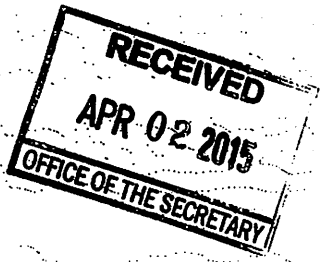
UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Admin. Proc. File No. 3-16362



In the Matter of the Application of

GREEN COURTE REAL ESTATE PARTNERS III, LLC

For Review of Action Taken by the New York Stock Exchange

GREEN COURTE'S REPLY BRIEF

Pursuant to the Order entered by the Securities and Exchange Commission (the "SEC" or the "Commission") on March 3, 2015, Green Courte Real Estate Partners III, LLC ("Green Courte") respectfully submits this reply brief.

The specific arguments made in the Opening Brief submitted by the New York Stock Exchange (the "NYSE") will be rebutted below. As an initial matter, however, what is most significant about the NYSE's Opening Brief is what it does not argue. Nowhere in the brief does the NYSE make any effort to show that its interpretation of Section 312.03(c) is consistent with the language of that section, which the NYSE itself drafted and which the Commission then approved.[1] This silence speaks volumes.

I. The NYSE Misstates the Governing Test

The parties agree that the question of whether an applicant's "access to services" has been "prohibited or limited" within the meaning of Section 19(d) of the Exchange Act turns on

[1] The only thing the NYSE says in favor of its interpretation is that the interpretation is "longstanding" and that the NYSE thinks it is "appropriate" to look at a date that is different from the date that is actually specified in the NYSE's own rule. (NYSE Brief at 3.)

whether the applicant has been hindered in its ability "to utilize one of the fundamentally important services offered by the SRO." (Green Courte Brief at 7; NYSE Brief at 5-6.) The NYSE then alters the test, however, contending that what the Commission was really getting at was whether the denial of services "directly and significantly impacted the applicant's core business." (NYSE Brief at 6.) In fact, this "core business" language is a gloss of the NYSE's creation that has never been stated by the Commission.[2] To the contrary, in determining whether services were "fundamentally important," the Commission has consistently looked at whether the services were "central to the function of the SRO." *Morgan Stanley & Co.*, 1997 WL 802072, at *3 (SEC Dec. 17, 1997), *quoted in Securities Industry & Financial Markets Association*, 2014 WL 1998525, at *9 (SEC May 16, 2014).

It is obvious why the NYSE runs away from the "central to the function of the SRO" test. There is no service that is more central to the function of the NYSE than allowing companies to list their shares on a public market. That, however, is precisely what the NYSE has denied Sun Communities, Inc. ("SUI") for a block of securities worth more than $35 million.

II. SUI Has Suffered a Reviewable Denial of Service by the NYSE

Besides misstating the test, the NYSE makes a number of other arguments in an effort to show that SUI has not suffered a denial of service. As explained below, none of these arguments can withstand scrutiny.

First, the NYSE argues that there has been no denial of service because SUI "remains listed on the Exchange with full access to the Exchange's listing and trading services." (NYSE Brief at 6.) The first half of this argument misses the point, and the second half of this argument simply misstates the facts. The point is not whether SUI is a listed company. The point is

[2] The NYSE cites *Morgan Stanley* and *SIFMA* for this proposition, but the "core business" language appears nowhere in those decisions. Tellingly, the NYSE does not provide specific page cites.

whether a given block of its securities is listed. As is shown by the record in this case, SUI attempted separately to obtain listing without a stockholder vote for each of the different blocks of common stock that it contemplated issuing to Green Courte. (Record at 5-19 & 68-74.) It was successful with regard to the first several blocks. (Record at 5-19.) As to the last one, SUI was thwarted by the staff of the NYSE. (Record at 68-74.) As to that final block of securities, there was a complete denial of service to SUI. The NYSE's insistence that SUI has had "full access to the Exchange's listing and trading services" is flatly wrong.

Next, the NYSE points out that, when SUI applied to be a listed company, it agreed to abide by the rules as set forth in the NYSE's Listed Company Manual. (NYSE Bricf at 6.) According to the NYSE, this somehow bars SUI from disagreeing with any interpretation of a rule that may ever be advanced by the NYSE staff. This argument is wrong. To use the NYSE's own language, SUI agreed to abide by the rules "as set forth in" the manual. It did not agree to abide by a staff interpretation of one of those rules that is flatly inconsistent with the language of the rule.

