

market participants of alternatives to purchasing NYSE's data.

Table 1 below provides a recent snapshot of the state of competition in

the U.S. equity markets in the month of January 2009;²⁰

TABLE 1—REPORTED SHARE VOLUME IN U.S.-LISTED EQUITIES DURING JANUARY 2009 (%)

Trading venue	All stocks	NYSE-listed	NASDAQ-listed
NASDAQ	27.1	20.5	39.9
All Non-Exchange	26.7	26.2	31.0
NYSE Arca	17.9	15.7	15.8
NYSE	14.8	26.2	0.0
BATS	10.7	9.0	10.8
International Stock Exchange	1.3	1.4	1.4
National Stock Exchange	0.6	0.7	0.7
Chicago Stock Exchange	0.4	0.4	0.3
CBOE Stock Exchange	0.2	0.0	0.1
NYSE Alternext	0.1	0.0	0.0
NASDAQ OMX BX	0.0	0.0	0.0

The market share percentages in Table 1 strongly indicate that NYSE must compete vigorously for order flow to maintain its share of trading volume. The need to attract order flow imposes significant pressure on NYSE to act reasonably in setting its fees for NYSE market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom NYSE must attract order flow. These market participants particularly include the large broker-dealer firms that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one trading venue to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. Moreover, distributing data widely among investors, and thereby promoting familiarity with the exchange and its services, is an important exchange strategy for attracting order flow.²¹

In addition to the need to attract order flow, the availability of alternatives to NYSE Trades significantly affect the terms on which NYSE can distribute this market data.²² In setting the fees for its NYSE Trades, the Exchange must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data.²³ Of course, the most basic source of information generally

available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.²⁴ In this respect, the core data feeds that include an exchange's own transaction information are a significant alternative to the exchange's market data product.²⁵

The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data, as well as the core data feed, are all sources of competition in non-core data products. As Table 1 illustrates, share volume in U.S.-listed equities is widely dispersed among trading venues, and these venues are able to offer competitive data products as alternatives to NYSE Trades. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis. No comments were submitted on this proposal, and the Commission notes

that the proposal does not unreasonably discriminate among types of users.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NYSE-2009-04), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-6722 Filed 3-25-09; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11690 and # 11691]

Texas Disaster # TX-00334

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of disaster for the State of Texas dated 03/10/2009.

Incident: Bastrop County Wildland Fire.

Incident Period: 02/28/2009 through 03/13/2009.

Effective Date: 03/17/2009.

Physical Loan Application Deadline Date: 5/11/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/10/2009.

²⁰ Source: ArcaVision (available at www.arcavision.com).

²¹ See NYSE Arca Order at 74784 nn. 218–219 and accompanying text (noting exchange strategy of offering data for free as a means to gain visibility in the market place).

²² See Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed. 1998) (discussing the theory of monopolies and pricing). See also U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997)

(explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. See, e.g., *FTC v. Whole Foods Market, Inc.*, 502 F. Supp. 2d 1 (D.D.C. 2007); *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. See, e.g., *Leegin Creative Leather Products v. PSKS, Inc.*, 127

S. Ct. 2705 (2007); *Atlanta Richfield Co. v. United States Petroleum Co.*, 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *State Oil Co. v. Khan*, 522 U.S. 3 (1997); *Northern Pacific Railway Co. v. U.S.*, 356 U.S. 1 (1958).

²³ See NYSE Arca Order at 74783.

²⁴ *Id.*

²⁵ *Id.*

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30–3(a)(12).

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration in the State of Texas, dated 03/10/2009, is hereby amended to establish the incident period for this disaster as beginning 02/28/2009 and continuing through 03/13/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 18, 2009.

Darryl K. Hairston,
Acting Administrator.

[FR Doc. E9-6742 Filed 3-25-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Meeting Notice

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

DATES: Tuesday, April 21, 2009, from 9 a.m. to 5 p.m. and Wednesday, April 22, 2009, from 9 a.m. to 5 p.m., Eastern Standard Time.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration.

The purpose of the meeting is scheduled as a full committee meeting. The agenda will include: The purpose for this meeting is to study, research, and recommend Veterans Business Development topics for the SBA's Administrator, the Congress, and to the President.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Simms, Program Liaison, by February 2, 2009, by fax or e-mail in order to be placed on the agenda. Cheryl Simms, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, Telephone number: (202) 619-1697, Fax number: 202-481-6085, e-mail address: cheryl.simms@sba.gov.

Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Program Liaison at (202) 619-1697; e-mail address: cheryl.simms@sba.gov, SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at <http://www.sba.gov/vets>.

Dated: March 11, 2009.

Bridget E. Bean,

Acting SBA Committee Management Officer.

[FR Doc. E9-6744 Filed 3-25-09; 8:45 am]

BILLING CODE

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of periodic review of approved class waivers from the Nonmanufacturer Rule for products in effect as of March 17, 2009.

SUMMARY: The U.S. Small Business Administration (SBA) is conducting a periodic review of approved class waivers from the Nonmanufacturer Rule for products in effect as of March 17, 2009. The purpose of this notice is to determine if there are any small business manufacturers or processors for the products listed on the list of

approved class waivers. The basis for a waiver is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified small businesses dealers to supply the products of any manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses or participants in SBA's 8(a) Business Development Program.

DATES: Comments and source information must be submitted within April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at (202) 481-1788; or my e-mail at Edith.Butler@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. SBA's regulations provided the same for procurements set aside for service-disabled veteran-owned small business concerns 13 CFR 125.15. This requirement is commonly referred to as the Nonmanufacturer Rule. See 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 1202(c). The SBA defines "class of products" based on the Office of Management and Budget's North American Industry Classification System (NAICS), and product service codes.

The following are products listed on SBA's list of Approved Class Waivers in Effect as of March 17, 2009.