



January 21, 2020

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

Re: ***SIFMA Comment Letter on the NYSE National Rule Proposal to Establish Fees for the NYSE National Integrated Feed: File No. SR-NYSENAT-2019-31***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to comment on the above-referenced filing submitted to the U.S. Securities and Exchange Commission (“Commission”) to establish market data fees by NYSE National, Inc. (“NYSE National”).² Currently, there are no fees for use of the NYSE National Integrated Feed. NYSE National is looking to impose the new fees discussed in more detail below. To show that the proposed rule change is consistent with applicable statutory requirements under the Securities Exchange Act of 1934 (“Exchange Act”),³ NYSE National must provide sufficient rationale for these fees by following the examples of necessary information set forth in the Staff Guidance on SRO Rule Filings Relating to Fees,⁴ or another acceptable means. NYSE National failed to provide the necessary information for the SEC to independently determine whether the fees meet the requirements of the Exchange Act, and in consequence, SIFMA requests the Commission to institute proceedings to determine whether to approve or disapprove the proposal.

Effective February 3, 2020, NYSE National proposes to commence charging the following monthly fees for its Integrated Feed: 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 \$15,000 for category three; a non-display use declaration late

¹ 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>.

² See Securities Exchange Act Release No. 87797 (“Proposal”) (Dec. 18, 2019).

³ See, e.g., 15 U.S.C. 78f(b)(4); 78f(b)(5); and 78f(b)(8).

⁴ SEC’s Division of Trading and Markets, *Staff Guidance on SRO Rule Filings Relating to Fees* (“Staff Guidance”) (May 21, 2019).

fee of \$1,000; and a \$200 fee for each additional location a firm takes in the feed. SIFMA opposes NYSE National's filing to establish fees for its Integrated Feed because the Exchange has not provided the requisite justification per the Staff Guidance.

Contrary to NYSE National's claim,⁵ its Integrated Feed is not subject to competitive forces because there are no available substitutes to the exchange's depth-of-book products. First, NYSE National lists inferior products that do not contain depth-of-book information as "alternatives" to its Integrated Feed. This depth-of-book information is essential for many broker-dealers to provide customers with the best and most competitive order routing capabilities and execution quality, and NYSE National is the exclusive purveyor of that information. Second, considering data vendors must first purchase the data from NYSE National, subject to NYSE National's terms and pricing, *before* being able to resell that data, these data vendors cannot offer a competing product. NYSE National's de facto monopoly over its data precludes the development of competing products to constrain its pricing.

SIFMA further disagrees with NYSE National's claim that the price for the integrated feed will be constrained by the competition for order flow under the "platform theory" of competition. Among other reasons, the competition for order flow will not constrain the cost of market data because the decision of where to trade occurs in milliseconds, while market data fees are purchased and charged monthly independent of decisions on where to trade. Further, not all purchasers of market data execute trades solely on exchanges, which limits the theoretical ability to constrain market data prices by routing order flow to other exchanges. Also, as evidenced in Professor Glosten's study, 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.⁶ Additionally, exchanges have yet to show an increase (or decrease) in their trading volume after reducing (or increasing) its price of market data.

NYSE National attempts to justify the new price of the Integrated Feed based on the purported increased value of the data as measured by market share despite providing information that fails to support that claim. 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, 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%.⁷ NYSE, NYSE Arca and NYSE American charge various market data fees for the respective proprietary direct market data feeds. Despite a decrease in market share, NYSE and NYSE Arca did not respond by reducing the cost of its market data due to the perceived reduction in demand. Thus, this proposal would

⁵ Proposal at 26-27.

⁶ 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).

⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary. These market share percentages are ex-auction.

significantly increase the overall cost of market data for NYSE exchanges when the overall market share for NYSE exchanges increased by only 0.34%⁸ from May 2018 to December 2019.

Accordingly, NYSE National has offered nothing to show that competition for order flow constrains the price for market data.⁹ Therefore, NYSE National should provide additional information on the cost of its market data offering to support its fee request.

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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 212-313-1124 or rtoomey@sifma.org).

Sincerely,



Robert Toomey
Managing Director and
Associate General Counsel

cc: The Honorable Jay Clayton, Chairman
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner

Brett Redfearn, Director, Division of Trading & Markets

⁸ NYSE group market share (excluding auctions) increased from 18.95% in May 2018 to 19.29% in December 2019.

⁹ *Contra* Proposal at 22, 24.