

From: Ransom, David <Dransom@mwe.com>
Sent: Monday, July 12, 2010 5:02 PM
To: colocation <colocation@CFTC.gov>
Subject: re: Co-location/Proximity Hosting Services -- Comments on Commission's Proposed Rule
Attach: CFTC Letter Signed with Figs v2.pdf

Mr. Stawick:

Our firm represents Equinix, Inc. Please find attached the comments of Equinix regarding the Commission's Proposed Rule on Co-location/Proximity Hosting Services. If you have any questions or any difficulty opening the attachment, please do not hesitate to contact me. Thank you in advance for your consideration.

David

David Ransom
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Please visit <http://www.mwe.com/> for more information about our Firm.

July 12, 2010

David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

*Re: Comments of Equinix, Inc., on the Commission's Proposed Rule on Co-Location/
Proximity Hosting Services*

Dear Mr. Stawick:

On behalf of Equinix, Inc., ("Equinix"), I appreciate the opportunity to submit the enclosed comments on the Proposed Rule on Co-Location/Proximity Hosting Services that was published by the Commodity Futures Trading Commission ("CFTC" or "Commission") in the Federal Register last month. 75 Fed. Reg. 33198 (June 11, 2010). In summary, Equinix – an independent, third-party provider that offers co-location and proximity hosting services to all industries, including but not limited to the financial services industry – applauds the Commission for its efforts to ensure that co-location and proximity hosting services are offered in an equitable, fair and transparent manner that is designed to protect market participants.

However, as noted below, there are many elements of the Commission's Proposed Rule that could trigger unintended consequences and negatively affect smaller, upstart exchanges that rely on independent providers such as Equinix, as well as produce corresponding negative effects for market participants we serve. For example, we believe –

- the Commission's equal access proposal, while laudable as a matter of intent, fails to demonstrate an adequate understanding of the complexity of the trading ecosystem it would regulate and the related technology and policy issues it would create;
- the Commission should not regulate market set fees of independent data centers;
- the Commission should seek information about market participants' systems and transactions from market participants themselves, not third-party providers who do not have knowledge of such content;

- the Commission’s proposal on latency disclosure would be impractical, of questionable use for market participants, and requires far greater analysis; and
- the Commission has not yet demonstrated that it has a clear vision of a regulatory regime it may seek to impose over an industry that is not clearly within the CFTC’s authorizing statute.

We also urge the Commission to coordinate this proposed rulemaking with any potential rulemaking begun by the Securities Exchange Commission (“SEC”) pursuant to that agency’s Concept Release on Equity Market Structure (File No. S7-01-10). Like other stakeholders who serve customers in the financial services industry, we are very concerned about the specter of inconsistent and contradictory regulatory obligations and duties that could be imposed by the CFTC and SEC. We believe it would be costly, inefficient and a step backward if independent data centers are required to follow different co-location rules for their financial service industry customers depending upon the type of trade those customers are executing. Thus, we urge the Commission and SEC to coordinate their agency rulemakings.

We also would be pleased to answer any questions the Commission may have during this rulemaking process.

About Equinix

Before addressing the specifics of the Commission’s Proposed Rule, allow me to briefly describe our company and the services that it offers. Equinix is a leading global provider of co-location and interconnection services, operating 87 data centers in 35 markets across 11 countries in the United States, Europe and Asia-Pacific. Our company was founded in 1998, and employs more than 1,600 people at our headquarters in Foster City, California, and other locations around the world. Equinix is a mission-critical Internet infrastructure provider with 6 million gross square feet of global data center space, more than 3,000 customers, including leading networks, cloud providers, content companies, financial institutions and enterprises.

Customers do business at Equinix because they know that their most critical information assets will be protected and connected. More than 575 different networks, carriers and ISPs are accessible at Equinix International Business Exchange™ (IBX®) data centers, including the world’s largest IP backbone networks. To be clear, Equinix is neither a securities firm, nor a trading market. We do not accept orders or otherwise trade in securities. Rather, Equinix operates data centers at which financial institutions lease physical space for their own trading systems. If CFTC believes it must regulate independent data center providers such as Equinix, it needs to begin such regulation carefully and modestly.

The Benefits of Equinix Data Centers

The co-location and interconnection services provided by Equinix result in significant benefits to our customers, which span a wide range of industries. While Equinix does serve customers in the financial services industry, the company also supplies these critical services to leading Internet



service and cloud providers, content companies, global enterprises, social networking sites, governmental agencies and Web commerce companies. The customer benefits include: (1) operational reliability, (2) exceptional security, (3) customer choice and competitive pricing, and (4) enhanced network connection opportunities.

