

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55354; File No. SR-NYSE-2007-04)

February 26, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Approval of Fee for NYSE Real-Time Trade Prices

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE. 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 Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish as a one-year pilot test NYSE Real-Time Trade Prices, a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange (“NYSE Trade Prices”) and to establish a flat monthly fee for that service.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

- i. The Service. The Exchange proposes to conduct a one-year pilot program that will allow the Exchange to test the viability of NYSE Real-Time Trade Prices. The Exchange intends for the NYSE Real-Time Trade Prices service to accomplish three goals:
- a. to provide a low-cost service that will make real-time prices widely available to many millions of casual investors;
 - b. to provide vendors with a real-time substitute for delayed prices; and
 - c. to relieve vendors of all administrative burdens.

During the one-year pilot program, the NYSE Real-Time Trade Prices service would allow internet service providers, traditional market data vendors, and others (“NYSE-Only Vendors”) to make available NYSE Trade Prices on a real-time basis.³ The NYSE Real-Time Trade Prices information would include last sale prices for all securities that are traded on the Exchange. It would include only prices. It would not include the size of each trade and would not include bid/asked quotations.

As with most of its market data products, the Exchange is proposing to conduct the one-year pilot program for NYSE Real-Time Trade Prices to respond to the desires of its constituents. In this case, the product responds to the requirements for distribution of real-time last sale prices over the internet for reference purposes, rather than as a basis for making trading decisions. The Exchange contemplates that internet service providers with a substantial

³ The Exchange notes that it will make the NYSE Trade Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

customer base and traditional vendors with large numbers of less active investors are potential subscribers to NYSE Real-Time Trade Prices.

Many internet service providers and vendors distribute data to large numbers of casual market data consumers, who access the data in order to “get a feel” for the market in a security or to price the value of a portfolio, rather than to make investment decisions. The Exchange has designed the NYSE Real-Time Trade Prices service to appeal to that community, significant segments of which have historically relied upon delayed last sale prices. That is, the Exchange believes that NYSE Real-Time Trade Prices will replace delayed last sale prices for many casual investors.

During the one-year pilot program, the Exchange will not permit NYSE-Only Vendors to provide NYSE Trade Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires.

During our discussions with potential vendors, vendors requested NYSE real-time, last sale prices for widespread internet distribution, but wanted to eliminate the administrative burdens associated with the current distribution of real-time CTA prices. In addition, because these vendor services do not support trading or order routing functionality, the vendors do not require, nor do they wish to pay for, the full spectrum of consolidated CTA information. At the same time, they recognize the quality and branding value of an NYSE print. In response, the NYSE Trade Price pilot program features a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

The Commission and the industry have long recognized CTA’s success in making market data available on an affordable and widespread basis to a large number of investors. NYSE’s

proposed pilot program will test out a potential supplement to CTA's success, as the pilot program will make NYSE Trade Prices widely available and without charge to an even larger universe of investors.

ii. The Fees. For the duration of the one-year pilot program, the Exchange proposes to establish a monthly flat fee that will entitle an NYSE-Only Vendor to receive access to the NYSE Real-Time Trade Prices datafeed. The NYSE-Only Vendor may use that access to provide unlimited NYSE Trade Prices to an unlimited number of the NYSE-Only Vendor's subscribers and customers. It may also syndicate the service to an unlimited number of other website proprietors (as described below). The Exchange will not impose any device or end-user fee for the NYSE-Only Vendors' distribution of NYSE Trade Prices.

The Exchange proposes to set the flat fee at \$100,000 per month. The NYSE-Only Vendor would agree to identify the NYSE trade price by placing the text "NYSE Data" in close proximity to the display of each NYSE Trade Price or series of NYSE Trade Prices.

The flat fee enables the NYSE-Only Vendor to make NYSE Trade Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The flat fee enables internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution.

