**Sarah E. Zgliniec**
Senior Counsel
New York Stock Exchange
[redacted]

NYSE
AN ICE EXCHANGE

April 6, 2023

**Via Email**

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

Re: Exchange Act File Nos. SR-NYSEAMER-2023-12; SR-NYSEArca-2023-13; SR-NYSECHX-2023-08; SR-NYSENAT-2023-07

Dear Ms. Countryman:

NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Exchanges"), submit this comment letter in response to the April 4, 2023 letter[1] that Hyannis Port Research, Inc. ("HPR") has submitted to the files above (the "filings").

At the outset, the Exchanges note that the additional risk checks that are the subject of the filings are already functioning on the Exchanges. As the Exchanges previously announced, the additional risk checks were launched on NYSE American and NYSE National on March 13, 2023, and on NYSE Arca and NYSE Chicago on March 20, 2023.[2]

***Latency of the Exchanges' Risk Checks***

In the filings, the Exchanges stated that they "expect[] that the latency added by the combination of the 2020 Risk Checks plus the proposed additional pre-trade risk controls would be significantly less than one microsecond." HPR now requests information supporting that assertion.

While developing the risk checks, the Exchanges exercised their functionality through extensive capacity and performance testing, just as the Exchanges do with every enhancement to the Pillar trading system. Through this pre-release testing, the Exchanges determined that even

1 Letter to Vanessa Countryman, Secretary, Securities and Exchange Commission ("Commission"), from Gerard P. O'Connor, Vice President and General Counsel, Hyannis Port Research, Inc., dated April 4, 2023 (the "HPR Letter").

2 See Trader Update dated February 17, 2023, available here: https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000536554/NYSE_Group_Risk_Controls_Phase_3_dates_revised.pdf.

under multiples of peak production message rates, the latency attributable to the risk checks would be significantly less than one microsecond. And indeed, after deploying the risk checks in production on the Pillar trading system on the dates listed above, the Exchanges have observed that incremental latency due to the risk checks is in fact significantly less than one microsecond.

***Symmetrical Application of the Exchanges' Risk Checks***

As noted in the filings, the Exchange opted to implement its risk checks "symmetrically" to all orders because that is the functionality that clients have specifically requested, and it is also the recognized best practice in this area. Allowing customers to opt in or out of risk checks would create incentives for all firms to avoid using any controls for fear of suffering a competitive disadvantage.[3]

In complaining that the Exchanges have not provided customers an option to "opt out" of the Exchanges' risk checks, HPR claims that the Exchanges "intentionally removed the existing port optionality in place today."[4] This is not the case. The additional risk checks introduced in the filings are part of the Exchange's Pillar trading system and are executed at the gateway where customer order entry ports connect into the Pillar trading system.[5] As the Exchanges made clear in the filings, "the additional risk checks proposed here would be a functional enhancement to the Exchange's Pillar gateway and the risk checks would be applied to all orders on the Exchange."[6] There never was any "port optionality" regarding risk checks that has now been "intentionally removed," as HPR claims. Rather, before these filings took effect, the additional risk checks were not offered, and now they are as a part of the Pillar trading system.

As the Exchanges have explained, the functionality of the Pillar trading system is applied uniformly to all orders, regardless of whether a particular client has opted to use that functionality for a particular order. A customer can no more "opt out" of the Pillar-based risk checks than it can opt out of any of the other myriad attributes of the Pillar trading system that apply to all trading on the Exchanges.

---

3 See, e.g., discussion in SR-NYSEAMER-2023-12 at 5-6.

4 See HPR Letter, supra note 1, at 4.

5 As the Exchanges noted in the filings, the sole exception to this is "the proposed pre-trade risk control in paragraph (b)(2)(B) . . . which would permit an Entering Firm to set dollar-based or percentage-based controls as to the price of an order that are equal to or more restrictive than the levels set out in Rule 7.31(a)(2)(B) regarding Limit Order Price Protection. This risk check, like the Exchange's Limit Order Price Protection, is implemented in the matching engine." See SR-NYSEAMER-2023-12 at 8 n.21.

6 See, e.g., SR-NYSEAMER-2023-12 at 8.

Because the risk checks are applied symmetrically to all orders entering the Pillar trading system, the Exchanges stated in the filings that "providing customers an opt-out ability would require the Exchange to provide new order entry ports that would bypass the evaluation of such pre-trade risk protections." To be clear, this is not simply a matter of providing a different kind of port to customers, but also of reengineering the Pillar trading system to create different gateways to interact with such "opt out" ports and to seamlessly handle orders proceeding through two different types of ordering ports. Given the *de minimis* latency impact of the risk checks,[7] as well as customers' preference for such risk checks to be applied symmetrically across all trading on the Exchanges,[8] the Exchanges concluded that the added expense of such development work (on the part of the Exchanges) and of purchasing "opt-out" ports and migrating to them (on the part of customers) is not justified.

***The Competitive Landscape***

In the Letter, HPR again insists that the Exchanges are its competitors and that they are somehow exercising an unfair competitive advantage. But as the Exchanges have repeatedly said, they are not competitors of HPR and do not purport to offer a complete set of market access controls. The Exchanges have noted repeatedly, both in their rule text and in their filings, that the Exchanges' pre-trade risk controls are merely supplemental and "are not designed for compliance with Rule 15c3-5 under the Exchange Act."[9]

Rather, the Exchanges' competitors are the other SROs that have had pre-trade risk controls similar to the ones at issue here as part of their rulebooks for many years. If HPR was concerned about the risk of competition from exchanges, it could have raised that issue when such functionality was first added to various SROs' trading systems in 2017[10] -- but it did not.

It would be an unjustifiable burden on competition and on the Exchanges for the Commission to permit all equities exchanges to offer such functionality *except* for the Exchanges. Specifically, the Exchanges would be at a significant competitive disadvantage vis-à-vis other equities

7 See discussion above.

8 See, e.g., SR-NYSEAMER-2023-12 at 5-7.

9 See, e.g., Commentary .01 to Rule 7.19E.

10 See, e.g., SR-NYSEAMER-2023-12 at notes 8-11.

exchanges that already off the type of pre-trade risk controls proposed in this filing, as customers may choose to direct order flow away from the Exchange until it is able to offer such competing pre-trade risk controls.

Respectfully submitted,

*/s Sarah E. Zgliniec*

Sarah E. Zgliniec
Senior Counsel
NYSE Group, Inc.