(1) *Operational Reliability:* Equinix data centers are designed to ensure that customers' businesses operate in a continuous and seamless fashion. This permits customers to focus on their core business, leaving Equinix to safeguard the facility and maximize customers' uptime. For instance, the robust power and cooling systems utilized by Equinix help secure the continuity of a customer's business operations. Each customer licensing space in an Equinix data center is served usually by a first line of utility power and a second line of emergency generators. Often, the capital expenditure required to build this infrastructure is cost prohibitive for many businesses, including exchanges, to replicate. Therefore, third-party data centers offer an important choice in the marketplace for those businesses.

(2) *Exceptional Security:* Equinix customers benefit from housing their operations in a well-fortified security infrastructure. Entry into an Equinix data center includes multiple layers of security, including a series of biometric readings. The security arrangements permit sophisticated industry practices to be available to those using the data center. This level of security is often changing and one of the most highly scrutinized practices for providers in the financial services industry.

(3) *Choice and Competitive Pricing:* Equinix data centers often provide a diverse set of network providers, presenting their customers with the important benefit of choice. Connecting through an Equinix data center may grant customers direct access to hundreds of carriers and network service providers, often including top global networks. Further, Equinix does not require its customers to purchase a specific type of connectivity, nor does it favor certain providers by offering high-priced bundled products or services. In addition, direct service contracts among various customers, including network service providers, market data providers, risk analytics firms and brokers located within an Equinix data center afford customers the opportunity to strategize and tailor these relationships to the distinct needs of their business. Competition for business among the numerous service providers at independent data centers, including Equinix, results in lower prices and additional savings to customers. Additionally, Equinix and other independent data centers, which have several competitive networks, help fulfill Congress's mandate for a national market system by providing competitive "links" between multiple market centers.

Furthermore, Equinix data centers offering co-location are openly marketed and available on a first-come, first-served basis to all customers, including financial services firms. Participants in electronic trading can access multiple trading venues within a single Equinix data center or campus without discrimination or limitation by size, perceived importance or volume of trading. Smaller trading firms have the same access to Equinix and other co-location facilities that their larger multi-national counterparts do. Equinix



and other stakeholders in the data center industry are highly competitive and their customers are demanding. Thus, Equinix is highly motivated to provide high quality, highly secure, competitively priced services to all market participants.

(4) Enhanced Network Connection: For some customers, connecting directly to numerous network service providers and business partners that are within the same building increases transaction speed, while reducing cost. For other customers, transaction speed is not a high priority. Aggregating a customer's business partners and network service providers in a single location also eliminates the costs that a customer would incur in purchasing connections to its partners and providers in multiple locations.

Equinix Comments on Specific Aspects of the Proposed Rule

In its Proposed Rule, the CFTC sets forth provisions in four separate areas – equal access, fees, latency and third-party providers – that would be directly applicable to Designated Contract Markets (DCMs), Derivatives Transaction Execution Facilities (DTEFs), and Exempt Commercial Markets (ECMs). With respect to equal access, we believe flaws in the current proposal require substantial additional work and republication of a dramatically clearer proposed rule. We believe fees of independent data centers are market driven and need no regulation by CFTC. As explained below, we are very concerned that the Commission's proposal on "latency" not only could be burdensome and administratively costly, but also technologically infeasible and of very limited utility for market participants.

A. Equal Access

In its Proposed Rule, the Commission states: "[T]he Commission believes that DCMs, DTEFs, and ECMs with SPDCs [significant price discovery contracts] that offer co-location and/or proximity hosting services must ensure that there is sufficient availability of such services for any and all willing and qualified market participants." The Commission further states: "[T]he provision relating to 'Equal access' would require that fair and open access be available to third-party hosting service providers seeking to provide proximity hosting services."

Equinix agrees with this proposal, only so long as the Commission intends to apply it to DCMs, DTEFs and ECMs. As a threshold matter, Equinix must inquire: Is the Commission's intent to apply this proposal solely to DCMs, DTEFs and ECMs? Or, does the Commission also intend for the first time to regulate third-party providers and apply the proposal to independent data centers such as our company and its competitors? We urge the Commission to republish a proposed rule (not an interim or final rule) to clarify this point, making clear that the provisions of the Proposed Rule would only be applicable to DCMs, DTEFs and ECMs.

If the Commission intends to apply this equal access proposal to third-party data centers such as those operated by our company, we would strongly oppose it because it could lead to negative effects for a competitive marketplace and harm our industry and other stakeholders who depend upon facilities such as we make available. For example, any operator of an independent data center obviously has a finite amount of space, and thus availability in each facility. If this



current proposal were applied to third-party data centers, does CFTC really intend that data centers might be required to rearrange customers within a data center because an additional financial services customer arrives later than others and is placed somewhere further away than other market participants? It appears to do so. This aspect of the CFTC proposal should be clarified. Does CFTC truly intend that independent data centers would be required to build an entirely new facility for additional financial services customers to meet equal access requirements when their other facilities may be full? The proposed rule is susceptible to such a construction. Does CFTC really intend that an independent data center would be required to locate customers within a specified proximity to a particular exchange server, when multiple different exchanges may have servers in an independent a data center? The proposed rule fails to exhibit any understanding that multiple exchanges may have facilities within an independent data center.