Similarly, the NYSE argues that there has been no denial of service because, "if a company decides not to undertake a specific corporate action because such action would run afoul of Exchange rules, it cannot then claim that it has had its access to Exchange services prohibited or limited." (NYSE Brief at 6.) This argument is completely circular. It simply assumes that issuing the shares in question without a stockholder vote would "run afoul of Exchange rules." In fact, such an issuance would not run afoul of Section 312.03 if the rule were interpreted in accordance with its clear and unambiguous language. The only reason there is a dispute here is because the staff has interpreted Section 312.03 in a way that is inconsistent with

its clear and unambiguous language. That incorrect interpretation has resulted in a denial of service and thus is reviewable by the Commission pursuant to Section 19(d).[3]

Finally, the NYSE contends that there has been no denial of service because SUI "is perfectly free to issue the Optional . . . Securities upon obtaining shareholder approval." (NYSE Brief at 7.) This argument fails in the face of Commission authority that makes clear that, in order for there to be a reviewable denial of service, there does not need to be complete impossibility – the imposition of a significant extra burden is more than enough. *See, e.g.*, *Securities Industry & Financial Markets Association*, 2014 WL 1998525, at **7-9 (SEC May 16, 2014) ("*SIFMA*") (the mere imposition of a fee for a service can amount to a reviewable denial); *Interactive Brokers LLC*, 1998 WL 117627, at *3 n.8 (SEC Mar. 17, 1998) (reviewing challenged SRO action because, although the applicant had "not been denied access entirely," its "access undeniably ha[d] been limited").

III. Green Courte Is a "Person Aggrieved" and Has Standing

The NYSE begins its discussion of Green Courte's standing by claiming that the Commission can only grant review if "a direct relationship exists between the applicant seeking Commission review and the SRO that has taken action against it." (NYSE Brief at 7.) Apparently, according to the NYSE, such a "direct relationship" could only exist if Green Courte was itself denied services by the NYSE. (NYSE Brief at 7-8.) The NYSE implicitly concedes that the Commission has never actually said any of this in any decision. Rather, according to the

[3] At this point in its brief, the NYSE cites *Morgan Stanley*. (NYSE Brief at 6-7.) With regard to the argument that the NYSE is making here, however, *Morgan Stanley* is readily distinguishable. In *Morgan Stanley*, there was no question that, under the relevant rule of the SRO, the member was barred from doing municipal securities work in Massachusetts for two years because one of its officers had made a campaign contribution to a Massachusetts official. The member asked the SRO to exempt it from that rule, and, when the exemption was denied, asked the Commission to review the denial. *Morgan Stanley* is inapposite to the instant situation, where the Commission is being asked to resolve a dispute over the correct interpretation of a rule.

NYSE, this strict new "direct relationship" rule can be "implied" from other things the Commission has said. (NYSE Brief at 7.)

In fact, the SEC has explicitly rejected the new rule that the NYSE urges here. In *SIFMA*, the Commission stated in so many words that there "is no statutory requirement that a person aggrieved must itself be subject to a prohibition or limitation of access to SRO services." 2014 WL 1998525, at *6. Without ever quoting this precise language, the NYSE concedes that *SIFMA* recognized "associational standing." (SEC Brief at 7.) The NYSE goes on to argue, however, that *SIFMA* should be not be applied beyond its narrow facts. The key sentence in *SIFMA*, however, was not limited to trade associations. Instead, the Commission said flatly that there "is no statutory requirement that a person aggrieved must itself be subject to a prohibition or limitation of access to SRO services."

As the Supreme Court has repeatedly commanded, "the starting point for interpreting a statute is the language of the statute itself." *E.g., Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). In order for Green Courte to have standing (once it has been determined that SUI was denied service), Section 19(d) requires only one thing – that Green Courte be a "person aggrieved" by that denial of service. Here, Green Courte has a signed, written contract with the listed company that was denied service by the NYSE, relating to the very securities as to which service has been denied. Green Courte joined with SUI in writing the letter to the staff of NYSE that set forth the contracting parties' joint position on the relevant issue. (Record at 68-73.) The NYSE's interpretation of Section 312.03 threatens Green Courte with millions of dollars of economic harm. Under these circumstances, granting standing to Green Courte would pose no danger of opening the door for interlopers or other persons with

only tangential interests. The Commission should hold that Green Courte is a "person aggrieved" by the denial of service to SUI and grant review.