In setting the level of the NYSE Real-Time Trade Prices pilot program fees, the Exchange took into consideration several factors, including:

- a. consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed fees;
- b. the contribution of market data revenues that the Exchange's independent Board of Directors believes is appropriate for entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed fees;
- c. the contribution that revenues accruing from the proposed fees will make to meeting the overall costs of the Exchange's operations;
- d. projected losses to the Exchange's other sources of market data revenues (e.g., from its share of revenues derived from Network A nonprofessional subscriber fees), which losses are likely to result from the ability of NYSE-Only Vendors to distribute unlimited quantities of NYSE Trade Prices to an unlimited number of investors at no cost to the investors;
- e. the savings in administrative and reporting costs that the NYSE Real-Time Trade Prices service will provide to NYSE-Only Vendors; and
- f. the fact that the proposed fees provide an alternative to existing Network A fees under the CTA Plan, an alternative that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

In short, the Exchange believes that the proposed NYSE Real-Time Trade Prices pilot program fees would reflect an equitable allocation of its overall costs to users of its facilities.

iii. Contracts. After consultation with potential NYSE-Only Vendors, the Exchange has determined to allow NYSE-Only Vendors to provide NYSE Real-Time Trade Prices to their subscribers and customers without requiring the end-users to enter into contracts for the benefit

of the Exchange. This pilot program marks the first real-time interrogation service for which the Exchange has not required end-users to enter into agreements.

Instead, the Exchange will require NYSE-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE-Only Vendors to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Network A Vendor Form"). The Network A Vendor Form will authorize the NYSE-Only Vendor to provide the NYSE Real-Time Trade Prices service to its subscribers and customers.

The Network A Participants drafted the Network A Vendor Form as a one-size-fits-all form to capture most categories of market data dissemination. It is sufficiently generic to accommodate NYSE Real-Time Trade Prices. The Commission has approved the Network A Vendor Form.⁴

The Exchange will supplement the Network A Vendor Form with an Exhibit C that will provide above-described terms and conditions that are unique to the NYSE Real-Time Trade Prices service. The supplemental terms will govern such things as the restriction against providing the service in the context of a trading or order-routing service, the replacement of end-user agreements with a hyperlink to a notice, the substance of the notice, the "NYSE Data" labeling requirement and the NYSE-Only Vendor's obligation to impose the below-described

⁴ See Securities Exchange Act Release Nos. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990), and 49185 (February 4, 2004), 69 FR 6704 (February 11, 2004).

Syndication Requirements on other website proprietors. In addition, Exhibit C will specify that the NYSE-Only Vendor's authorization to provide the service will terminate at the expiration date of the pilot program unless the Exchange submits a proposed rule change to extend the program or to make it permanent and the Commission approves that proposed rule change. Finally, because of the experimental nature of the program, Exhibit C will require NYSE-Only Vendors to share with the Exchange any research they may conduct regarding the pilot program or the results of their experience with the program and to consult with the Exchange regarding their views of NYSE Real-Time Trade Prices.

iv. Syndication. In addition to allowing an NYSE-Only Vendor to make NYSE Trade Prices available on its website, the pilot program will also allow NYSE-Only Vendors to syndicate the service by arranging with other website proprietors to link any such other proprietor's website to the NYSE-Only Vendor's NYSE Trade Prices service. NYSE will allow NYSE-Only Vendors to syndicate their NYSE Trade Price services in this manner at no additional charge to the NYSE-Only Vendor or to the other website proprietors, subject to the following "Syndication Requirements":

- a. Each other website proprietor must provide the same readily visible hyperlink that the NYSE-Only Vendor must provide on its website: the hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data.
- b. Each other website proprietor must identify the NYSE trade price by placing the text "NYSE Data" in close proximity to the display of each NYSE Trade Price or series of NYSE Trade Prices, just as NYSE proposes to require NYSE-Only Vendors to do.

