

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50040; File No. SR-NYSE-2004-32)

July 20, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to NYSE Liquidity QuoteSM Exhibit C

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 June 24, 2004, the New York Stock Exchange, Inc. (“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 prepared by the Exchange. On July 16, 2004, the NYSE filed an amendment to the proposed rule change.³ The Commission is publishing this notice, as amended, 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 is proposing to include additional display requirements to the existing terms and conditions pursuant to which vendors may distribute to their customers NYSE Liquidity QuoteSM information that the Exchange makes available. The Exchange has set forth the additional requirements in an Exhibit C (the “Liquidity Quote Exhibit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 16, 2004 (“Amendment No. 1”). In Amendment No. 1, the NYSE clarified that the entire proposed Exhibit C represents new text.

C”) to the standard form of “Agreement for the Receipt and Use of Market Data.” The text of the proposed Liquidity Quote Exhibit C appears below in italics.

* * * * *

EXHIBIT C

AGREEMENT FOR RECEIPT AND USE OF MARKET DATA:

ADDITIONAL PROVISIONS

21. NYSE LIQUIDITY QUOTESM

(a) DEFINITIONS

(i) “Liquidity Quote Information” means any depth-market information and other information that NYSE makes available pursuant to the NYSE Liquidity QuoteSM Service, including Liquidity Quote bids and offers, and any modified version of that information and any information derived from that information.

(ii) “Other Bids and Offers” means bids and offers other than Liquidity Quote bids and offers. For example, Other Bids and Offers include the NYSE best bid or offer, another market center’s best bid or offer and a national best bid or offer.

(b) AUTHORIZATION — Exhibit A describes Customer’s receipt of Liquidity Quote Information. Liquidity Quote Information shall constitute “NYSE Market Information” for all purposes of the Agreement and its exhibits. Customer may use Liquidity Quote Information, and may provide displays of Liquidity Quote Information to Subscribers, but may do so:

(i) only as and to the extent described, and in the manner specified, in Exhibit A; and

(ii) only for so long as the Agreement and this Exhibit C are in effect.

Customer's provision of displays of Liquidity Quote Information to Subscribers shall constitute "Subscriber Services" under the Agreement. Each display of Liquidity Quote Information that Customer provides to Subscribers shall indicate that NYSE is the source of the information included in the display.

(c) DISPLAY SERVICES – As an additional Subscriber Service requirement under clause (iii) of Paragraph 5(b) of the Agreement, Customer shall not commence to provide displays of Liquidity Quote Information to a Subscriber unless:

(i) Customer has first presented the Subscriber with such form of notice or agreement as NYSE may specify; and

(ii) if NYSE specifies that the Subscriber must acknowledge its receipt of that notice, or manifest its assent to that agreement, the Subscriber has first complied with that requirement in such manner as NYSE may direct.

(d) LIQUIDITY QUOTE DISPLAY RULES

(i) AGGREGATED DISPLAYS – Insofar as Customer aggregates Liquidity Quote bids and offers with Other Bids and Offers in its displays (an "Aggregated Display"), Customer shall cause the Aggregated Display to indicate the number of shares attributable to the Liquidity Quote bids and offers.

- (ii) MONTAGES – If Customer includes a Liquidity Quote bid or offer in a montage that includes an NYSE best bid or offer (a “Montage”), Customer shall exclude the size of the NYSE best bid or offer from any calculation of cumulative size within the Montage.
- (iii) ATTRIBUTION – Customer shall associate the identifier “NYSE Liquidity Quote” or “NYLQ” with each element or line of Liquidity Quote Information that it includes in an Aggregated Display, Montage or other integrated display.
- (iv) LIQUIDITY QUOTE-ONLY DISPLAYS – Customer may integrate Liquidity Quote Information with other market information as the Agreement, as modified by this Exhibit C, may provide. However, Customer shall also make Liquidity Quote Information available as a product that is separate and apart from information products that include other market centers’ information (a “Non-integrated NYSE Liquidity Quote Product”). Customer may include other NYSE market data in Non-integrated Liquidity Quote Products, subject to compliance with such contract and fee requirements as may apply to that other NYSE market data. Customer shall make its subscribers aware of the availability of the Non-integrated Liquidity Quote Product in the same manner and to the same extent as it makes its subscribers aware of the integrated product.
- (v) SCREEN SHOTS - No later than at the time that Customer commences to provide to others displays of Liquidity Quote