Instead, non-discriminatory market forces should continue to determine growth in capacity. Independent data centers have a natural incentive to expand to meet capacity demands and meet customers' needs without the need for regulatory mandates. For these reasons, we urge the Commission to clarify that its equal access proposal is intended to apply only to trading markets such as DCMs, DTEFs, and ECMs that provide captive data center services. The results of the current proposal would be costly and counter-productive, and could lead to disruption of the independent data center industry, and not benefit market participants.

As noted previously, Equinix data centers offering co-location are openly marketed and available. Participants in electronic trading can access multiple trading venues within a single Equinix data center without discrimination or limitation based on size, perceived importance or volume of trading. The Commission's intent in requiring DCMs, DTEFs, and ECMs to provide equal access to market participants is consistent with our company's policy and business strategy, and thus will be served without regulation.

We also should note that the underlying supposition in the Commission's Proposed Rule – that financial service industry customers will want adjacent access to the same matching engines – is simply not consistent with our experience. In fact, adjacent access to particular matching engines is often not sought by our customers. In multi-exchange data centers, for example, many customers often seek to have their equipment placed equi-distant from matching engines. *(Please see the attached Figure 1, which demonstrates this point. Also compare and contrast the attached Figure 2, which further demonstrates the point that to achieve equi-distance between various cities where matching engines are located, a hypothetical customer/qualified market participant may be to locate somewhere between them.)* Thus, based on our experiences, we urge the Commission to proceed with caution on the issue of equal access, and to eschew a generalized regulatory mandate that could prove unworkable for the data center industry and detrimental to the interests of our customers.

If equal access is rigidly applied, independent data centers will have to “set aside” space for expected financial services customers. If we estimate too few physical locations are needed, we need to understand clearly what would be the CFTC's guidance. If we estimate too many to meet a rigid requirement, we could end up with unused facilities and greater costs to those who



do seek services. (Please see attached Figures 4 and 5, which demonstrate these points. Also see Figure 6 which illustrates the expansion of multiple data centers in a single campus.) Clearly the current proposed rule needs to be rewritten to make clear what CFTC intends in these situations.

We also urge the Commission to closely examine how it intends to define “qualified market participant,” because our data ecosystem is potentially broader than the Commission appreciates. For example, we are aware of instances in which information technology companies provide managed IT services for financial services industry clients at our data centers. The IT companies most likely would not fall within the definition of “qualified market participant.” Nevertheless, they may be providing critical services to smaller hedge funds which want to co-locate within our data center but do not have the technical expertise to do so on their own, leading them to engage the services of an IT company. We raise this point to emphasize that while the hedge funds utilizing such services are qualified market participants, they may not be the independent data center customer of record.

B. Fees

The Commission’s Proposed Rule states: “[T]he Commission seeks to ensure that the fees charged to market participants and third-party proximity hosting services remain equitable and do not become an artificial barrier to effective market access.” In addition, the Commission states that it “would not view preferential pricing for certain market participants or certain classes of market participants as equitable pricing.”

Again, Equinix believes the Commission intends this provision to apply to DCMs, DTEFs, and ECMs. To the extent it is applied more broadly to customers of independent data centers, the CFTC has made no factual showing or determination such fees are other than market driven and fair and equitable. This is not a basis to make a rule impacting the fee practices of independent data centers. As noted, our company’s data centers that offer co-location are openly marketed and available. Furthermore, Equinix does not require its customers to purchase a specific type of connectivity.

The Commission simply should not regulate fees within an independent data center. To the extent companies like Equinix offer commercial prices that are market determined, the Commission should not collect information regarding such fees or further evaluate such fees, except perhaps privately, for purposes of this rulemaking, so it will have an adequate basis of facts for rulemaking. Equinix is prepared, given sufficient protections for its proprietary and sensitive competitive information, to assist CFTC in understanding our non-discriminatory and market-based pricing. Investors and customers of independent data centers have all the necessary self-interest to evaluate both quality of services and fees and to make appropriate tradeoffs between these factors. The data center industry is highly competitive, and the market currently keeps independent data center pricing in check. Public disclosure of pricing may work against natural market forces and create an environment ripe for unwanted price leveling or other anti-competitive behavior.



C. Latency Transparency

The Commission's Proposed Rule would require that "general information concerning the longest, shortest or average latencies for all connectivity options are separately detailed and readily available to the public on regulated trading markets' Web sites."

