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March 18, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: Notice of Filing of Proposed Rule Change to Establish a Schedule of Wireless Connectivity Fees and Charges with Wireless Connections (Release No. 34-88168; File No. SR-NYSE-2020-05)

Dear Ms. Countryman:

XR Securities LLC ("XRS" or the "Firm")[1] writes to comment on the above referenced proposed rule change (the "Proposal") by New York Stock Exchange LLC ("NYSE" or the "Exchange"), which would set forth fees for the Exchange's wireless connections available through third party data centers.[2] Specifically, the Proposal would establish a schedule of fees for wireless connections in third party data centers located in (i) Carteret, New Jersey, (ii) Secaucus, New Jersey, and (iii) Markham, Canada (the "Third Party Data Centers") that connect to the Exchange's data center located in Mahwah, New Jersey (the "Wireless Connections").

The Firm strongly supports the comment letter submitted by McKay Brothers LLC regarding the Proposal (the "McKay Comment Letter").[3] The McKay Comment Letter persuasively argues, among other things, that:

(1) Exchange Facility: contrary to NYSE's assertions, the Wireless Connections are a "facility" of the Exchange as defined in the Securities Exchange Act of 1934 ("Exchange Act")[4] and are therefore subject to the exchange rule filing process and Commission review;

(2) Latency Advantage: the Exchange has provided the Wireless Connections with an unjustified latency advantage by allowing them to connect to a private pole on the premises of NYSE's Mahwah datacenter that is closer in geographic proximity to the

[1] XR Securities LLC is a proprietary market-making firm. We add value to the markets in which we participate by providing liquidity in a full range of instruments across multiple asset classes. We design and build cutting-edge technology and serve as a leader in the global derivatives marketplace.

[2] Securities Exchange Act Release No. 88168, 85 FR 8932 (Feb. 18, 2020).

[3] Letter to Vanessa Countryman, Secretary, Commission, from Jim Considine, Chief Financial Officer, McKay Brothers LLC, re: SR-NYSE-2020-05 (Release No. 34-88168) (Mar. 10, 2020) https://www.sec.gov/comments/sr-nyse-2020-05/srnyse202005-6950634-212524.pdf. The Firm notes that it is a minority owner (less than 5%) of McKay Brothers LLC.

[4] 15 U.S.C. 78c(a)(2).

Exchange's systems than the public poles that all other wireless service providers must use;[5]

(3) Additional Transparency: greater transparency is necessary with respect to the Wireless Connection's latency advantage in the Proposal, as well as any other exchange rule filings involving a latency or other advantage provided in connection with an exchange's services.

While we fully agree with McKay's observations, we write to emphasize that the geographic latency advantage provided to the Wireless Connections arises from a deliberate design choice by the Exchange to favor its services (provided through its affiliate) over competing wireless service providers. The Exchange could have alternatively designed the Wireless Connections to ensure equal access among all market participants connecting to the Exchange. For example, the Chicago Mercantile Exchange, Inc. ("CME") provides co-location services "built around fair and equal access" at its Aurora, IL data center.[6] CME did this by facilitating the construction of a tower adjacent to its Aurora datacenter with capacity for approximately 35 microwave dishes, all of which have equidistant connections to the trading servers in the CME datacenter.[7]

The key difference between the Exchange and CME is that CME does not have a conflict of interest arising from the operation of a wireless connectivity service (through an affiliate or otherwise) that competes with other available wireless service providers.[8] A potential conflict of interest arises in any instance in which an exchange, directly or indirectly, offers services that are also provided by other market participants (*e.g.*, routing broker, wireless connectivity). As a for-profit entity, the Exchange is incentivized to provide any available advantage to its services so as to maximize their profitability and has done so here by providing the Wireless Connections with a faster means of connecting to the Exchange.

We believe that this latency advantage unfairly discriminates against market participants that do not use or choose to use the Wireless Connections in contravention of Section 6(b)(5) of the Exchange Act.[9] While any market participant is free to elect to use the Exchange's Wireless Connection, this fact does not explain why alternative wireless connectivity options between the Third Party Data Centers and the Exchange's Mahwah datacenter do not receive this same

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[5] The closer proximity reduces geographic latency associated with the transmission of information (*e.g.*, orders or market data) to and from the Exchange.

[6] *See* CME Group, FAQ: Data Center Sale Leaseback, *available at* https://www.cmegroup.com/trading/colocation/faq-data-center-sale-leaseback.html.

[7] *See id.* ("CME Group will maintain its policy of equidistant cross connects for CME Group Co-Location Services.").

