165 Broadway
New York, NY 10006
Tel: 1 212 418 0100
Fax: 1 212 418 0123

April 25, 2019

***Via Electronic Mail** (rule-comments@sec.gov)*
Eduardo A. Aleman
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-location Services
Release No. 34-85450; File No. SR-NYSEARCA-2019-07

Dear Mr. Aleman:

Virtu Financial, Inc. (together with its affiliates, "Virtu" or "we")[1] respectfully submits this comment letter in response to the NYSE Arca, Inc.'s (the "Exchange") Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-location Services (the "Proposal").

Our objection to the filing is simple and straightforward: we oppose the arbitrary and inconsistent classification of the Exchange's affiliate Global OTC as a "Third Party System" and corresponding action by the Exchange to add Global OTC to the list of "Third Party Systems" in the Exchange's fee schedules (the "Fee Schedules"). There is no reason for Global OTC to be treated differently than any other Exchange affiliate. The Proposal should be rejected.

[1]Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu's market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. As such, Virtu broadly supports innovation and enhancements to transparency and fairness which enhance liquidity to the benefit of all marketplace participants.

Virtu has been a strong and vocal critic of the Exchange's imposition of additional and arbitrarily-increasing market data and connectivity fees.[2] Virtu has publicly voiced its concerns and objections to these unfettered "tariffs" and has petitioned the Commission with 23 other diverse market participants to engage in rulemaking to address the monopolistic practices of the exchanges with respect to market data and connectivity fees.[3] In addition, Virtu participated in the Securities and Exchange Commission's Market Data Roundtable on October 25 and 26, 2018 and in conjunction therewith submitted a letter expressing its position on this contentious issue.[4]

**The Proposal**

On March 29, 2019, the Exchange filed the Proposal to amend the Fee Schedules related to co-location services to provide access to the Global OTC execution system.[5] On its website, Global OTC is described as follows:

> Global OTC, operated by a wholly-owned subsidiary of NYSE Group, Inc., is the longest serving Alternative Trading System (ATS) and only fully automated ATS for trading global blue chip and US emerging growth Over-The-Counter (OTC) equity securities.[6]

The Proposal states "the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers ("Third Party Systems"). The Exchange has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc. ("ICE"). The Exchange proposes to treat Global OTC as a Third Party System and add it to the list of Third Party Systems set forth in the Fee Schedules."[7] Further, the Proposal notes that "[a]s with the existing connections to Third Party Systems, the Exchange

---

[2] Commissioner Robert J. Jackson, Jr., "Unfair Exchange: The State of America's Stock Exchanges", George Mason University, September 19, 2018, https://www.sec.gov/news/speech/jackson-unfair-exchange-state-americas-stock-markets.
[3] See letter submitted by 24 Interested Market Participants to Brent J. Fields, Secretary, Securities Exchange Commission (December 6, 2017) (https://www.sec.gov/rules/petitions/2017/petn4-716.pdf).
[4] https://www.virtu.com/uploads/2019/02/2018.10.23-Virtu%E2%80%99s-Comment-Letter-Roundtable-on-Market-Data-and-Market-Access.pdf
[5] Proposal at p. 2.
[6] https://www.globalotc.com/index
[7] Proposal at p. 3.

proposes to charge a monthly recurring fee for connectivity to the Global OTC System. The Exchange does not propose to change the current fee, which is for connectivity only."[8]

Prior to the Proposal, Virtu was not independently charged for connectivity to Global OTC. Instead, Virtu utilized its existing cross-connection with the Exchange to access Global OTC. With the change in the Proposal, Virtu and others similarly situated would now be required to pay an additional monthly recurring fee to access a system to which affected market participants already have access under their existing agreements with the Exchange, the amount of which would be dictated by a market participant's needed bandwidth.

**Global OTC is not a "Third Party System"**

The Exchange provides no legal basis or authority for its proposal to treat Global OTC as a Third Party System. The Proposal defines Third Party Systems as "third party markets and other content service providers." But Global OTC is **not** a third party market or an "other content provider" to the Exchange. It is a wholly-owned subsidiary of the NYSE Group, Inc. whose ultimate parent is Intercontinental Exchange, Inc. ("ICE").

The Exchange's classification of Global OTC as a Third Party System creates an artificial distinction through its interpretation that an affiliate under common ownership and control constitutes a third party. This inaccurate interpretation and application of corporate law should be rejected. Instead, the Exchange's classification of Global OTC as a Third Party System should be viewed as what it truly is: a further burden on market participants in the form of unnecessary additional connectivity fees and costs.

Taking the Exchange's application to its extreme could result in the perverse conclusion that all of ICE's exchange subsidiaries should be classified as "Third Party Systems."[9] As the Exchange admits, however, other affiliates of the Exchange (such as NYSE, NYSE American, and NYSE National) are not treated as Third Party Systems and, instead, are properly considered affiliated entities of the Exchange.[10] Notably, as a subsidiary of NYSE Group, Inc., Global OTC is not a distant indirect affiliate of the Exchange. Rather, Global OTC sits within the same holding group in ICE's overall corporate structure as, for example, the Exchange, NYSE, NYSE American,

[8] *Id*.
[9] ICE has at least 32 subsidiaries. See, https://www.sec.gov/Archives/edgar/data/1571949/000157194919000003/ice20181231ex211.htm
[10] Proposal at p. 2, fn. 5.

and NYSE National—the Exchange affiliates that **do not** require separate connectivity fees. Global OTC should not be treated differently or in an arbitrary fashion.

**The Exchange's statements on fee impact are inaccurate**

The Exchange's Proposal further claims that the proposed re-classification of Global OTC will **not result** in a change to the current fees, which are for connectivity only. But this statement is plainly inconsistent with the Exchange's own pricing documents. As set forth in the Exchange's Price List,[11] the connectivity fee at issue is assessed on a **per exchange** basis. As a result, adding Global OTC to the Exchange's Third Party Systems list changes the total fees charged to customers who previously accessed that system through the Exchange.

Further, a firm may not know the level of connectivity they require. That is, if a firm requires a greater bandwidth, it will be required to pay more, per the Exchange's Price List. This could result in an additional monthly Third Party System fee of up to $3,500 per exchange per 1Gb of bandwidth. For example, a firm that already has connectivity to Global OTC over a 40Gb LCN cross-connect with the Exchange could be charged a new additional fee under the Proposal ranging anywhere from the minimum $200 for 1Mb to $140,000 for 40Gb per month, with no way of knowing the precise new fee from the Exchange's own pricing documents. This pricing should be clarified and made apparent to market participants.

* * * * * *

[11]https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf

Virtu strongly urges the Commission to suspend the Proposal and initiate proceedings to determine whether to approve or deny it. As written, the NYSE Arca Proposal will lead to an arbitrary classification of Global OTC that is inconsistent with the Exchange's treatment of other Exchange affiliates. Virtu appreciates this opportunity to submit this comment letter. Please do not hesitate to contact me if you have any questions regarding any of the comments provided in this submission.

Sincerely yours,

Douglas A. Cifu
Chief Executive Officer

cc: The Honorable Jay Clayton, Chairman
The Honorable Hester Peirce, Commissioner
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Elad L. Roisman, Commissioner
Brett Redfearn, Director, Division of Trading and Markets