Equinix has very serious concerns about the technological feasibility of this proposal, as well as its utility for market participants. Latency disclosure would be impractical, of questionable use for market participants, and potentially misleading. Many of our customers – both within the financial services industry and otherwise – neither want nor need such latency information. Moreover, there are no generally accepted standards for calculating and disclosing latency. Thus, we believe the risk of confusing or misleading investors outweighs any marginal benefit. *(Please see attached Figure 3 and Figure 6, which demonstrates the point that some exchanges choose to install access nodes that provide network connectivity to a matching engine in a second, and often remote, data center. Figure 3 is intended to demonstrate the difficulty of measuring latency and Figure 6 demonstrates the difficulty of measuring latency within a campus environment.)*

In addition, if this envisioned requirement became applicable to independent data centers, it could alter the nature of the industry and add tremendous costs, and the result would be detrimental to our customers. Our company has no method of providing this information because Equinix does not monitor the content or quantity of traffic within a financial customer's installation. If this proposal were applied to Equinix, it would add an entirely new function to our core business. That is, we would be forced to enter the business of examining customer data, and reporting upon it. In short, this provision would be administratively burdensome, technologically infeasible, and of questionable utility for market participants.

Finally, the Commission fails to appreciate that transaction speed and latency are often issues that are outside the data center's control, and more dependent upon the needs and decision-making of the data center customer, not the data center. The customer ultimately decides what kind of computer equipment and cables that it will deploy within a data center, and it knows full well that such decisions will affect transaction speed and latency. While we can provide specific examples of differences, for example, in fiber optic versus copper wire installations customers might install, we have no interest in controlling such customer decision-making. We urge the Commission to proceed more cautiously on this issue, and to appreciate the limits of data center capabilities and the needs of individual customers. A regulation intended to put all customers on equal footing may actually limit customer choice, produce choke-points required for data monitoring, create a potential security breach, and stifle technological innovation.

D. Third-Party Providers

The Commission's Proposed Rule on third-party providers would require DCMs, DTEFs and ECMs to obtain "all information about market participants, their systems, and their transactions from their third-party providers necessary to carry out self-regulatory obligations



and other obligations under the [Commodity Exchange] Act and Commission Regulation.” The Proposed Rule further states that the Commission believes that DCMs, DTEFs and ECMs “should enter into contractual agreements with such third-party providers” to meet this obligation.

In practice, it would be exceedingly difficult and costly for independent data centers to comply with this portion of the rule. It would also fundamentally alter our relationship with our customers. As noted previously, Equinix does not monitor the *content* of traffic within a customer’s installation, *nor do we believe that we should be given this obligation*. This proposal would turn the essence of the data center business model on its head. Rather than serving as an infrastructure tool, with no access to its financial service customers’ content data, data centers would in effect be required to become an arm of and reporting agent for a trading market. We believe such a rule can only be justified by a record of facts and concerns that is not evident here.

If the Commission seeks information on market participants’ systems and transactions, we believe it is most logical that CFTC should seek such information directly from those market participants – not third-party providers who facilitate the storage, transmission or delivery of such content without knowledge of the content. Equinix urges the Commission to abandon this portion of its proposal as it might apply to independent data center operations.

Finally, the Commission’s proposal to prohibit DCMs, DTEFs, and ECMs from barring “otherwise qualified third-parties from providing co-location or proximity hosting services to market participants trading on that trading market” is closely tied to the proposal to require “equal access.” Fostering private-sector, third-party data centers is good public policy and good for market participants. It increases competition, choice and innovation, and thereby results in lower costs and greater value to all market participants.

Conclusion

In its Proposed Rule, the Commission quotes from the Policy Statement Concerning the Oversight of Screen-Based Trading Systems, which states in relevant part that effective regulation should “not impair the ability of system providers and sponsors to develop and implement innovative technologies.” We strongly agree with this statement, and we urge the Commission, as it moves forward in this rulemaking, to consider it as well. Many smaller exchanges which do not wish to invest in a captive data center rely upon our industry to provide state-of-the-art facilities for their market participants. The Proposed Rule shows no sign of understanding that independent data centers are a critical part of the ability of small or upstart exchanges to compete with their more well-heeled brethren. We can provide CFTC with specific examples of such installations by our company.

While the Commission’s Proposed Rule no doubt is the result of its desire to ensure that co-location and proximity hosting services are equitable, fair and transparent, we urge the Commission to consider all the ramifications of any proposal in this area. We believe the Proposed Rule, as currently structured, raises additional questions for the Commission to consider, and, as drafted, the Proposed Rule could provoke serious unintended consequences that



harm the market participants who rely upon the independent data center industry both within the financial services industry and those outside of it. We urge the Commission to proceed with greater caution on this rulemaking and would be pleased to answer any questions that may arise during this process. We hereby offer to provide a facility tour of any one of our centers serving a CFTC exchange so the CFTC staff can see first hand the serious implications of this Proposed Rule.

