

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-2001-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

[FR Doc. 01-27128 Filed 10-26-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44962; File No. SR-NYSE-2001-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Establishing the Fees for NYSE OpenBook™

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder² notice is hereby given that on October 15, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to establish a set of fees in its NYSE OpenBook service, a new service in which subscribers may view limit orders contained in the NYSE limit order book.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE OpenBook is a compilation of limit order data that the Exchange will provide to market data vendors, broker-dealers, private network providers, and other entities through a data feed. By enhancing the quality of the Exchange's market data, the Exchange believes that NYSE OpenBook would preserve and increase the benefits that the Exchange offers to its constituents. At the same time, the Exchange believes that the innovation of NYSE OpenBook serves two of the public policy goals of enhancing market transparency and fostering competition among orders and markets.

The Exchange represents that for every limit price, NYSE OpenBook will include the aggregate order volume. The Exchange will make the NYSE OpenBook data feed available through the Exchange's Common Access Point ("CAP") network. Initially, the Exchange will update NYSE OpenBook every ten seconds.

The Exchange is proposing two fees. First, the Exchange proposes to collect a fee equal to \$5,000 per month from each entity that elects to receive the NYSE OpenBook data feed. Second, the Exchange proposes to collect an end-user fee of \$50.00³ per month for each terminal through which the end user is able to display the NYSE OpenBook.

The Exchange believes that NYSE OpenBook responds to the demand of trading desks of broker-dealers and institutional investors for depth-of-market data, a demand that results from decimalization's six-fold increase in the number of price points. Thus, initially, the Exchange anticipates that these trading desks will be the primary users

of NYSE OpenBook. As the Exchange gains experience with NYSE OpenBook, the Exchange notes that it may design a data product that is more suitable for use by registered representatives. Eventually, if a demand develops, the Exchange would consider designing a limit order data product suited for the retail, nonprofessional customer.

The Exchange represents that it will require each NYSE OpenBook data feed recipient to enter into the existing form of "vendor" agreement. That agreement will authorize the data feed recipient to provide NYSE OpenBook display services to its customers or to distribute the data internally. In addition, the Exchange represents that it will require each end-user that receives NYSE OpenBook displays from a vendor or broker-dealer to execute the existing NYSE "subscriber" agreement for that purpose.

The Exchange, acting for the Consolidated Tape Association ("CTA") and Consolidated Quotation ("CQ") Plan Participants, currently uses the vendor and subscriber agreements to make available equity quotes and prices. In addition, the Exchange, acting on its own behalf, uses the vendor and subscriber agreements to make available bond quotes and prices. Since the agreements are generic, the Exchange believes that the agreements would accommodate NYSE OpenBook. When the CTA and CQ Plan Participants adopted the current vendor forms of agreement, the Commission published the forms for public comment and approved them.⁴

The Exchange intends to supplement the vendor and subscriber agreements with additional terms that are unique to NYSE OpenBook. The first additional term to the vendor and subscriber agreements that the Exchange would provide requires a data-feed recipient that disseminates NYSE OpenBook outside of its organization may not integrate the limit orders of other markets or trading systems into the NYSE limit orders (*i.e.*, the data-feed recipient must display the NYSE's compilation in a separate "window"⁵ marked "NYSE OpenBook™"). The Exchange notes that the window requirement is designed to maintain the

³ The Exchange notes that although no other market participant currently offers a limit order data compilation, a few markets offer services that provide a point of reference. According to the Exchange, the NASDAQ Stock Market charges \$50 per terminal for its Nasdaq Level II service, which provides the best bid and offer from all market makers and ECNs (although it does not otherwise provide depth-of-book or depth-of-market information). The Exchange also believes that the London Stock Exchange charges \$144-\$219 per terminal for the price and size of limit orders in stocks that are included in the FTSE 250 index. Further, the Exchange believes that the Toronto Stock Exchange charges \$30 per terminal for its order books.

⁴ See Securities Exchange Act Rel Nos. 22851 (January 31, 1986), 51 FR 5135 (February 11, 1986); 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990).

⁵ The Exchange notes that it is referring to a "window" for conceptual clarity. The requirement does not literally require a separate window, only separate displays. In other words, a vendor could format multiple displays in a single window.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

integrity of the NYSE's data compilation so that it is uniquely identified to the NYSE. A vendor could place other markets' limit order displays on the same page as the NYSE OpenBook window.

