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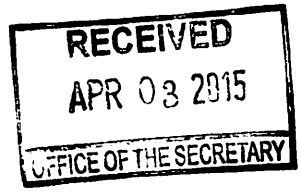
SECURITIES AND EXCHANGE COMMISSION



In the Matter of the Application of GREEN COURTE REAL ESTATE PARTNERS III, LLC For Review of Action Taken by New York Stock Exchange	Admin. Proc. File No. 3-16362

REPLY BRIEF OF NYSE REGULATION, INC. TO THE COMMISSION'S ORDER REGARDING PRELIMINARY MATTERS

On behalf of the New York Stock Exchange LLC (the "Exchange"), NYSE Regulation, Inc. ("NYSE Regulation") respectfully submits this memorandum in reply to the Opening Brief, dated March 19, 2015 (the "Opening Brief") of Green Courte Real Estate Partners III, LLC ("Green Courte") in the above captioned application for review (the "Application"). Green Courte has sought review by the Securities and Exchange Commission (the "Commission") of a determination made by NYSE Regulation that Exchange rules required Sun Communities, Inc. ("Sun") to obtain the approval of its shareholders prior to a certain issuance of securities to Green Courte. After review of Green Courte's Opening Brief, NYSE Regulation reiterates its request that the Application be dismissed because (i) Sun was not denied access to Exchange services and (ii) Green Courte does not qualify as a "person aggrieved" under Section 19(d) of the Securities and Exchange Act of 1934 (the "Act").

This Reply Brief should be read in conjunction with the Exchange's initial brief on this matter, dated March 19, 2015 (the "Initial Brief"). The Initial Brief includes a relevant statement of facts and all capitalized terms not otherwise defined herein have the meaning given to them in the Brief.

I. GREEN COURTE AND SUN DID NOT UNDERSTAND, AND DID NOT SEEK TO UNDERSTAND, THE EXCHANGE'S SHAREHOLDER APPROVAL RULE UNTIL SEVERAL MONTHS AFTER THEY ENTERED INTO THE SUBSCRIPTION AGREEMENT

The Subscription Agreement entered into by Green Courte and Sun provided for Sun to issue Green Courte securities in a series of transactions. Issuance of the Optional Subscription Securities—the final transaction in the series—was only required if it would not compel Sun to obtain the approval of its shareholders. Despite this express condition and the complex nature of its agreement, neither Green Courte nor Sun approached the Exchange to understand how the

Exchange's shareholder approval rules might impact its deal until months after the Subscription Agreement was signed.

In its Opening Brief, Green Courte states that Sun "sought confirmation from the NYSE that, in performing the 20-percent calculation, the denominator should be the number of shares outstanding, including shares issued in connection with the public offering." To the extent Green Courte's use of "sought confirmation" suggests that Sun had previously obtained guidance from the Exchange on this issue, the Exchange wants to clarify that this is not the case. Green Courte and Sun entered into the Subscription Agreement on July 30, 2014. Neither party approached the Exchange to determine if shareholder approval was required until December 2014, more than four months later. Further, in their letter to the Exchange on December 30, 2014, Green Courte and Sun ask the Exchange to "concur"—not confirm—with their understanding of the Exchange's shareholder approval rules.[1]

The Exchange's interpretation with respect to how the 20% test should be calculated has been in place for many years. Had Green Courte or its counsel consulted with the Exchange prior to entering into the Subscription Agreement, Exchange staff would have provided them with the same, consistently applied interpretation. Their failure to conduct this basic due diligence, especially when issuance of the Optional Subscription Securities was conditioned entirely on the application of this rule, should not now give rise to a claim for relief from the Commission simply because the rule interpretation does not suit them.

[1] Record at 72.

II. REQUIRING SUN TO OBTAIN SHAREHOLDER APPROVAL PRIOR TO ISSUANCE OF THE OPTIONAL SUBSCRIPTION SECURITIES DOES NOT CONSTITUTE A DENIAL OF ACCESS

NYSE Regulation's determination that Sun must obtain shareholder approval prior to issuing the Optional Subscription Securities does not constitute a denial of access to Exchange services. Green Courte argues that in allegedly misapplying its rule and requiring Sun to obtain shareholder approval, NYSE Regulation has imposed a requirement so burdensome that it effectively serves as a bar to access the Exchange's listing services. However, giving shareholders a vote on significantly dilutive transactions is so fundamental to the notion of investor protection that it is codified in the rules of both the Exchange and the Nasdaq Stock Market. It is entirely appropriate for the Exchange to impose certain prerequisites before permitting a listed company to complete a transaction that would significantly dilute the ownership interests of its existing shareholders.