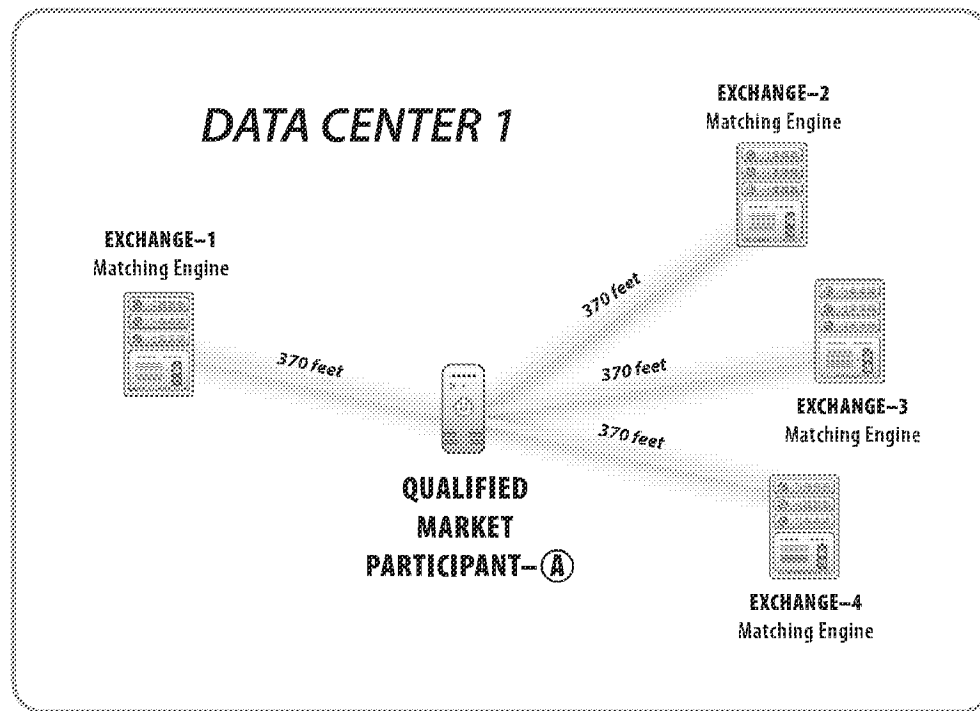
Sincerely,

A handwritten signature in black ink, appearing to read 'John Knuff', with a stylized flourish at the end.

John Knuff
General Manager, Financial Services
Equinix, Inc



Fig. 1—Multiple Exchanges In An Independent Data Center



- Qualified market participants typically trade on multiple exchanges and their trading strategies often include multiple asset classes in various global markets.
- Independent data centers may contain multiple exchange matching engines representing multiple asset classes and regulators like the CFTC.
- When multiple exchanges are distributed around a single data center or a campus of interconnected data centers, qualified market participants take advantage of lower cost to access the exchanges.
- When an independent data center hosts multiple exchanges, qualified market participants will locate their trading systems somewhere near multiple exchanges but not always adjacent to a single exchange.

LEGEND AND GLOSSARY




-  The matching engine represents the key asset of an exchange for electronic trading. It is the destination for order flow and the source of market data. Exchanges illustrated can represent multiple asset classes such as options and futures regulated by the CFTC and equities regulated by the SEC.
-  The network access node is owned by the exchange and is located at a different data center than the matching engine for qualified market participants to remotely access the exchange.
-  Each computer represents a qualified market participant. Triangulation is the determination of the best location for trading systems.

Fig. 2—Accessing Exchanges in Multiple Cities



- Qualified market participants typically locate trading systems between multiple exchanges and near robust connectivity providers.
- Qualified market participants will determine the optimal location of their trading systems based on the proportion of their trades on each of the exchanges and the execution speed of the exchanges (triangulation).
- Qualified market participants may not want to locate trading systems equi-distant between all New York and Chicago exchanges (i.e. Ravenna, OH).

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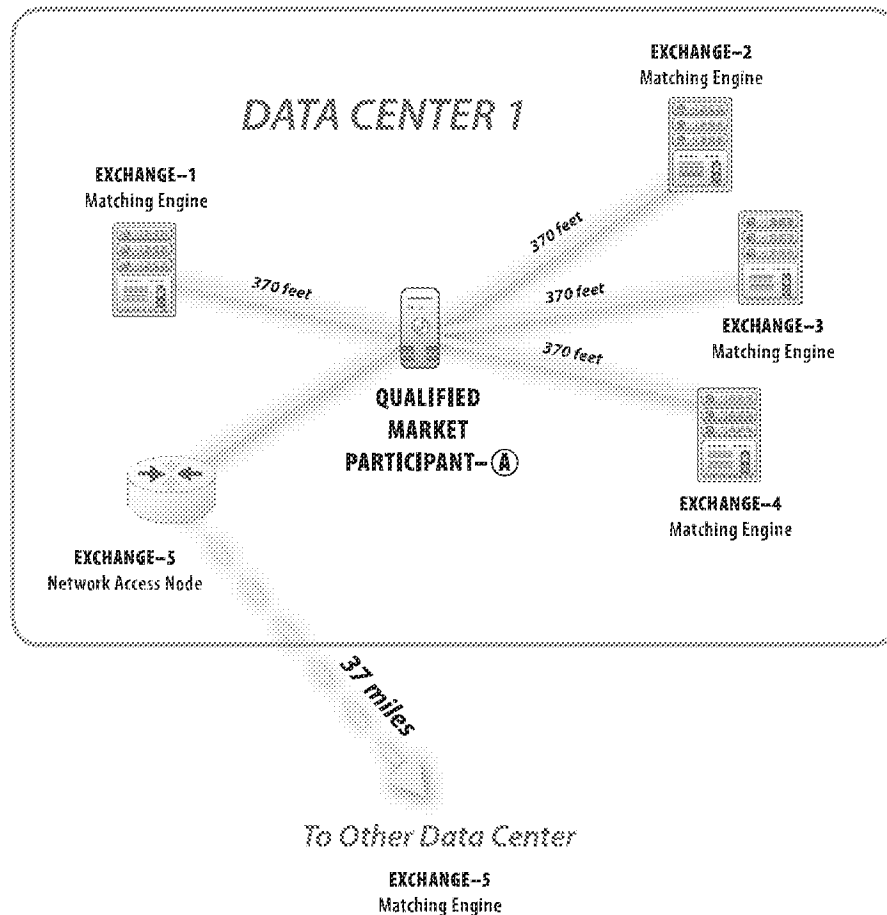