[8] The Firm recognizes that CME is a designated contract market ("DCM") registered with the Commodity Futures Trading Commission rather than a national securities exchange regulated by the Commission. This difference is irrelevant, however, as both entities are subject to roughly comparable regulatory requirements. *See e.g.*, 7 U.S.C. 7d(9) and (19) (requiring a DCM to provide a "competitive, open, and efficient market" and to not "impose any material anticompetitive burden on trading").

[9] 15 U.S.C. 78f(b)(5) (providing, among other things, that the rules of an exchange may not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers").

advantage. No other wireless service provider can replicate this latency advantage because it arises from the Exchange's control over its Mahwah datacenter. As a result, we believe that the latency advantage inappropriately burdens competition by advantaging the Exchange's services while disadvantaging all other competitors, and is therefore inconsistent with Section 6(b)(8) of the Exchange Act.[10]

The Firm is similarly concerned that the Exchange's steps towards placing wireless equipment on the roof of the Mahwah datacenter would extend the latency advantage and leave broker-dealers, such as the Firm, with no competitive alternative for the fastest wireless connectivity between the Exchange and the Third Party Data Centers.[11] The Exchange has only sought permission from the Township of Mahwah to add enough capacity for a single provider. The Exchange should not be permitted to proceed with these plans unless it allows other wireless service providers to similarly place wireless equipment on the Mahwah datacenter roof. The Exchange's affiliate, NYSE Euronext Inc., allowed market participants to place equipment on the datacenter roof at its Basildon datacenter in the U.K. in response to competitive pressure from the London Stock Exchange opening up equal colocation access to market participants.[12] The Exchange does not face any similar competitive constraint that would cause it to provide equal and fair access to the Mahwah datacenter and has consequently sought to ossify its latency advantage rather than equalize access.[13]

Nothing is more critical in trading than timely access to exchange systems to submit orders and receive market data, and the Wireless Connections have the fastest means of access to the Exchange via the on-premises private pole. The Commission has repeatedly acknowledged that in today's markets, "small degrees of latency affect trading strategies"[14] and being faster, "even if only by a microsecond,"[15] can make a competitive difference. It is therefore imperative that the Commission closely scrutinize the unfairly discriminatory and anti-competitive latency advantage provided to the Wireless Connections.[16] Thus, while we support the Commission's

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[10] 15 U.S.C. 78f(b)(8) (requiring that the rules of an exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act]").

[11] *See* McKay Letter at n.14, citing to Letter from Thomas M. Merritt, Deputy General Counsel, Virtu, to Brett Redfearn, Director, Division of Trading and Markets, SEC, re: *NYSE Mahwah Roof* (June 25, 2019) ("Virtu Letter"), https://www.sec.gov/comments/4-729/4729-5880550-188760.pdf.

[12] *See e.g.*, Jeremy Grant, *NYSE Euronext opens up Basildon data centre*, FINANCIAL TIMES (Nov. 2, 2010), https://www.ft.com/content/251f9418-e6ce-11df-8894-00144feab49a ("NYSE Euronext is set to open up its Basildon data centre in the UK to third-party providers of co-location services, only weeks after the London Stock Exchange did the same thing"); Leo King, *NYSE Euronext broadens tech access to massive UK datacenter*, COMPUTER WORLD (Apr. 13, 2012), https://www.computerworld.com/article/3416476/nyse-euronext-broadens-tech-access-to-massive-uk-data-centre.html (noting that has NYSE Euronext have allowed "businesses to set up their own microwave aerials on the roof of the centre").

[13] The Basildon example further suggests that there is no technical limitation preventing the Exchange from opening up the roof of the Mahwah datacenter to multiple market participants.

[14] Exchange Act Release No. 88216 at n.13 (Feb. 14, 2020) [Federal Register publication pending].

[15] Exchange Act Release No. 61358, 75 FR 3593, 3610 (Jan. 21, 2010).

[16] 15 U.S.C. 78f(b)(5) and (8).

conclusion that the Wireless Connections are facilities of the Exchange, we believe that the Wireless Connections as currently operated are inconsistent with Exchange Act requirements.[17]

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We appreciate the opportunity to provide comments on the Proposal. Please feel free to call the undersigned at (312) 244 4500 with any questions regarding these comments.

Respectfully,

Matt Haraburda
President
XR Securities LLC

cc: The Hon. Jay Clayton, Chairman
The Hon. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Allison Herren Lee, Commissioner

Mr. Brett Redfearn, Director, Division of Trading and Markets
Mr. Christian Sabella, Deputy Director, Division of Trading and Markets
Ms. Elizabeth Baird, Deputy Director, Division of Trading and Markets
Mr. David S. Shillman, Associate Director, Division of Trading and Markets
Mr. John Roeser, Associate Director, Division of Trading and Markets

S.P. Kothari, Director, Division of Economic and Risk Analysis

[17] *Id.*