each change."⁵ Such detailed historical information is not required by the Act and is not relevant to whether the substance of the Proposal—which is, by definition, forward looking—is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to the Exchange as a self-regulatory organization.⁶ Either the Exchange has set forth sufficient purpose of the proposed changes and their basis under the Act (specifically Sections 6(b)(4), 6(b)(5) and 6(b)(8)⁷) and the rules and regulations thereunder to offer the services and charge the fees on a going forward basis, or it has not.

Second, the Comment Letter states that "NYSE argues that the connectivity fees and services meet the standards for approval under the [Act] because the fees are used to defray or cover costs of providing the services and maintaining the data center"⁸ and proposes that the Exchange provide data regarding its costs compared to fee revenue. In so doing, the Comment Letter misapprehends the basis upon which the Exchange establishes its fees. Costs are one of a list of factors that the Exchange discusses in explaining why the proposed charges are reasonable, equitably allocated and not unfairly discriminatory, consistent with Section 6(b)(4) of the Act.⁹ The other factors the Proposal describes – which the Comment Letter ignores but the Exchange weighed when proposing its prices – include the competitive landscape; whether Users would be required to utilize a given service; the alternatives available to Users; and, significantly, the benefits Users obtain from the services.¹⁰ In other words, the proposed fees

⁵ Comment Letter, at 1.

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78f(b)(4), 78f(b)(5) and 78f(b)(8).

⁸ Comment Letter, at 1.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See Proposal, at 54884-54886.

are based in part on the value presented to Users, not just the Exchange's cost to provide the services. For example, the benefits Users receive from having reduced latency when connecting to NYSE Data Products, being able to access Third Party Systems, or receive Third Party Data Feeds, are significant and obvious pricing factors, irrespective of the Exchange's costs in providing such services. In focusing on cost to the exclusion of all other factors, the Comment Letter is suggesting an inquiry that ignores (without disputing) all other factors set forth in the Proposal, including the benefits Users realize from the proposed services in light of their individual business models.

The Comment Letter continues by further misapprehending the nature of co-location fees, arguing that information about past fees would help "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."¹¹ However, the connectivity fees described in the Proposal are *not* "fixed costs of exchange membership." The Exchange provides access to the Exchange Systems and Third Party Systems (together, "Access") and connectivity to NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC (collectively, "Connectivity") to all Users who choose to purchase such services, whether they are Exchange Members or not. A User does not require the Access or Connectivity described in the Proposal in order to trade on the Exchange, as such use is completely voluntary, and each User can avail itself of alternative access and connectivity options.¹² The form and latency of access and connectivity that best suits a User's needs remains up to the User.

In addition, the Exchange notes that information regarding past fees would not assist a Member in determining whether proposed fees would be applied in an equitable manner in the future. Rather, a Member would look to the Proposal and its description of the fees. As noted therein, the proposed services and fees are available to all Users on an equal basis (i.e., the same products and services are available to all Users). All Users that voluntarily select to access the Exchange Systems or connect to Included Data Products would only be charged the fee for the relevant LCN or IP network access. All Users that voluntarily choose to receive access to Third Party Systems, connectivity to Premium NYSE Data Products, Third Party Data Feeds, third party testing or certification feeds and DTCC would be charged the same amount for the same services.

¹¹ Comment Letter, at 2. The Exchange notes that the Commission, not Members, will make the determinations regarding the Proposal, which is, as noted above, prospective in application.

¹² See Proposal, at 54878.

Alternative Means of Access

Third, the Comment Letter argues that market participants, particularly market makers, are forced to choose whether to co-locate. It asserts that the “trading environment imposes a form of trading tax on all members by offering different methods of access to different members.”¹³ Contrary to the Comment Letter, the Exchange does not offer “different methods of access to different members.” The same co-location services are offered to all market participants, whether they are Members or not, and all market participants have the opportunity to purchase from the Exchange whatever services they deem right for their needs on a fair and non-discriminatory basis. Contrary to what the Comment Letter argues,¹⁴ the Exchange is not a vendor of “relative speed.” Rather, it is a vendor of fair and non-discriminatory access, and like any vendor with multiple product offerings, different purchasers may make different choices regarding which products they wish to purchase.