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Fig. 3—Value of Network Access Nodes



- No single data center or campus of data centers will ever be large enough to hold all of the trading systems for the qualified market participants of an exchange.
- Exchanges often install network access nodes in other data centers to provide reduced access costs for member firms.
- Multiple exchange network access nodes can be located globally, in multiple cities or in multiple data centers within a metropolitan area.
- Network access nodes are heavily used by qualified market participants who do not require low latency/proximity hosting, but these firms represent a majority share of connectivity and a substantial share of trade volume for exchanges.

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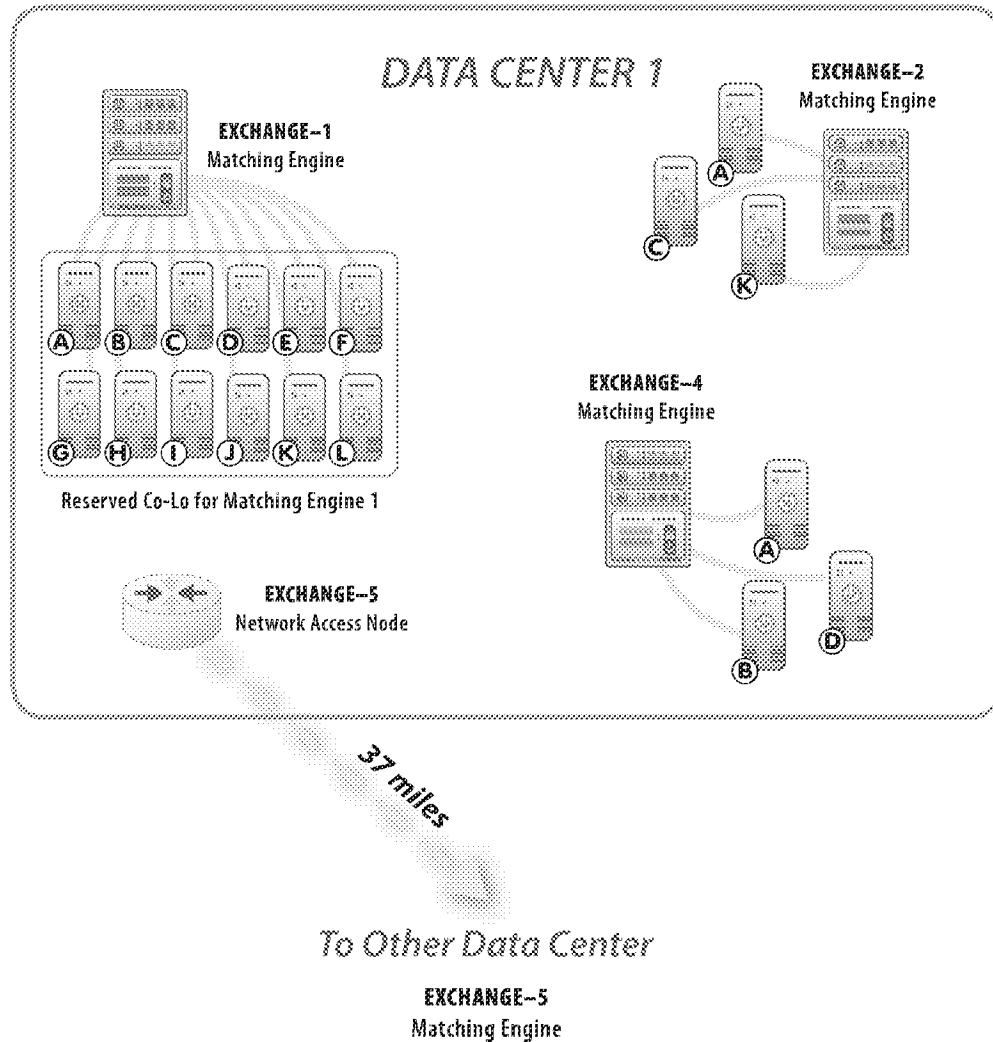


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Fig. 4—CFTC Focus on Matching Engine Adjacency



- Much of the scrutiny by regulators assumes that firms will co-locate in a single exchange captive data center and that qualified market participants will always fight for location closest to the matching engine.
- This single matching engine proximity model does not address the fact that firms often need to connect to multiple regulated exchanges, unregulated trading venues, news sources, trading counter-parties, and pre-trade risk analytic providers.