Information, or modifies those displays, Customer shall submit to NYSE for inclusion in Exhibit A sample screen shots that demonstrate each manner of display and each modification.

(e) INTERNAL DISPLAYS - The Liquidity Quote display requirements set forth in Paragraph 21(d) shall not apply insofar as Customer provides displays to its officers, partners and employees or to those of its Customer Affiliates.

ACCEPTED AND AGREED

[NAME OF VENDOR]

By: _____

Name:

Title:

Date:

NEW YORK STOCK EXCHANGE, INC.

acting solely on its own behalf

as Paragraph 12 describes

By: _____

Name:

Title:

Date:

* * * * *

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

On April 2, 2003, the Commission approved NYSE Liquidity Quote, a product that provides investors with “liquidity bids” and “liquidity offers.” The NYSE Liquidity Quote represents the aggregated Exchange trading interest at a specific price interval below the best bid (in the case of a liquidity bid) or at a specific price interval above the best offer (in the case of a liquidity offer).⁴ The specific price interval above or below the best bid and offer, as well as the minimum size of the liquidity bid or offer, is established by the specialist in the subject security. Liquidity bids and offers include orders on the limit order book, trading interest of brokers in the trading crowd, and the specialist’s dealer interest, at prices ranging from the best bid (offer) down to the liquidity bid (up to the liquidity offer).

The Liquidity Quote Contract and Exhibit C

Pursuant to the Commission’s April Order, the Exchange has made NYSE Liquidity Quote information available to vendors and others since June 13, 2003. As of December 31, 2003, the Exchange had entered into agreements with approximately 50 vendors that distribute NYSE Liquidity Quote information displays to approximately 12,000 end-user terminals. In order for a vendor to receive NYSE Liquidity Quote

⁴ See Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR-NYSE-2002-55) (“April Order”).

information from the Exchange for redistribution to its customers, the Exchange requires the vendor to enter into its standard form of “Agreement for Receipt and Use of Market Data.” This form (the “Consolidated Vendor Form”) is the same form that vendors must enter into in order to receive market data under the Consolidated Tape Association “CTA” Plan and the Consolidated Quotation “CQ” Plan. The participants in the CTA and CQ Plans first submitted the Consolidated Vendor Form to the Commission for immediate effectiveness in 1990⁵ and the Commission approved a revised version of it in 1996 in conjunction with the participants’ restatement of the CTA and CQ Plans.⁶

The Exchange designed the Consolidated Vendor Form as a generic, one-size-fits-all form of agreement that consists of a standard set of basic provisions that apply to all data recipients. Accordingly, the Consolidated Vendor Form accommodates a number of different types of market data, a number of different means of receiving access to market data, and a number of different uses of market data. Because it was recognized that the Consolidated Vendor Form could not anticipate every aspect of a vendor’s receipt and use of market data or future advances in technology or new product offerings, Paragraph 19(a) of the Form provides that “Exhibit C, if any, contains additional provisions applicable to any non-standard aspects of Customer’s Receipt and Use of Market Data.” The Liquidity Quote Exhibit C contains certain display requirements that are not standard to the receipt and use of other types of market data under the Consolidated Vendor Form (the “Display Requirements”).

⁵ See Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4-281).

⁶ See Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996) (File No. SR-CTA/CQ-96-1).