The Comment Letter ignores that, in the absence of an Exchange-offered regulated co-location service, market participants with speed-sensitive trading strategies would be forced to vie for the closest *unregulated* space next to the exchange systems. By contrast to an unregulated provider, the Exchange ensures that every User’s equipment stack is the same distance in switches and cable lengths from the Exchange’s systems, regardless of where the User is positioned in the Exchange data center. An unregulated co-location provider¹⁵ would not be required by law to provide a non-discriminatory environment: any user of such a facility would merely be a tenant alongside other third parties, and the common vendor could decide their placement and fees on any basis—even a discriminatory one. Inevitably, some clients would lose the battle for proximity, creating a greater “distortive effect” than any regulated co-location service. Accordingly, the Exchange believes that fair and non-discriminatory access is only assured by offering regulated co-location services.

Fourth, the Comment Letter questions whether there are “true alternatives” to co-location “that are practically available to various types of participants who are seeking to

¹³ Comment Letter, at 2. The Exchange does not address the Comment Letter’s statements regarding broker-dealer purchase of proprietary market data feeds directly from exchanges, as such statements are outside the scope of the Proposal. The fees proposed in the Proposal relate solely to connectivity and co-location services, and are not market data fees.

¹⁴ Comment Letter, at 3.

¹⁵ For those exchanges that do not offer co-location, in some cases a third party may offer clients co-location proximate to the exchange’s systems. Such co-location is not regulated by the Commission because it is not provided by the exchange or one of its facilities.

compete with those who are paying exchanges for co-location” and suggests that the Exchange provides no “information and analysis showing how their ability to set fees of this type is constrained by true market forces for a **comparable** product.”¹⁶ In so doing, the Comment Letter ignores the various alternatives to the Access and Connectivity described by the Exchange four times in the Proposal itself.¹⁷ As repeatedly explained in the Proposal, use of Access or Connectivity is completely voluntary. Alternatives to using the Access and Connectivity provided by the Exchange include connectivity through other Users, Exchange access centers outside the Exchange data center, third party access centers, or third party vendors. Any User may make such connection through a third party telecommunication provider, third party wireless network, the Exchange’s Secure Financial Transaction Infrastructure (“SFTI”) network, or a combination thereof. These alternatives provide distinct services and pricing structures that a User may find more attractive than those proposed by the Exchange, and each User is free to conduct its own analysis of the relative benefits of those alternatives and choose whichever it deems most beneficial to it (which the Comment Letter does not dispute).

Finally, it is curious for the Comment Letter to conclude that market participants that invest in technology “should have the opportunity to capitalize on short-term inefficiencies in the stock market that do not harm the interests of long-term investors”¹⁸ while questioning whether exchanges should be permitted to provide co-location services.¹⁹ Apparently, the Comment Letter believes that a market participant’s capitalization on short-term market inefficiencies via unregulated data centers does not harm the interests of long-term investors, but the exact same activity in a regulated data center run by the Exchange does. The illogic of the distinction is self-evident.

¹⁶ Comment Letter, at 2. Emphasis in the original. The Exchange notes that such information would not be relevant to the Commission’s assessment whether the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. See 15 U.S.C. 78f(b)(8).

¹⁷ See Proposal, at 54878, 54883, 54884, and 54886.

¹⁸ Comment Letter, at 2-3.

¹⁹ For an analysis of what impact high frequency traders may have on today’s equity markets, see Bartlett, Robert P. and McCrary, Justin, *How Rigged Are Stock Markets? Evidence from Microsecond Timestamps* (August 5, 2016), UC Berkeley Public Law Research Paper No. 2812123, available at SSRN: <http://ssrn.com/abstract=2812123> or <http://dx.doi.org/10.2139/ssrn.2812123>.

Mr. Brent J. Fields
September 23, 2016
Page 7 of 7

The Exchange appreciates the opportunity to respond to the Comment Letter and respectfully requests the Commission approve the Proposal.

Very truly yours,

A handwritten signature in blue ink, consisting of stylized, cursive letters that appear to be 'BJF'.