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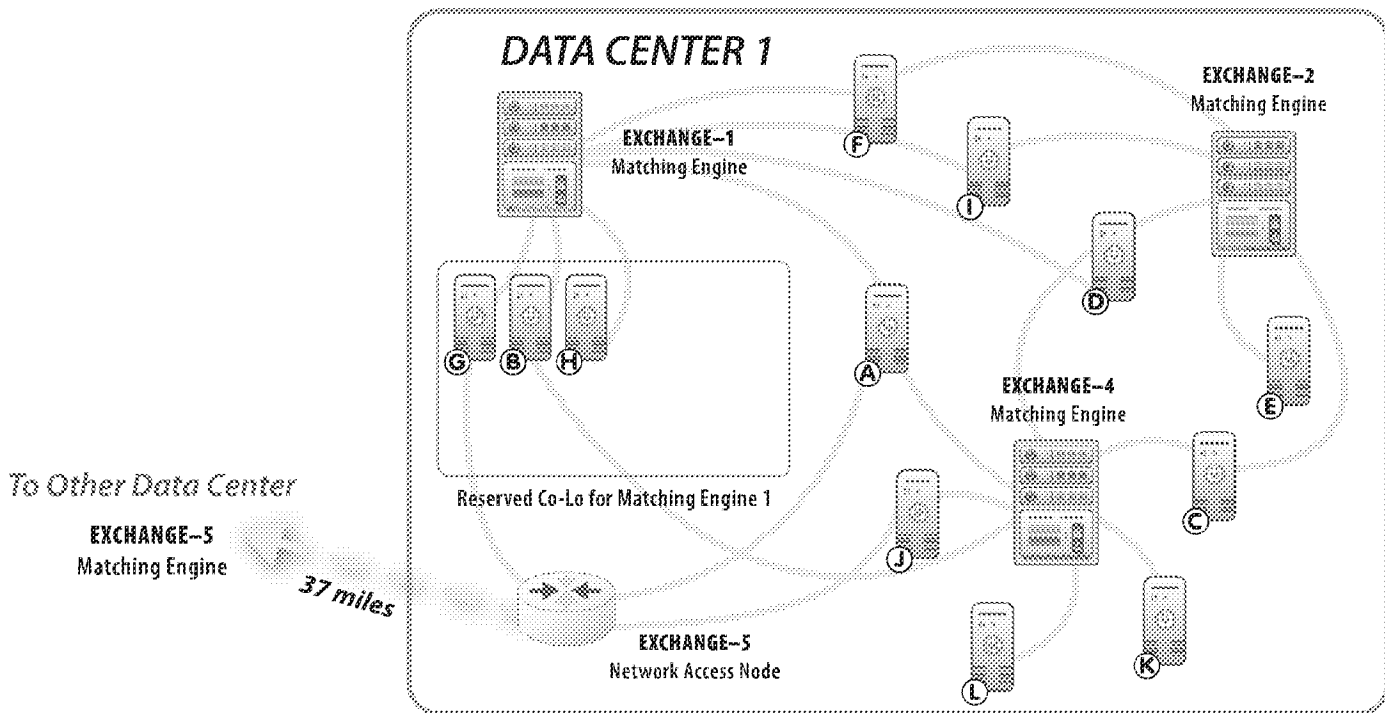


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Fig. 5—Independent Data Centers Foster Competitive And Complex Trading Ecosystems



- Firms typically connect their trading systems to multiple exchanges within a single a data center and external data centers via access nodes.
- Qualified market participants have fair and equal access to any available space within the data center on a first come-first served basis.
- First movers have the choice to decide which location will best match their trading needs; often choosing a centralized location to multiple exchanges over close proximity to a single exchange matching engine.
- Regulators are focused on one-exchange / one-matching engine / one data center and have not given proper consideration for the gathering of multiple independent exchanges in an independent data center model.
- The Commission's equal access proposal fails to demonstrate an adequate understanding of the complexity of the trading ecosystem that can be found within an independent data center / multi-exchange model.

