

September 23, 2004

VIA ELECTRONIC MAIL

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: *Notice of Filing of a Proposed Rule Change Establishing Fees for Receiving NYSE OpenBook on a Real-Time Basis, Rel. No. 34-50275; SR-NYSE-2004-43*

Dear Mr. Katz,

Ameritrade, Inc.¹ (“Ameritrade” or “the Firm”) appreciates the opportunity to comment on the New York Stock Exchange, Inc.’s (“NYSE”) proposal to establish fees for providing NYSE OpenBook on a real-time basis. Far from being the typical rule filing, this proposal is intricately tied to the NYSE’s Hybrid Market Proposal (File No. SR-NYSE-2004-05). As such, Ameritrade believes it is imperative that the Securities and Exchange Commission (“Commission”) ensure that the public has an adequate period to understand and comment on this proposal. Ameritrade further believes that the NYSE OpenBook proposal is not in the public interest because it creates another service by which institutional and professional traders will be allowed to use an informational advantage to the detriment of retail investors. Moreover, the fee structure is far too expensive for retail investors and the restrictions on how brokers can use the data are onerous.

The NYSE OpenBook service is a compilation of limit order data provided to market data vendors, broker-dealers, private network providers and other entities through a data feed. For every limit price, the OpenBook includes the aggregate order volume. Currently, the NYSE

¹ Ameritrade Holding Corporation (“Ameritrade Holding”) has a 29-year history of providing financial services to self-directed investors. Ameritrade Holding’s wholly owned subsidiary, Ameritrade, Inc., acts as a self-directed broker serving an investor base comprised of over 3.5 million client accounts. Ameritrade does not solicit orders, make discretionary investments on behalf of our clients, or provide proprietary research or advice regarding securities. Rather, Ameritrade empowers the individual investor by providing them with tools they need to make their own investment decisions. In exchange for a low commission, we accept and deliver the order to buy or sell securities to the appropriate exchange, market maker, electronic communications network or other alternative market for execution. Ameritrade does not trade for its own account or make a market in any security.

updates the NYSE OpenBook every five seconds. The NYSE proposes to make available an enhanced service in real-time. In addition, the NYSE proposes the following fees: (1) \$5000 per month for the right to receive and redistribute the feed; and (2) \$50.00 per month for each terminal to be used by an end user.

Ameritrade fully supports the NYSE's efforts to provide investors with real-time, depth-of-market data. In today's market it is critical that investors have the ability to see not only the national best bid or offer ("NBBO"), but also price and volume away from the inside quote. In fact, real-time market data is essential to price discovery, and acts as the very lifeblood of the securities markets. With this proposal, however, the NYSE continues to discriminate against retail investors by effectively structuring and pricing the service so as to deny them access to this vital information. Although Ameritrade believes its clients would clearly benefit from having access to real-time depth-of-market information for listed securities, thus far NYSE has chosen to structure OpenBook to ensure it essentially is not available to retail investors.

First, the NYSE exerts control over the OpenBook data feed by severely restricting vendors' ability to display the data to investors. Vendors are prohibited from making enhancements to the data or even commingling the OpenBook limit order data with data from other market centers. Institutions and professionals, however, are free to use the data feed as they wish and commingle it with data from other market centers. Ameritrade believes this discrimination is clearly not in the public interest and is in violation of the requirements of the Securities Exchange Act of 1934, which provides that such proposals not unnecessarily discriminate among market participants.

Second, the NYSE fees appear on their face to be unreasonable and without justification. The NYSE does not provide any basis for the \$5000 per month/\$50 per terminal charge. Unlike the listed market, retail investors have been able to view the depth of the market in Nasdaq securities for years. Given that the Nasdaq offers Level II quotes for \$9 per month, the NYSE's proposed charge of \$50 per terminal is clearly unreasonable. If Ameritrade were to offer OpenBook to the same clients that currently subscribe to Level II quotes, it would cost Ameritrade *\$15 million per year in additional fees*. To emphasize the impact we note that Ameritrade pays a *total* of approximately \$17 million per year in market data fees. Either the NYSE costs for providing OpenBook are extremely large, or the fees have no relation to the cost of providing the data. Ameritrade requests that the Commission require the NYSE to support fully its fees by detailing the cost of providing such data.

Beyond the significant structural and cost issues, the NYSE OpenBook proposal raises critical market structure issues. By providing a service that is priced so as to be available only to institutional or professional traders, the NYSE would create a bifurcated market in which retail investors are clearly disadvantaged. In addition, by restricting the ability of vendors to provide a consolidated data stream for listed securities, the NYSE contributes to fragmentation and reduced transparency in the listed market.

Mr. Jonathan G. Katz

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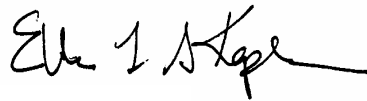
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This proposal also is intricately tied to the NYSE's Hybrid Market proposal and Regulation NMS.² Taken together, NYSE's Hybrid Market and OpenBook proposals are incomplete and appear to be of little benefit to retail investors. As a result, we request that these proposals be considered in total and that the Commission give the public as much time as allowed by statute to comment upon their impact. In addition, Ameritrade requests that the Commission require the NYSE to revise its OpenBook proposal to allow vendors greater latitude to incorporate the data into a real-time, consolidated stream of information. The Firm also requests that the Commission require the NYSE to revise its fee structure so the data can be provided to retail investors at a cost reasonably related to the actual cost of providing the data feed.

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Ameritrade thanks the Commission for considering its comments. Please contact me at 443/539-2125 if you would like to discuss this matter further.

Sincerely,



Ellen L.S. Koplow
Executive Vice President and General Counsel

² See Regulation NMS, SEA Rel. No. 49,325 (March 9, 2004) and SEA Rel. No. 49,749 (May 26, 2004).