

December 12, 2016

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

Re: Securities Exchange Act Release No. 79316; SR-NYSE-2016-45; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Change, as Modified by Amendment Nos. 1 and 2, Amending the Co-location Services Offered by the Exchange to Add Certain Access and Connectivity Fees

Dear Mr. Fields:

Citadel Securities (“Citadel”)¹ appreciates the opportunity to comment on the Commission’s order instituting proceedings² to determine whether to approve or disapprove the proposed rule change, as amended, by the New York Stock Exchange LLC (“NYSE” or the “Exchange”) relating to certain co-location, connectivity, and access fees (the “NYSE Proposal”).³ The proposed fees are emblematic of a persistent and destructive trend of exchanges significantly increasing connectivity, market data, and other fees with little justification or benefit, as well as failing to provide market participants with adequate notice regarding all of the various fees being charged. We agree with the Commission that the NYSE Proposal raises concerns under the Securities Exchange Act of 1934 (“Exchange Act”), including (a) Section 6(b)(4), which requires that the rules of an exchange provide for the equitable allocation of reasonable fees, (b) Section 6(b)(5), which requires that the rules of an exchange protect investors and the public interest and not permit unfair discrimination, and (c) Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The NYSE Proposal to charge an additional connectivity fee for the Premium NYSE Data Products illustrates the proliferation of exchange fees that may not be equitably allocated among exchange members. For example, the NYSE Best Quote and Trades feed (“NYSE BQT”), one of the Premium NYSE Data Products, is an aggregated and consolidated feed that combines data

¹ Citadel Securities is a leading global market maker across a broad array of fixed income and equity securities. In partnering with us, our clients, including asset managers, banks, broker-dealers, hedge funds, government agencies and public pension programs, are better positioned to meet their investment goals. On an average day, Citadel accounts for approximately 15 percent of U.S. listed equity volume, 19 percent of U.S. listed equity option volume, and more than 35 percent of all retail U.S. listed equity volume.

² Securities Exchange Act Release No. [73916](#), 81 FR 83303 (November 21, 2016) (“Order Instituting Proceedings”).

³ Securities Exchange Act Release No. [78887](#), 81 FR 66095 (September 20, 2016) (the “Proposal”). *See also* [Amendment No. 2](#) to the Proposal.

elements from six of the data feeds that are Included Data Products.⁴ In order to receive the NYSE BQT feed from NYSE, it appears that a broker-dealer must: (1) pay connectivity fees to trade and receive data from the Exchange; (2) subscribe to and pay for each of the six data feeds underlying NYSE BQT;⁵ (3) pay an additional access fee of \$1,000 for the NYSE BQT;⁶ and (4) under the Proposal, now pay an additional monthly connectivity fee of \$500 to \$1,000 to access the Premium NYSE Data Products.

Given the above, Citadel agrees with the Commission that it is unclear why instituting a separate connectivity fee to access the Premium NYSE Data Products accords with the requirements of the Exchange Act. NYSE justifies the proposed connectivity fee in part by asserting that “no single Included Data Product will require as much bandwidth as a Premium NYSE Data Product for the same market.”⁷ Yet, as noted, in order to acquire the NYSE BQT, it appears that a broker-dealer must pay for each underlying component data feed, the cumulative total of which would seem to take as much bandwidth as the NYSE BQT itself, as well as pay an additional \$1,000 per month fee for “access” to the NYSE BQT. It is unclear how the \$1,000 NYSE BQT “access fee” is meaningfully different and justifiable under the Exchange Act from the proposed, separate connectivity fee for access to the NYSE BQT and other Premium NYSE Data Products.

These additive and layered fees are a persistent problem with exchange fees more generally. While any individual new fee or fee increase by an exchange could appear to be “reasonable” and not “unfairly discriminatory,” the aggregate and cumulative impact of exchange fees impedes a free and open market and is contrary to the public interest as prohibited by Section 6(b)(5) of the Exchange Act. Citadel appreciates the Commission’s close scrutiny of the NYSE Proposal and encourages a similar level of review for new exchange fee proposals that takes into account all of the various fees that are imposed on market participants, in particular with respect to market data products where exchanges have a monopoly as the initial distributors. Increases in exchange fees raise the cost of providing services to customers and ultimately result in higher trading costs for investors. Although NYSE may not be required under the Exchange Act to provide historical information regarding these fees,⁸ NYSE is required under Form 19b-4 to provide sufficient information to elicit meaningful comment on the NYSE Proposal. Citadel believes that market participants, as well as the Commission, would benefit greatly from additional transparency regarding all of the various fees being charged and regarding how NYSE has been managing the costs of connectivity and bandwidth under its current fee structure.

