

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57861; File No. SR-NYSE-2008-42)

May 23, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Enhance its NYSE OpenBook Product Offerings

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 May 16, 2008, 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 enhance its NYSE OpenBook[®] product offerings to offer additional separate data feeds containing NYSE quotations and order imbalance information. The text of the proposed rule change is available at www.nyse.com, the Exchange, and the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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

In its filing with the Commission, NYSE 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. NYSE 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 responds to the desire of some market participants for depth-of-market data. It is a compilation of limit order data that the Exchange provides to market data vendors, broker-dealers, private network providers and other entities (collectively, "Vendors") through a data feed. For every limit price, NYSE OpenBook includes the aggregate order volume.

NYSE OpenBook is a packaged suite of data feed products. In addition to the current NYSE OpenBook data feed ("NYSE OpenBook Realtime"), for no additional charge, the Exchange makes available to NYSE OpenBook recipients a separate data feed containing NYSE quotations ("NYSE BestQuote").¹ NYSE BestQuote allows customers to see additional market interest that is not displayed in the NYSE limit order book and that, therefore, is not available in NYSE OpenBook.

This proposed rule change:

¹ NYSE added NYSE BestQuote to the NYSE OpenBook Realtime package in October 2006. See Securities Exchange Act Release No. 54594 (October 12, 2006), 71 FR 61819 (October 19, 2006) (SR-NYSE-2006-81).

- i. responds to a demand for a newly enhanced version of the NYSE OpenBook product to be called NYSE OpenBook Ultra, which provides order-level detail; and
- ii. adds to NYSE OpenBook a new category of information: information regarding order imbalances prior to the market opening and closing auctions (“Order Imbalance Information”).

1) NYSE OpenBook Ultra. The Exchange makes NYSE OpenBook Realtime available on a snapshot basis, with updates distributed in real-time at intervals of one second. Pursuant to this proposed rule change, the Exchange proposes to make available an enhanced NYSE OpenBook service that would update NYSE OpenBook information upon receipt of each displayed limit order (“NYSE OpenBook Ultra”). NYSE OpenBook Ultra responds to the desire of some market participants for real-time depth-of-book data on an order-by-order basis. In addition, NYSE OpenBook Ultra will improve upon NYSE OpenBook Realtime by adding information regarding the changes in limit order interest, by providing more precise timestamp resolution (microseconds) and by providing an easy-to-read format that is optimized for speed and recoverability.

The Exchange will continue to support NYSE OpenBook Realtime and will offer NYSE OpenBook Ultra as an optional alternative without additional or different fees or terms. However, the Exchange anticipates that it will reassess its pricing for NYSE OpenBook, and may restructure or modify the charges applicable to the NYSE OpenBook Realtime and NYSE OpenBook Ultra packages. The Exchange will submit any proposed new or modified fees to the Commission as proposed rule changes and will not impose any new or modified charges on data feed recipients and end-users prior to Commission approval.

2) Order Imbalance Information. Order Imbalance Information is a data feed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. These orders are subject to execution at the market's opening or closing price, as the case may be, and represent issues that are likely to be of particular trading interest at the opening or closing.

The Exchange plans to distribute information about these imbalances in real-time at specified intervals prior to the opening and closing auctions. Initially, the Exchange proposes to make order imbalance information available at the following intervals:

For opening order imbalances:

- Every five minutes between 8:30 a.m. Eastern Time ("ET") and 9:00 a.m. ET.
- Every one minute between 9:00 a.m. ET and 9:20 a.m. ET.
- Every 15 seconds between 9:20 a.m. ET and the opening (or 9:35 a.m. ET if the opening is delayed).

For closing order imbalances:

- Every fifteen seconds between 3:40 p.m. ET and 3:50 p.m. ET.
- Every five seconds between 3:50 p.m. ET and 4:00 p.m. ET.

Order Imbalance Information will also include the imbalance information that the Exchange is required to disseminate under NYSE Rule 123C(5), as well as automated real-time streaming order imbalance information at specified intervals.

The Exchange proposes to make Order Imbalance Information available as part of the NYSE OpenBook package at no additional charge.

3) Fees. Currently, an end-user of NYSE OpenBook pays (or its Vendor pays on its behalf) the monthly per-terminal NYSE OpenBook device fee of \$60. A NYSE OpenBook data feed recipient pays a monthly \$5,000 access fee for NYSE OpenBook, plus the per-terminal fee if the data feed recipient also displays the data.

For the moment, the Exchange proposes to permit data feed recipients and end-users to receive and use NYSE OpenBook Ultra, including Order Imbalance Information and NYSE BestQuote, for no additional charge. That is, the same \$5,000 access fee and \$60 per-terminal fee will apply. This will allow current NYSE OpenBook recipients to sample the proposed enhanced version of NYSE OpenBook for the same fees that they pay today.

4) Contracts. As with OpenBook Realtime, the Exchange proposes to make NYSE OpenBook Ultra (including Order Imbalance Information and NYSE BestQuote) available under the same contracting arrangement that the Commission has approved for the receipt and use of market data under the CTA and CQ Plans. That arrangement contemplates that each data feed recipient enter into the Commission-approved standard form of “Agreement for Receipt and Use of Market Data” that Network A uses for data redistributors and other parties that use the data for purposes other than interrogation.² Exhibit A to each of those agreements would need to be updated to reflect the receipt and use of NYSE OpenBook Ultra data. The arrangement also requires an end-user of the information (other than a data feed recipient) to enter into a Commission-approved Network A professional subscriber or a nonprofessional subscriber agreement, as the case may be.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section

² The Participants in the CTA and CQ Plans first submitted the Consolidated Vendor Form to the Commission for immediate effectiveness in 1990. See Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4-281). The Commission approved a revised version of it in 1996 in conjunction with the participants’ restatement of the CTA and CQ Plans. See Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996) (File No. SR-CTA/CQ-96-1).

6(b)(5)⁵ that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)⁸ permits the Commission

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied the pre-filing notice requirement.

to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act, which would make the rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would immediately allow the Exchange to disseminate this supplemental information prior to the execution of the opening and closing transactions on the NYSE. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2008-42 on the subject line.

⁹ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2008-42. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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 available publicly. All submissions should refer to File Number SR-NYSE-2008-42 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).