



July 10, 2020

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

Re: ***SIFMA Comment Letter on Request for Information and Additional Comment on a Proposed Rule Change to Establish Fees for the NYSE National Integrated Feed: File No. SR-NYSE-NAT-2020-05***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to the U.S. Securities and Exchange Commission (“Commission”) to comment on the Commission's request for additional information on the rule filing to establish market data fees by NYSE National, Inc. (“NYSE National”).<sup>2</sup> SIFMA expressed concerns<sup>3</sup> with NYSE National's first filing,<sup>4</sup> which was suspended by the Commission,<sup>5</sup> and second filing,<sup>6</sup> which was similarly suspended by the Commission,<sup>7</sup> that attempted to establish market data fees for use of the NYSE National Integrated Feed, which was previously offered for free.

As noted in our previous comment letter,<sup>8</sup> NYSE National proposed to commence charging the following monthly fees for its Integrated Feed (as the feed was previously offered for free): access fee of \$2,500; redistribution fee of \$1,500; professional user fee of \$10 and non-professional user fee of \$1; non-display fee of \$5,000 for each category of use with a cap of

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> See Securities Exchange Act Release No. 89065 (June 12, 2020) 85 FR 37123 (June 19, 2020) (“RFI”).

<sup>3</sup> See Letter from Robert Toomey, SIFMA to Vanessa Countryman, SEC dated January 21, 2020. See also, Letter from Ellen Greene, SIFMA to Vanessa Countryman, SEC dated March 11, 2020.

<sup>4</sup> See Securities Exchange Act Release No. 87797 (Dec. 18, 2019).

<sup>5</sup> See Securities Exchange Act Release No. 88109 (Jan. 31, 2020).

<sup>6</sup> See Securities Exchange Act Release No. 88211 (Feb. 14, 2020).

<sup>7</sup> See Securities Exchange Act Release No. 88538 (April 7, 2020).

<sup>8</sup> See SIFMA January 21, 2020 Letter.

\$15,000 for category three; a non-display use declaration late fee of \$1,000; and a \$200 fee for each additional location a firm takes in the feed.

SIFMA reiterates its prior arguments that NYSE National failed to provide the necessary information for the SEC to independently determine whether the fees meet the requirements of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>9</sup> To show that the proposed rule change is consistent with applicable statutory requirements under the Exchange Act, NYSE National must provide sufficient information for the Commission to make such a determination, such as by providing the information set forth in the Staff Guidance on SRO Rule Filings Relating to Fees<sup>10</sup> or addressing the Commission's questions in the RFI.<sup>11</sup> Unlike other companies selling products based on market value in competitive markets, exchanges must make specific showings under the Exchange Act regarding the fees they propose to charge.

With respect to the specific questions in the Commission’s RFI on the NYSE National Integrated Feed, SIFMA is focusing on the first two questions regarding whether the proposed fees are constrained by competition and whether there are any substitutes for the NYSE National Integrated Feed. SIFMA continues to believe that the answer to both of these questions is no and that the Commission should therefore disapprove the NYSE National Integrated Feed Fee Filing.

With regard to the first question regarding whether the proposed fees are constrained by competition, SIFMA disagrees that “exchanges are platforms for market data and transaction services and competition for order flow on the trading side of the platform acts to constrain the pricing of market data on the other side of the platform.”<sup>12</sup> Exchanges have yet to show that a reduction (or increase) in the price of their market data has led to an increase (or decrease) in trading volume. Among other reasons, the competition for order flow does not constrain the cost of market data because market participants feel obligated to purchase market data feeds from exchanges regardless of their market share to be in a position to satisfy their best execution obligations. To support the argument that market data fees are constrained by the competition for order flow, exchanges have the burden to show the actual or anticipated impact on order flow from gaining or losing subscribers as a result of the price for market data feeds.

Further, SIFMA disagrees with the assertion that exchanges function as platforms between consumers of market data and consumers of trading services and that overall competition between exchanges will limit their overall profitability.<sup>13</sup> Contrary to the exchanges' platform competition argument that an exchange will charge low prices for data to attract

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<sup>9</sup> See, e.g., 15 U.S.C. 78f(b)(4); 78f(b)(5); and 78f(b)(8).

<sup>10</sup> SEC’s Division of Trading and Markets, *Staff Guidance on SRO Rule Filings Relating to Fees* (“Staff Guidance”) (May 21, 2019).