⁴ Securities Exchange Act Release No. [73816](#), 79 FR 75200, (December 17, 2014) (SR-NYSE-2014-64) (“the NYSE BQT data feed consists of certain data elements from six market data feeds— NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO.”).

⁵ *Id.* at 75201.

⁶ See NYSE Market Data Pricing at 5.1.1, available at <http://www.nyxdata.com/Docs/Market-Data/Pricing>.

⁷ Proposal at 66098.

⁸ See Letters to Brent J. Fields, Secretary, Commission, Martha Redding, Associate General Counsel, NYSE, dated Sept. 23, 2016 at 3, and from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated September 9, 2016 letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated Sept. 9, 2016.

Furthermore, there is no readily available substitute or equivalent means of access to the Premium NYSE Data Products. NYSE explicitly acknowledges that connectivity to the Premium NYSE Data products “is directly related to the purpose of co-location.”⁹ NYSE further notes that the purpose of co-location is to enhance the efficiency of a firm’s operations, primarily by reducing latency in order entry and receipt of market data.¹⁰ Accordingly, for an alternative means of access to the Premium NYSE Data Products to be an equivalent substitute, the alternative means should result in the same level of latency as accessing the products directly from the Exchange. However, all of the alternative means of access proposed by NYSE (*e.g.*, connecting/accessing through another user, access center outside the data room, third party access center, or third party vendor),¹¹ would introduce additional latency as well as additional fees paid to the other user or vendor.

While exchanges may argue that subscribing to premium services or data products is “voluntary” and point to alternative means of access through a third-party or suggest that firms not pursue the benefits of utilizing co-location, in reality, market participants do not have effective alternatives to paying exchange fees for access to such services and products. Exchanges are afforded two distinct advantages that are not readily available to any other market participant: (1) market data; and (2) protected quotation status under the Order Protection Rule.¹² Market participants must be able to access exchanges displaying protected quotations to comply with the Order Protection Rule, and need the exchanges’ market data to determine the best quotations and available liquidity.

Within this regulatory framework, broker-dealers face significant competition from other broker-dealers for the order flow of institutional, retail, and other investors. These competitive pressures oblige broker-dealers to seek the most efficient access to markets and market data to execute orders, a dynamic that improves conditions for investors by fostering price competition and innovation.

Thus, broker-dealers are faced with either assuming the risks associated with slower and less efficient access, to the ultimate detriment of their customers, or paying whatever fees exchanges may charge for the most efficient access, either directly to the exchange or through another broker-dealer. The ultimate impact of these fee monopolies is to impede a free and open market to the detriment of the public interest and investors by raising trading costs, increasing barriers to entry for smaller broker-dealers and new entrants, and increasing incentives for exchanges to focus on profits at the expense of their responsibilities to the market as a whole.

The SEC is a critical safeguard to monitor and remedy these issues. In its review of exchange fee proposals, Citadel urges the Commission to give greater consideration to the aggregate impact of fees, the existence of certain exchange monopolies as a consequence of the current equity market structure, and whether exchange fees are reasonable, equitably allocated, and not unfairly discriminatory where broker-dealers do not have equivalent alternatives.

⁹ [Amendment No. 2](#) to the Proposal at 6.

¹⁰ Proposal at 66102 (“The expectation was that normally Users ‘would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange.’”).

¹¹ Proposal at 66104.

¹² 17 CFR 242.611.

In sum, Citadel believes that NYSE has not provided a reasonable basis for the proposed fees under the Exchange Act, in particular with respect to the additional connectivity fees for access to the Premium NYSE Data Products. Charging members a separate connectivity fee for these products does not appear to be an equitable allocation of reasonable fees as required by Section 6(b)(4) of the Exchange Act. In addition, the NYSE Proposal implicates more general concerns regarding exchanges significantly increasing connectivity, market data, and other fees on market participants that do not have viable alternatives. This trend leads to unfair discrimination in violation of Section 6(b)(8) of the Exchange Act and fails to protect investors and the public interest in violation of Section 6(b)(5) of the Exchange Act. As noted above, Citadel appreciates the Commission's close scrutiny of the NYSE Proposal and encourages a similar level of review for new exchange fee proposals that takes into account all of the various fees that are imposed on market participants.

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Please feel free to call the undersigned at [REDACTED] with any questions regarding these comments.

Respectfully,

/s/ Adam C. Cooper

Senior Managing Director and Chief Legal Officer