



Elizabeth K. King  
Chief Regulatory Officer, ICE  
General Counsel and Corporate Secretary, NYSE  
11 Wall Street  
New York, NY 10005



February 25, 2020

**Via Email & FedEx**

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549

Re: Securities Exchange Act Release Nos. 86865 (September 4, 2019) (SR-NYSE-2019-46); 86868 (September 4, 2019) (SR-NYSEArca-2019-61); 86867 (September 4, 2019) (SR-NYSEAmer-2019-34); and 86869 (September 4, 2019) (SR-NYSENat-2019-19) (collectively, "NMS Network Filings").

Dear Ms. Countryman:

The New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (the "NYSE Exchanges") submit this comment letter to respond to a third comment letter submitted by the Nasdaq Stock Market LLC ("Nasdaq")<sup>1</sup> objecting to the NMS Network Filings, as amended.<sup>2</sup>

For the reasons set forth below and in the Amended NMS Network Filings, the NYSE Exchanges respectfully request that the Commission approve the Amended NMS Network Filings so that the enhancements to SIAC performance as described in those filings can be implemented without any further delay.

**Overview of the Amended NMS Network Filings**

Currently, Users<sup>3</sup> can purchase a service that includes a connection to either of the local area networks available in co-location, which provide (1) access to the trading and

<sup>1</sup> See Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Ms. Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 4, 2020, available here <https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946-6776361-208130.pdf> ("Nasdaq Letter III"). See also John Yetter, Vice President and Senior Deputy General Counsel, Nasdaq, to Ms. Vanessa Countryman, Secretary, Securities and Exchange Commission, dated October 24, 2019, available here: <https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946-6332253-195114.pdf> (the "Nasdaq Letter I").

<sup>2</sup> See Securities Exchange Act Release Nos. 87927 (January 9, 2020), 85 FR 2468 (January 15, 2020) (SR-NYSE-2019-46); 87928 (January 9, 2020), 85 FR 2447 (January 15, 2020) (SR-NYSEArca-2020-61); 87929 (January 9, 2020), 85 FR 2453 (January 15, 2020) (SR-NYSEArca-2019-34); and 87930 (January 9, 2020), 85 FR 2459 (January 15, 2020) (Notices of Filing of Amendment No. 1 to the NMS Network Filings) ("Amended NMS Network Filings").

<sup>3</sup> Capitalized terms in this letter have the same meaning as in the Amended NMS Network Filing.

execution services of the NYSE Exchanges, and (2) connectivity to the market data of those five exchanges. In addition, without any additional charge, Users can connect to the NMS feeds over the same network connections through which they access other services. Currently, all direct SIP data recipients in the Mahwah data center also connect to one or more of the NYSE Exchanges for trading and market data purposes.

The Amended NMS Network Filings do not make any changes to the availability of the local area networks to connect to the NMS feeds or propose any new or changes to current fees for the connectivity to the NMS feeds. All current Users of the local area networks to connect to the NMS feeds may, if they choose, continue to receive NMS feeds in this manner.

With the Amended NMS Network Filings, the only change proposed by the NYSE Exchanges is to *add* the NMS network as part of the services available if a User purchases a 10 Gigabit (“Gb”) or 40 Gb connection to one of the two local area networks in the Mahwah data center. The NMS network has been designed to enhance the SIP by providing a dedicated, alternate, low-latency network to connect to the NMS feeds in the Mahwah data center. As noted in the Amended NMS Network Filings, the NYSE Exchanges anticipate that this network would have a one-way reduction in latency to access the NMS feeds of over 140 microseconds as compared to the current connection options.

The proposed rule change therefore proposes to add a service, but does not make any changes to the current services, or add or amend any fees. If approved, a User would have the choice to use either one of the existing local area networks or the new low-latency NMS network to connect to the NMS feeds, without any fee differences.

#### Summary of the Nasdaq Letter

Nasdaq’s third comment letter argues again that the NYSE Exchanges should separate any fees for connecting to the NMS feeds from the fees to connect to the NYSE Exchanges. Nasdaq argues that the bundled pricing imposes a burden on competition in two ways. First, Nasdaq reiterates that bundling imposes a burden on competition to become a processor for either CTA or OPRA, and specifically points to how the proposal “undeniably continues to impose an anti-competitive burden on Nasdaq’s (or any entity’s) ability to compete to serve as the OPRA SIP.” Second, Nasdaq claims that market participants that desire to “access the CTA and CQ data feed alone” are “forced” to buy a bundle and that, bundling with OPRA has the effect of steering *all* market participants to consume larger bandwidths at higher cost.