- c. Each other website proprietor must identify the NYSE-Only Vendor as the source of the NYSE Trade Price data in close proximity to the display of each NYSE Trade Price or series of NYSE Trade Prices.
- d. Each other website proprietor must agree not to provide NYSE Trade Prices in a context in which a trading or order-routing decision can be implemented unless the other website proprietor also provides consolidated displays of Network A last sale prices available in an equivalent manner.
- v. Duration of Pilot Program. The innovative nature of the pricing structure for NYSE Real-Time Trade Prices and the absence of administrative requirements pose potential regulatory and financial risks for both the Exchange and its customers.

On the regulatory side, in Rule 603(c)(1), the Commission specifies that unconsolidated data should not support trading and order routing functionality. The Exchange agrees with the Commission. It would be inappropriate for market professionals and investors to base trading and order-routing decisions and investment advice on one market's last sale prices, which last sale prices exclude national best bids and offers, sizes and other data elements. The Exchange did not design the NYSE Real-Time Trade Prices service for the purposes of trading and order-routing decisions and investment advice, yet the Exchange is concerned about its ability to monitor and prevent those unintended uses.

On the financial side, the Exchange designed NYSE Real-Time Trade Prices as a low-cost service that will make real-time prices widely available to many millions of casual investors, will allow vendors to replace delayed prices services with real-time services, and will relieve vendors of all administrative burdens. However, the Exchange is concerned about the potential

financial risk associated with market participants' use of NYSE Real-Time Trade Prices for the unintended purposes described above.

Therefore, the Exchange proposes to test the NYSE Real-Time Trade Prices service for one year. The Exchange proposes to commence the pilot program at the end of the month in which the Commission approves the proposed rule change and to end the program one year from that date. During that year, the Exchange will closely monitor the use of the NYSE Real-Time Trade Prices service, including for any unintended uses of the product. Among other functions, the Exchange will consult with NYSE-Only vendors, will monitor the impact of the program on other market data services, will examine any abuses arising from the absence of contractual relationships with end-users and will assess whether the flat fee is set at the appropriate level and whether a different pricing metric would be preferable.

Prior to the end of the one-year period, the Exchange will assess its experience with the product. It either will submit a proposed rule change that seeks to extend or modify the pilot program or to make it permanent, or will announce publicly that it does not seek to extend the pilot program beyond the one-year termination date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange participants, issuers and other persons using its facilities.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

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

In proposing and adopting Regulation NMS, the Commission rescinded the prior prohibition on SROs from disseminating their trade reports independently,⁷ subjecting that distribution to the “fair and reasonable” and “not unreasonably discriminatory” standards that have historically governed the distribution of consolidated data.⁸ The Commission stated, “Given that . . . SROs will continue to transmit trades to the Networks pursuant to the Plans . . . , the Commission believe [SIC] that SROs and their members also should be free to distribute their trades independently.”⁹

The Commission rescinded the prohibition in recognition of the fact that competition in the realm of SRO trade-report distribution would produce market forces and innovation that would benefit the investing public. By means of the pilot program, the Exchange would allow internet service providers and traditional vendors to test the viability of an alternative market data fee structure that does not exist today and to do so without the burden of the reporting, contracting and other administrative obligations associated with most other market data services. If they believe that the proposed fees would enable them to make market data available in the most cost-effective manner for them and their subscribers and customers, they will embrace the pilot program’s proposed fees. If not, they will continue to make consolidated last sale prices available pursuant to the Network A fees currently in effect under the CTA Plan.

⁷ See Rule 601 of Regulation NMS.

⁸ See Rule 603(a) of Regulation NMS.

⁹ See Footnote 638 to Regulation NMS (Securities Exchange Act Release No. 51808; File No. S7-10-04 (June 9, 2005), 70 FR 37495 (June 29, 2005)).

Given that the pilot program proposes to provide an alternative to existing fees and does not alter or rescind any existing fees, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in 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 discussed the proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Real-Time Trade Prices service by becoming NYSE-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Within 35 days of the date of 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 NYSE 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

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2007-04 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSE-2007-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).