November 25, 2019

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F. Street NE.
Washington, DC 20549

Re: SR-NYSE-2019-46

Dear Ms. Countryman:

The Nasdaq Stock Market LLC ("Nasdaq") submits this comment letter in response to a letter filed by the New York Stock Exchange LLC ("NYSE") on November 8, 2019 with respect to the above-captioned proposal regarding pricing for connectivity. NYSE's letter responded to a comment letter submitted by Nasdaq on October 24, 2019. Nasdaq supports the enhancements that NYSE proposes with respect to the Securities Industry Automation Corporation ("SIAC") performance. Nasdaq believes that its concerns regarding burden on competition can be overcome in several ways, which would allow SIAC to continue with the implementation that it has planned for the first quarter of 2020.

Burden on Competition for SIP Competition

Nasdaq disagrees with NYSE's contention that enhancing NYSE's offering as the exclusive securities information processor ("SIP") outweighs any concerns related to a burden on competition. Section 6(b)(8) of the Securities Exchange Act of 1934 ("Act")[1] requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NYSE's proposal would undeniably impose a competitive burden on the ability of an entity to compete for the opportunity to serve as the exclusive SIP. Moreover, the burden is neither necessary nor appropriate under the Act since alternative approaches would allow NYSE to implement system enhancements without imposing a competitive burden.

Approving NYSE's pricing proposal would empower NYSE to continue to assert its exclusivity as SIP by quashing any competitive bid with the threat of increased overall costs to the industry should NYSE be displaced as SIP. Today, NYSE offers market participants connectivity to the Consolidated Tape System and Consolidated Quote System ("CTA/CQ") data streams, as well as the Options Price Reporting Authority ("OPRA") data stream (collectively "NMS Feeds") as the single processor for all of these data streams (collectively "NMS Network Connection"). The proposal would permit market participants who currently pay NYSE to connect to NYSE's trading venue to receive up to eight free connections to receive the NMS Feeds through the faster NMS Network. The proposal would assess a fee to any market participant who elected to receive only

[1] 15 U.S.C. 78f(b)(8).

the faster NMS Network Connections through the NMS Network without connecting to NYSE's trading venue. The charge assessed to market participants who elected not to connect to NYSE's trading venue would include a fee to connect to all three bundled NMS Feeds, even if the market participant desired to receive only one or two of the three NMS Feeds offered by NYSE.

NYSE, as single processor for CTA/CQ and OPRA and an exchange operator, is able to offer market participants the ability to receive connectivity to both NYSE proprietary data and NMS Feeds at a discount by bundling the connectivity for all these feeds together. This ability to discount grants NYSE, as exclusive processor and the primary distributor of NMS Feeds, a competitive advantage in any bidding process for either OPRA or the CTA/CQ SIP. NYSE's proposed pricing effectively sets the stage to block competition, as other exchanges or third-party technology providers could potentially not offer competing discounts or competitive pricing even though the bidder may offer enhanced technology or other innovative aspects with its bid. Specifically, if another exchange or third-party provider became the SIP for one of the three NMS Feeds, market participants would need to separately connect to two separate environments to obtain all three NMS Feeds. NYSE's current pricing proposal effectively raises industry costs in the event NYSE was replaced as the processor for any of the NMS Feeds.

NYSE argues in its comment letter that if an NMS Plan chooses to open a bidding process to replace its exclusive SIP, the decision to replace the SIP would be a purely commercial decision. NYSE further agrees that a bidder in such a commercial process would not be able to compete on economics alone because the result would be an increase in costs to the industry. NYSE opines that because switching the SIP would in fact result in overall costs to the industry, those costs could not be outweighed by a bidder that is on par or only marginally better than the incumbent. Further, NYSE states that there is no likely basis to justify selecting a bidder if doing so results in an increase in costs to the industry. NYSE, by its own admission, claims the bar to supplant the incumbent SIP is already so high that a change to the SIP is nearly prohibitive on a cost basis.

NYSE's proposal to amend its pricing of certain co-location services creates a pricing structure that is unlikely to be competitively surpassed by an OPRA bidder who could potentially bring innovation and enhanced technology to the industry. Potential SIP bidders offering an innovative solution or a more cost-effective product should be able to bid on a level playing field and not be thwarted by pricing that creates anti-competitive cost disparities for bidders. In short, NYSE's proposed cost structure threatens competitors from bidding to replace NYSE as the SIP, notwithstanding the potential technological innovation, and therefore impermissibly burdens competition.

OPRA SIP

Nasdaq notes that a Request for Proposal was issued by OPRA seeking competitive bids for operation of the OPRA SIP, a position currently held by SIAC, a wholly-owned subsidiary of NYSE. As noted above, NYSE's pricing proposal effectively sets the stage for arguing that replacing the OPRA SIP could only lead to increased overall costs to the industry if NYSE were replaced. This argument arises because market participants would be forced to purchase a subset of the NMS Network Connections from any new provider and continue to pay the bundled price to NYSE to connect and transact business on NYSE. A new provider would add costs to some market participants to directly receive all NMS Feeds. Even if a new processor were selected for one of the three NMS Feeds, bundled pricing could continue to be offered by NYSE for the other two NMS Network Connections, which also would increase the cost of directly receiving all three NMS Feeds for some market participants. Nasdaq agrees with NYSE's claim that a potential SIP provider has a very large obstacle to overcome to remove NYSE as SIP on OPRA due to the aforementioned cost analysis. However, this obstacle is the product of NYSE's proposed bundled pricing, which allows NYSE to leverage its status as exchange operator and SIP operator to maintain its status.

Burden on Competition Can be Removed

NYSE asserts that Nasdaq's comment suggests that NYSE should raise costs. This claim is unfounded. To the contrary, Nasdaq believes there are various ways that cost could be eliminated as a competitive impediment while alleviating the burden on competition. The following are some ways that costs could be eliminated; however, these suggestions are not exhaustive. First, pricing for the NMS Network Connectivity could be separated from pricing for NYSE connectivity to its trading venue, including access to proprietary data feeds, so that the two connections are potentially equal or less than the proposed pricing for the proposed bundled pricing. In this scenario, market participants could select the bandwidth they require for NMS Network Connectivity as well as NYSE proprietary feeds, whereas the current filing requires market participants to receive the same bandwidth or lower for the NMS Network Connectivity that they choose for the NYSE proprietary network at the bundled price. Second, NYSE could price each NMS Feed connection separately, allowing market participants the opportunity to acquire any of the NMS Network Connections individually. Third, NYSE could separate the OPRA NMS Feed from the CTA/CQ NMS Feeds. Nasdaq believes any of these options would cure the potential burden on competition and allow the performance enhancements to continue.

Timing

Finally, NYSE notes that its proposal should be approved before November 25, 2019 to allow the enhancement to continue moving forward. NYSE's pricing is not an impediment to testing and other processes could continue to occur while this proposal is reviewed.

Sincerely,

J. C. Conley

Joan C. Conley
Senior Vice President and Corporate Secretary