#### The NMS Network Filings are Consistent with Section 6(b)(8) of the Exchange Act

As an initial matter, Nasdaq misconstrues the Amended NMS Network Filings, which do not seek to change any fees. Nasdaq’s third comment letter continues to focus on whether the *existing* fees for connectivity to the NMS feeds are a burden on competition. But that issue is not before the Commission.

Rather, the proposal would facilitate enhancements to how SIAC performs its functions as the exclusive SIP for CTA and OPRA by providing Users an alternate, dedicated, low-latency network to connect to the NMS network. As described above, Users can already

purchase a connection to a local area network that provides connectivity to both the NYSE Exchanges and the NMS feeds. The Amended NMS Network Filings do not propose any changes to either this type of connectivity to the NMS feeds or the fees for those connections. Instead, the proposal would simply add a service and provide more choice to Users, allowing them to opt to use the low-latency NMS network to connect to the NMS feeds. And, as discussed in detail in NYSE Exchanges' response to the Nasdaq Letter I,<sup>4</sup> the NYSE Exchanges do not believe that the proposal is designed to address any competitive issues contemplated by the Exchange Act.

Taking next Nasdaq's concern that the proposal impacts competition to become a SIP processor, the NYSE Exchanges believe this issue is unrelated and unimpacted by the Amended NMS Network Filings. While the NYSE Exchanges do not agree with Nasdaq's characterization of the competitive landscape, the existing fees for Users to connect to both the NYSE Exchanges and NMS feeds will not change, regardless of whether the Commission approves or disapproves the Amended NMS Network Filings. The proposed change would merely offer Users the choice to use a low-latency network instead of the existing networks for such connectivity.

Further, contrary to Nasdaq's assertions, the bundled pricing for connectivity in the Mahwah data center keeps costs low because all direct SIP data recipients in co-location that have connectivity to the NMS feeds also connect to one or more of the NYSE Exchanges for trading purposes, not just for proprietary market data. Those Users benefit from the pricing structure because they do not currently, and will not if this proposal is approved, need to pay any additional fees for connectivity to the NMS feeds.

Nasdaq's additional claim that such Users are forced to purchase larger bandwidth because of this pricing structure has no basis.<sup>5</sup> There are myriad reasons why a User may purchase a 40 Gb connection to a local area network. For example, a User may be a Hosting User that needs additional bandwidth that it then re-packages and sells to its Hosted Customers. Or, a User may be a trading firm that is seeking low-latency access to the NYSE Exchanges' trading services and a 40 Gb connection optimizes that access. While the OPRA data feed generally requires a 40 Gb connection, as noted above, those Users are also connecting to the NYSE Exchanges.

Importantly, the NMS network has been built and tested and is ready to be implemented. It will provide significant enhancements to SIP performance, which will benefit all investors. In addition, the NYSE Exchanges understand that there are participants of CTA and OPRA that are ready to connect and have been incurring costs waiting for the implementation of the new NMS network.

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<sup>4</sup> See Letter from Elizabeth K. King, Chief Regulatory Officer, ICE and General Counsel and Corporate Secretary, NYSE, to Ms. Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated November 8, 2019, available here: <https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946-6403525-198419.pdf> ("NYSE Response Letter"). NYSE incorporates by reference its responses to the Nasdaq Letter I.

<sup>5</sup> If anything, the additional capacity provided by the NMS network connection will reduce demand for 40 Gb connections, and permit some Users to instead consume NYSE Exchanges' data over a 10 Gb connection to a local area network and NMS data over the complementary 10 Gb NMS network connection.

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Because the NYSE Exchanges cannot offer the NMS network as a service in its co-location facilities until the Amended NMS Network Filings are approved, we respectfully request that the Commission approve the filing without any further delay.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Elizabeth K. King". The signature is fluid and cursive, with a prominent initial "E" and a long, sweeping underline.

Elizabeth K. King

cc: Honorable Jay Clayton, Chairman  
Honorable Hester M. Peirce, Commissioner  
Honorable Elad L. Roisman, Commissioner  
Honorable Allison Herren Lee, Commissioner  
Brett Redfearn, Director, Division of Trading and Markets