In order to seek relief under Section 19(d) of the Act, Green Courte argues that it does not need to show the Exchange completely denied access. Instead, it contends that it need only demonstrate that a significant burden on access was imposed. Green Courte goes on to argue that, due to its expense and delay, requiring shareholder approval in this instance more than meets this significant burden standard. This argument is misguided. Obtaining shareholder approval of various proposals is something that every domestic listed company does at least annually both under Exchange rules and its own charter and bylaws. It is very difficult to reconcile, therefore, how the same action that Sun and all other domestic listed companies routinely and willingly undertake is characterized here by Green Courte as a burden so significant that it is worthy of Commission review.

Green Courte correctly states that the Exchange's fundamental role is to provide a public market for companies to list their securities. In carrying out that role, the Exchange has an obligation to have and apply reasonable rules and policies that are fair to listed companies while also sufficiently protective of the investing public. To that end, the Exchange has long required that shareholders have the right to vote on transactions that will result in dilution of their ownership of 20% or more. To calculate whether a transaction will result in such dilution, the Exchange utilizes the number of shares outstanding on the date that the company enters into a definitive agreement as that is the date that the company binds itself to take the dilutive action. This longstanding policy places a reasonable check on the ability of listed companies to dilute their shareholders and in no way rises to the level of a denial of access or substantial burden as Green Courte claims.

III. GREEN COURTE INCORRECTLY INTERPRETS THE COMMISSION'S HOLDING IN *SIFMA* TO ARGUE THAT IT HAS STANDING IN THIS MATTER

In attempting to argue that it has standing to seek Commission review in this matter, Green Courte incorrectly relies on a single sentence from the Commission's holding in *SIFMA* while ignoring the larger premise of that case. Green Courte points to the Commission's statement that there is no "statutory requirement that a person aggrieved must itself be subject to a prohibition or limitation of access to SRO services"[2] as completely disposing of any argument against its standing. However, Green Courte neglects to address the stark differences between itself and SIFMA as applicants seeking Commission review. SIFMA is an organization whose primary function is to advance and advocate for the interests of its members. On its website, SIFMA

[2] *In the matter of the Application of Securities Industry and Financial Markets Association for Review of Action taken by Self-Regulatory Organizations*, Release No. 34-72182, May 16, 2014.

describes itself as "the voice of the U.S. securities industry."[3] Accordingly, even though SIFMA was not subject to the market data fees at issue in that matter, its interest in challenging those fees was entirely aligned with that of its members. In *SIFMA*, the Commission stated that it did "not mean to suggest than anyone may bring an application for review of SRO action that prohibits or limits any other person's access to SRO services."[4] Instead, in granting SIFMA standing, the Commission stated that "whether SIFMA is a person aggrieved turns on whether it represents identified members who are themselves persons aggrieved."[5] Green Courte's position in the present matter could not be any more different than SIFMA.

Unlike SIFMA, which sought Commission review to protect the common interest of it and its members, Green Courte and Sun are contractual counterparties with completely opposite interests at stake. Green Courte wants to force Sun to issue it the Optional Subscription Securities. Sun, on the other hand, is seemingly content to not issue the securities and forego more than $35 million in proceeds as a result. As evidence of Green Courte and Sun's divergent interest in this matter, it is notable that Sun has not demonstrated any support for, nor joined in any way, Green Courte's Application to the Commission.

Green Courte cannot meet the standard established in *SIFMA* of demonstrating that it and Sun's interests are so closely aligned in this matter that Green Courte is justified in challenging an Exchange action of which it was not even the subject. Accordingly, Green Courte should not be granted standing and its Application should be dismissed.

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[3] Available at http://www.sifma.org/about/mission/.
[4] See *SIFMA* at p. 11.
[5] See *SIFMA* at p. 12.

CONCLUSION

Green Courte has failed to satisfy the minimum requirements to seek Commission review in this matter. Green Courte has failed to demonstrate that the Exchange's determination that Sun must obtain shareholder approval prior to issuing the Optional Subscription Securities constitutes a denial of access to Exchange Services. Further, in light of Commission precedent, Green Courte has not adequately demonstrated that it has standing as a "person aggrieved" to file its Application. Consequently, NYSE Regulation believes Green Courte's Application should be dismissed as a matter of law.

Dated: April 2, 2015

NYSE REGULATION, INC.

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2015, I caused a copy of the foregoing Reply Brief of NYSE Regulation, Inc., on behalf of New York Stock Exchange LLC, to the Commission's Order Directing the Filing of Briefs to be served upon the parties listed below via an overnight delivery. A courtesy copy was served upon Green Courte by electronic mail to its counsel.

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Dated: April 2, 2015