LEGEND AND GLOSSARY



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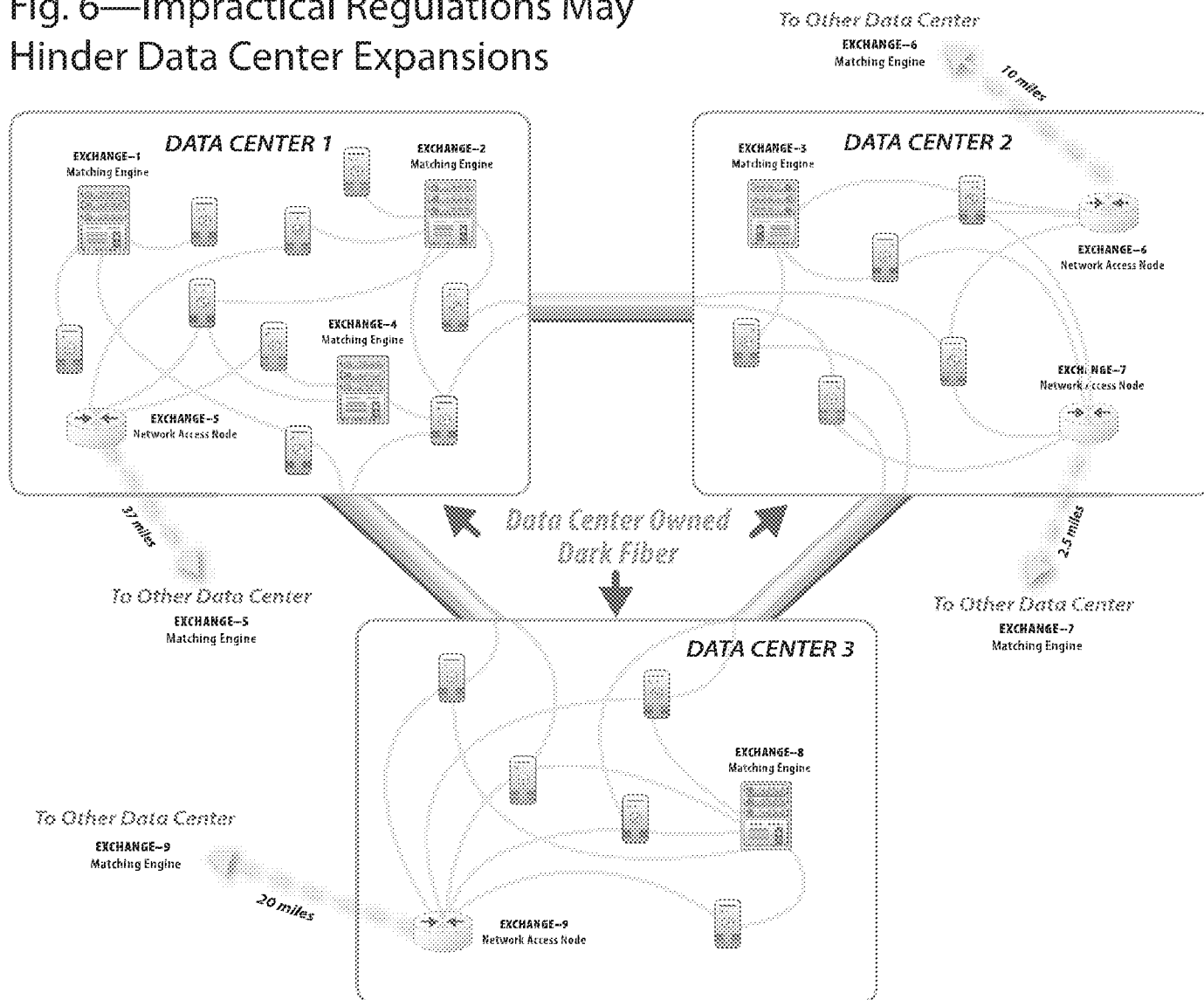


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Fig. 6—Impractical Regulations May Hinder Data Center Expansions



- As independent data center operator need to provide more resources to independent exchanges and qualified market participants, they will typically interconnect new building to create a data center campus.
- Distance to the exchange’s matching engine can vary as the number of buildings in a campus expand or increase.
- Exchanges may outgrow their existing data center and may need to relocate their matching engine to the newest data center built on a campus. The campus environment lowers the disruptive nature of a move for the qualified market participants.
- Requiring latency measurement to the matching engine via an access node should be the responsibility of the exchange to their qualified market participants.
- Qualified market participants and exchanges may choose higher latency copper-based network cabling that costs less than fiber optic cabling.
- CFTC’s proposed regulations that focus on cable lengths or latency measurement are applicable in a exchange owned captive data center, but are not applicable in a multi-exchange / multi-data center campus.
- Campuses allow for an exchange to come into the newest building and still provide low cost access to an existing trading ecosystem. For smaller or upstart exchanges, this helps them to compete with dominant exchanges that have the capital and market share to build their own captive data centers.
- Metro campuses benefit qualified market participants by adding value to the number of exchanges they can access while also benefiting the exchanges by allowing more qualified market participants low- cost access within the same data center campus.

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