IV. There Is Nothing Improper About Green Courte's Motive

The NYSE repeatedly implies that there is something improper about Green Courte's motive in commencing this proceeding. Green Courte, according to the NYSE, is "attempting to exploit this statutory scheme of review in order to force SUI's performance under a third-party agreement." (NYSE Brief at 1.) Green Courte, according to the NYSE, is nothing but a "disgruntled third party" that is improperly trying to drag the NYSE into a dispute with which the Exchange is not really concerned. (NYSE Brief at 8-9.)

This carping is completely unjustified. Green Courte's dispute is squarely with the NYSE and its patently incorrect interpretation of Section 312.03. As the NYSE concedes, the contract in question between SUI and Green Courte involves both a "put" and a "call." SUI had the right to put the shares to Green Courte, and could have been expected to do so if the market price had declined below the strike price, and Green Courte had the right to call the shares from SUI, which it understandably did once the market price increased above the strike price. For private litigants, proceedings like this cost money. It makes perfect sense that, as between SUI and Green Courte, the contracting party that was "in the money" would be the one willing to incur the expense, and therefore would be the one to commence the proceeding. There is no basis in any of this for the NYSE to imply that Green Courte is doing something improper, that SUI now somehow agrees with the NYSE's interpretation, or that Green Courte is improperly venting its frustration against the NYSE when the party it is really "upset" with is SUI. (NYSE Brief at 8-9.)

The parties' contract incorporates Section 312.03. The NYSE is insisting on an incorrect interpretation of that section. At the current market price for the securities in question, Green Courte is the party with the economic incentive to seek review.

V. One Last Comment

There is one last comment in the NYSE's Opening Brief that Green Courte' cannot allow to pass unremarked. On page 9, the NYSE takes SUI and Green Courte to task because "neither party ever consulted with the Exchange to confirm it correctly understood how Section 312.03(c) of the Manual is applied to multi-stage share issuances until several months after the Subscription Agreement was already signed." There is no justification for this criticism. The stock in question was not to be issued until six months after the Subscription Agreement was signed. Section 312.03(c) says in so many words that the 20-percent calculation is done based on the number of shares outstanding "before the issuance," not the number of shares outstanding six months earlier when the agreement is signed. There was no way for the parties to have anticipated that the NYSE would apply a different rule than the one it actually wrote.

VI. Conclusion

For all of the reasons stated above and in Green Courte's Opening Brief, the Commission should conclude that, under Section 19(d) of the Exchange Act, it has jurisdiction to review the action by the NYSE that is being challenged in this proceeding and that Green Courte has standing.

Date: April 2, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 2nd day of April, 2015, I served the foregoing brief on the New York Stock Exchange by sending copies by email and first class mail to:

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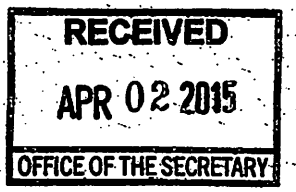

April 2, 2015

BY FAX (202-772-9324)

Lynn M. Powalski
Deputy Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Green Courte Real Estate Partners III, LLC
Admin. Proc. File No. 3-16362

Dear Ms. Powalski:

Pursuant to the Order entered by the Securities and Exchange Commission on March 3, 2015, Green Courte Real Estate Partners III, LLC hereby respectfully submits its reply brief.

Thank you very much.

Yours truly,

David Clarke, Jr.

David Clarke, Jr.

cc: Patrick J. Troy
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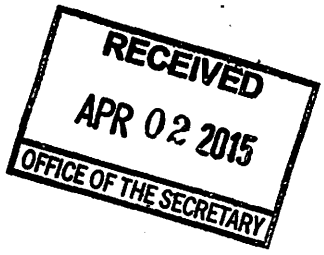

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Date: *2015-04-02 12:50:06 EST*

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Comments:

Green Courte Real Estate Partners III, LLC - Cover Letter and Reply Brief to Lyn M. Powalski

The attached is sent on behalf of David Clarke, Jr.

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