The January Order

The Exchange has required vendors to enter into the Liquidity Quote Exhibit C since the June 13, 2003 inception of NYSE Liquidity Quote. However, the Commission issued an order⁷ in January that set aside five of the Display Requirements after determining that those Display Requirements constitute Exchange rules that are required to be filed and approved pursuant to Section 19(b) of the Act.

The Exchange has reviewed both the January Order and its experience with the NYSE Liquidity Quote product. It has determined that some Display Requirements that were essential at the product's commencement in order to familiarize investors with the product are no longer necessary. It has also considered the oral comments of vendors regarding other Display Requirements, has weighed those comments against those Display Requirements' contribution to clarity and the Exchange's attribution needs, and has determined to eliminate them. As a result, the Exchange has determined to submit as the proposed rule change a Liquidity Quote Exhibit C that carries forward only one of the five Display Requirements that the January Order set aside, that requiring indication of the number of shares attributable to NYSE Liquidity Quote data. In addition, in response to oral comments of vendors and the January Order's discussion regarding the Display Requirements that required NYSE's prior approval of screen shots and changes to them, Exhibit C now requires vendors to submit screen shots and changes contemporaneously with their first use. According to the Exchange, this will facilitate the NYSE's monitoring of compliance with the Display Requirements. Prior approval is not required.

⁷ See Securities Exchange Act Release No. 49076 (January 14, 2004), (Admin. Proc. File 3-11129) ("January Order").

Number-of-Shares Requirement

Where a vendor integrates NYSE Liquidity Quote bids and offers with “best bid and offer” data, the quote’s display must indicate the number of shares attributable to NYSE Liquidity Quote data (the “Number-of-Shares Requirement”). A compliant example of such a screen would be as follows:

<u>EXCHANGE OR MARKET MAKER</u>		<u>SIZE</u>	<u>BID</u>
N		8	79.50
B		5	79.49
T		2	79.48
NYLQ 50*	P 2	52	79.47
C		1	79.30

In this example, “N,” “B,” “T,” “P,” and “C” refer to the best bid available on the Exchange, the Boston Stock Exchange, Inc., the Nasdaq Stock Market, Inc., the Pacific Exchange, Inc., and the Chicago Stock Exchange, Inc., respectively, and NYLQ refers to the NYSE Liquidity Quote bid. The left-hand column shows attribution to NYSE Liquidity Quote and the size of the NYSE Liquidity Quote and NYSE best bids. According to the Exchange, if one were to omit that column from the display, the NYSE Liquidity Quote would lose its attribution to NYSE. The Exchange represents that this requirement also alerts investors that a part of the aggregated quote’s size at \$79.47 is attributable to NYSE Liquidity Quote, and therefore:

- (i) that part is a depth quote, not a “best” quote;
 - (ii) the aggregated quote’s size includes the size of the NYSE best bid;
- and
- (iii) other, higher NYSE bids may also be included in its size.

Thus, if the left-hand column were omitted, investors would have no way

of knowing that:

- (i) of the 5,200 shares bid at \$79.47, (i) 5,000 shares represent a liquidity bid, and (ii) 800 of those 5,000 shares can be traded at NYSE's best bid of \$79.50; and
- (ii) other higher-priced bids that are included among the 5,000 Liquidity Quote shares may be available for execution on NYSE.

2. Statutory Basis

The Exchange believes that the proposal to include an additional display requirement to the existing terms and conditions pursuant to which vendors may distribute NYSE Liquidity Quote information is consistent with Section 6(b) of the Act,⁸ in general, and Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in processing information with respect to, and facilitating transactions in securities, 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, as amended, will impose 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received unsolicited written comments from members or other interested parties. The Exchange represents that it has taken into account the matters addressed by the Commission in the proceeding that gave rise to the January Order.

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 Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, as amended, 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, as amended, 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-2004-32 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-32. 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 Section, 450 Fifth Street, NW, Washington, DC 20549-0609. 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-NSYE-2004-32 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

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).