Further, the Exchange represents that the window requirement applies solely to vendors and not to trading desks that may display NYSE OpenBook for its own use. Because of the window requirement's limited reach, the Exchange notes that mere receipt of the data feed does not in itself convert a broker-dealer into a vendor. According to the Exchange, if a broker-dealer redistributes data to its customers, the broker-dealer would be subject to the window requirement like any other vendor. The Exchange believes that the dichotomy follows conventional licensing distinctions that treat vending and rebroadcasting differently from internal consumption. According to the Exchange, these distinctions are based in part on the practical difficulties inherent in policing internal consumption.

In addition, the Exchange believes that the dichotomy tracks current practices among market data vendors. According to the Exchange, vendors typically control the formats of their display services, but do not control the formats of their data feed services. The Exchange believes that this vendor practice follows a common business stratification approach of providing branded products to one market segment, and licensing customized offerings to another market segment.

The second additional term to the vendor and subscriber agreements that the Exchange would provide initially precludes data-feed customers from retransmitting the NYSE OpenBook data feed. The Exchange believes that this is a prudent safeguard in introducing the new product into the marketplace, particularly since NYSE OpenBook may be the subject of several releases in its first year. Furthermore, the Exchange notes that precluding retransmission of the NYSE OpenBook data feed reflects the Exchange's negative experience with retransmission of the CTA and CQ high speed lines. In recent years, some new entrants into the data-feed business have failed to adopt the administrative controls necessary to assure that their data-feed customers are entitled to receive indirect access to the CTA and CQ high speed lines. The Exchange represents that once the NYSE and the marketplace gain experience with the product, the Exchange will permit retransmission of the NYSE OpenBook data feed.

2. Statutory Basis

The Exchange believes that the basis under the act for the proposed rule change are the requirements under section 6(b)(4) of the Act,⁶ which provides that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities; and the requirements under section 6(b)(5) of the Act,⁷ which provides, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

A. Description of Proposed Restrictions on NYSE OpenBook

As described above, the NYSE proposes to provide a new service that will permit subscribers to view limit orders contained in the NYSE limit order book. The NYSE envisions two main categories of subscribers to this information: (1) broker-dealers and institutions; and (2) traditional market data vendors that disseminate information to market participants,

including broker-dealers, institutions, and other customers. The NYSE's proposed restrictions on re-dissemination of OpenBook data would appear to affect these two types of subscribers differently. While a broker-dealer or institution would be prohibited from enhancing, integrating, or consolidating the OpenBook data with other markets' data for re-dissemination outside of the firm, it could enhance, integrate, or consolidate OpenBook data for its internal use, including distribution to specific trading desks and branch offices within the firm. In this way, a broker-dealer or institution would have the flexibility to fine-tune its OpenBook data feed in a manner that would maximize its usefulness for its trading operations. On the other hand, vendors would be unable to disseminate the data to their customers in a form other than the form prescribed by the NYSE (*i.e.*, they must display the information in a separate window marked NYSE Open Book). Moreover, the Exchange represents that all recipients of the data-feed, including broker-dealers, vendors, institutions, and others, would initially be precluded from retransmitting the OpenBook data-feed in any form. The NYSE represents that "this is a prudent safeguard in introducing the new product into the marketplace, particularly since NYSE OpenBook may be the subject of several releases in its first year. Furthermore, the Exchange notes that precluding retransmission of the NYSE OpenBook data feed reflects the Exchange's negative experience with retransmission of the CTA and CQ high speed lines."

The Commission recognizes that the NYSE's OpenBook proposal would provide market participants with potentially valuable information about the limit orders on specialists' books. This service may be particularly useful in the current decimal pricing environment by providing more information concerning buy or sell interest at various price levels outside of the current inside quotations posted by the Exchange. Nevertheless, the NYSE's proposed restrictions on OpenBook data may potentially raise issues concerning unfair discrimination against different types of subscribers. Moreover, the NYSE's proposed restrictions on consolidating OpenBook information with limit order information available from other market centers may raise questions concerning the fairness and usefulness of the form and content of such information.

