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September 22, 2020

**Via Email**

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

Re: Further Comment Letter of NYSE National Regarding Its Proposal to Establish Fees for the NYSE National Integrated Feed (File No. SR-NYSENAT-2020-05)

Dear Ms. Countryman:

NYSE National, Inc. (“NYSE National” or the “Exchange”) respectfully submits this comment letter in further support of its proposed rule change to establish fees for the NYSE National Integrated Feed.<sup>1</sup> We write now to address two developments that have occurred since the Exchange submitted its previous comment letter on August 14, 2020.<sup>2</sup>

**SIFMA’s August 14, 2020 Letter**

First, after the Exchange submitted its August 14 Letter, an additional comment letter was submitted by SIFMA.<sup>3</sup> Like SIFMA’s earlier submissions on this matter, the SIFMA August Letter fails to acknowledge or address, let alone rebut, Professor Rysman’s empirical analysis proving that exchange market data and trading services are a platform, and that pricing decisions on one side of the platform are affected by competition on the other side of the platform.<sup>4</sup>

The SIFMA August Letter also disproves SIFMA’s contention that its members are “required” to purchase the NYSE National Integrated Feed. SIFMA admits both (a) that

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<sup>1</sup> See Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSENAT-2020-05) (“Proposal”).

<sup>2</sup> Letter from Elizabeth K. King, NYSE, to Vanessa Countryman dated August 14, 2020 (“August 14 Letter”), available at <https://www.sec.gov/comments/sr-nysenat-2020-05/srnysenat202005-7644319-222351.pdf>.

<sup>3</sup> See Letter from Ellen Green, SIFMA, to Vanessa Countryman dated August 14, 2020 (“SIFMA August Letter”).

<sup>4</sup> See Marc Rysman, Stock Exchanges as Platforms for Data and Trading, December 2, 2019, attached as Exhibit 3B to the Proposal, supra note 1; Marc Rysman, Complements, Competition, and Exchange Proprietary Data Products, August 13, 2020, attached as Attachment D to the August 14 Letter, supra note 2.

the purchase of particular market data feeds is not mandated by regulation and (b) that some broker-dealers purchase these feeds only because they conclude that the feeds help them effectuate their individually determined business plans.<sup>5</sup> This is precisely the Exchange's point: whether to purchase a subscription to a proprietary market data product is an individual market participant's business decision, and in a highly-competitive market, some broker-dealers may choose to purchase such products in an attempt to obtain an advantage over their competitors, whereas some may not. The fact that individual broker-dealers may make that choice for their own business reasons does not mean that every broker-dealer is compelled to (or does) make the same choice.

Indeed, in the August 14 Letter, the Exchange demonstrated this point by showing that its decision to impose fees for the NYSE National Integrated Feed in February and March 2020 caused numerous customers to rethink the benefit they would derive from the product in light of its cost, resulting in six customers dropping the feed and two others stating that they would drop the feed if the fees continued.<sup>6</sup>

### **The Commission's IEX D-Limit Order**

The second development is that on August 26, 2020, the Commission issued an order approving IEX's new D-Limit discretionary limit order type.<sup>7</sup> Commenters had argued that IEX's proposal was unfairly discriminatory because, among other reasons, it favored a small number of liquidity providers that were able to respond to latency arbitrage during the small fraction of the day when IEX's crumbling quote indicator ("CQI") was switched on.<sup>8</sup> In its approval order, the Commission rejected that argument, finding that IEX's proposal was narrowly-tailored to address a "legitimate disadvantage in latency arbitrage" and did not unfairly discriminate against broker-dealers that opted not to invest in the fastest technology. In reaching this conclusion, the Commission found as follows:

Based on the Commission's understanding of broker-dealers, as also reflected in the comment letters from institutional traders, ***most broker-dealers have not purchased the fastest connectivity and market data from multiple individual exchanges*** that are necessary to be able to trade at the precise moments in time identified by the [crumbling quote indicator]. In the race to access a "stale" quote, speed is paramount, and the systems, connectivity, and data needed to achieve the necessary

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<sup>5</sup> SIFMA August Letter, supra note 3, at 2.

<sup>6</sup> August 14 Letter, supra note 2, at 19-21.

<sup>7</sup> See Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438 (September 1, 2020) (SR-IEX-2019-15) ("IEX D-Limit Order").

<sup>8</sup> See IEX D-Limit Order, supra note 7, at 54447 ("[i]n November 2019, just 3 member firms at IEX were responsible for 55% of all the lit taking volume while the [CQI] Signal was 'on,' even though those firms accounted for only 13% of the total volume on IEX". . . . the Commission [should] "consider whether it would be fair for IEX to discriminate against 45% of its lit taking volume to address a perceived problem with only three firms.").

speed to take advantage of the information asymmetries that underlie latency arbitrage are expensive and uncommon among broker-dealers.<sup>9</sup>

(Emphasis added.)

The Commission's finding that "most broker-dealers have not purchased the fastest . . . market data from multiple individual exchanges" is a factual finding that binds the Commission. As the Commission notes, that finding is "[b]ased on . . . [its] understanding of broker-dealers" and on "comment letters from institutional traders." Having approved the IEX D-Limit discretionary limit order type based on that finding, the Commission is not free to accept SIFMA's unsupported contention that broker-dealers are "required" to purchase the NYSE National Integrated Feed.

Indeed, the Commission's finding in the IEX D-Limit Order proceeding is consistent with the evidence submitted by the Exchange in its August 14 Letter in this proceeding demonstrating that not all broker-dealers purchase order-by-order "integrated feeds" of market data from each of the five NYSE Group exchanges, and that not even all of the broker-dealer members of the Exchange purchase the integrated feed product at issue.<sup>10</sup> The Commission's IEX D-Limit Order finding is further proof that SIFMA's repeated claim that its broker-dealer members are "required" to purchase the NYSE National Integrated Feed is false.

Respectfully submitted,



Elizabeth K. King

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

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<sup>9</sup> IEX D-Limit Order, supra note 7, at 54449.

<sup>10</sup> August 14 Letter, supra note 2, at 17-21.