<sup>11</sup> RRI at 37127 – 28.

<sup>12</sup> RFI at 37124.

<sup>13</sup> RFI at 37124

trading, Professor Glosten concluded that exchanges charge reasonable prices for trading because trading services are substitutes and subject to strong competitive forces, and exchanges charge high prices for data because exchanges' data are complements.<sup>14</sup> As shown by Professor Glosten, exchanges' market data products are complementary because the ability of participants to evaluate the market, and therefore the utility and value of market data, increases with the addition of market data products from other exchanges. Thus, exchanges have little incentive to reduce the prices for their own market data because any theoretical increase in demand would be shared with other exchanges. For example, a reduction in the cost to trade on an exchange may result in increased trading volume, and theoretically increase demand for an exchange's market data; however, the exchange will not see a corresponding increase in the sale of market data as the corresponding decrease in trading volume on another exchange keeps the overall demand for the market data package constant. Additionally, exchanges have yet to show the ability to increase their trading volume by reducing their price of market data. Consequently, the competition for order flow under the "platform theory" does not constrain the cost of market data, but instead, results in supra-monopoly prices for these complementary market data products.<sup>15</sup> For your reference, attached to this letter you will find Professor Glosten's study that shows why complementary exchange data is not priced in a competitive or reasonable fashion, despite the competition for order flow.

The NYSE's own actions with regard to exchanges within its family provide further evidence that its concept of platform theory is not supportable. NYSE National claims to have set the fees based on the increased value associated with its growth in market share from 0% to 2.12% from May 2018 to December 2019. During the same timeframe, however, NYSE market share decreased from 9.35% to 8.83%, NYSE Arca market share decreased from 8.73% to 7.44%, NYSE American increased from 0.29% to 0.33% and NYSE Chicago decreased from 0.58% to 0.57%.<sup>16</sup> Despite a meaningful decrease in market share by NYSE and NYSE Arca over a year-and-half period, those exchanges did not respond by reducing the cost of their market data due to the loss of market share. Further, the introduction of the proposed fees for the NYSE National Integrated Feed would significantly increase the overall cost of market data for the family of NYSE exchanges when the overall market share for those exchanges collectively increased by only 0.34% in this same May 2018 to December 2019 period.<sup>17</sup>

With regard to the second question regarding whether there are any substitutes for the NYSE National Integrated Feed, SIFMA disagrees that there are alternatives for NYSE National

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<sup>14</sup> See Letter from Robert Toomey, SIFMA to Vanessa Countryman, dated Jan. 13, 2020. See also Lawrence R. Glosten, *Economics of the Stock Exchange Business: Proprietary Market Data* (Jan. 2020).

<sup>15</sup> *Id.*

<sup>16</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary. These market share percentages are ex-auction.

<sup>17</sup> NYSE group market share (excluding auctions) increased from 18.95% in May 2018 to 19.29% in December 2019.

market data and that exchanges overall compete with each other in selling proprietary market data.<sup>18</sup> Other data feeds offered by NYSE National or other exchanges are not alternatives to the NYSE National Integrated Feed because only this integrated feed provides depth-of-book information on NYSE National, which market participants believe is needed to be in a position to provide customers/investors with the best and most competitive order routing capabilities and execution quality. The existence of other market data products does not by itself result in competition that constrains the prices for market data if those products are not substitutes for one another, which is the case with market data products containing data beyond what is distributed to the securities information processors (“SIPs”) and which is needed by the marketplace. Similarly, NYSE National's monopoly over this integrated data precludes the development of competing products to constrain its pricing.

Absent additional information provided by NYSE National, we request that the Commission reject the proposed rule to establish fees for the NYSE National Integrated feed. We further note that the NYSE National has done little to show how the allocation of the proposed fees to different types of market participants are reasonable, equitable, and not unfairly discriminatory, consistent with the Commission’s third question. SIFMA accordingly believes that given the overall lack of competition for market data, exchanges must provide information on the cost to produce and distribute the market data to show the fees meet the requirements of the Exchange Act.

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SIFMA greatly appreciates the Commission’s consideration of the issues raised above and would be pleased to discuss these comments in greater detail. If you have any questions or need any additional information, please contact me (at [REDACTED]).

Sincerely,



Ellen Greene  
Managing Director  
Equities & Options Market Structure

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<sup>18</sup> RFI at 37124-25.