B. Statutory Standards

Section 11A generally sets forth the standards under which an SRO may

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

distribute *information with respect to* quotations, including limit orders.⁸

1. Section 11A(c)(1) (D) and (C)

Section 11A(c)(1)(D) of the Act⁹ requires, among other things, that exchange members, brokers, dealers, and securities information processors be able to obtain information with respect to quotations for and transactions in securities on terms that are not unreasonably discriminatory. The Commission requests comment on whether the NYSE's proposal is consistent with this provision. Commenters are requested to address whether the restrictions on vendor re-dissemination of the data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data, are unfairly discriminatory. Commenters are also asked to identify any other aspect of the proposal that may be unfairly discriminatory.

The Commission also requests comment on whether the proposal is consistent with the requirements of section 11A(c)(1)(C) of the Act,¹⁰ which requires among other things, that all securities information processors be able to obtain information with respect to quotations and transactions for purposes of distribution and publication on fair and reasonable terms. Specifically, are the contract terms that restrict the use and redissemination of the OpenBook fair and reasonable?

⁸In 1975, Congress gave the Commission authority under section 11A to regulate information with respect to quotations, including limit orders. See S. Rep. 94-75 94th Cong., 1st Sess. 93 at 8 (1975) (stating in relevant part, "[t]here are two paramount objectives in the development of a national market system. * * * And second, the centralization of *all* buying and selling interest so that each investor will have the opportunity for the best possible execution of his order regardless of where in the system it originates.") (Emphasis added); *Id.* at 9 (stating in relevant part, "[t]he regulation of securities communication systems would be accomplished under S. 249 by adding a new section 11A to the Exchange Act. This section is intended to bring under the SEC's direct jurisdiction all organizations engaged in the business of collecting, processing, or publishing information relating to quotations for, indications of interest to purchase and sell, and transactions in securities.") In 1996, the Commission adopted the customer limit order display rule to further the principles of a national market system. See Securities Exchange Act Release No. 37619A (August 29, 1996), 61 FR 48290, 48297 (September 12, 1996) (noting that "[t]he Commission has consistently recognized since 1975 that, in order to satisfy this Congressional vision, multiple-market display of limit orders was an important component for qualified securities.")

⁹ 15 U.S.C. 78k-1(c)(D).

¹⁰ 15 U.S.C. 78k-1(c)(1)(C).

2. Section 11A(c)(1)(B)

Section 11A(c)(1)(B) of the Act¹¹ requires, among other things, that a SRO distribute information with respect to quotations in such a manner as to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities, and the fairness and usefulness of the form and content of such information. In this regard, the Commission requests commenters' views on whether the form and content of the OpenBook data are useful and fair in light of the restrictions on the form of display (*i.e.*, the Exchange requirement that a subscriber that redisseminates the data must display it in a separate window marked NYSE Open Book).

3. Other Issues

Finally, the Commission requests comment on the proposal's potential impact on competition. Specifically, the Commission requests comment on whether the proposal imposes any burden on competition that is not necessary or appropriate.¹² In this regard, the Commission requests commenters' views on whether the prohibition on redisseminating OpenBook in an enhanced, integrated, or consolidated form prevents vendors from competing with the NYSE.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2001-42 and should be submitted by November 19, 2001.

¹¹ 15 U.S.C. 78k-1(c)(1)(B).

¹² See, *e.g.*, sections 6(b)(8) and (5) of the Act. 15 U.S.C. 78f(b)(8) and (5).

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-27131 Filed 10-26-01; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting location.

DATES: November 9, 2001, 10 a.m.-3:30 p.m.

ADDRESSES: Park Hyatt Ballroom, Park Hyatt Washington, 24th at M Street NW., Washington, DC 20037, (202) 789-1234.

SUPPLEMENTARY INFORMATION: The October 23, 2001 **Federal Register** notice (Volume 66, Number 205, Pages 53650-53651) announcing the November 9 meeting of the President's Commission to Strengthen Social Security did not include a meeting location. The purpose of this announcement is to provide the meeting location.

The Commission will meet commencing Friday, November 9, at 10 a.m. and ending at 3:30 p.m., with a break for lunch between 1 p.m. and 2 p.m. The Commission will be deliberating on Social Security reform options, including how to administer personal accounts.

Dated: October 23, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01-27224 Filed 10-26-01; 8:45 am]

BILLING CODE 4191-02-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Note.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office

¹³ 17 CFR 200.30-3(a)(12).