Securities Industry Association
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October 22, 2004

Jonathan G. Katz
Secretary
U.S. Securities & Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: SEC File No. SR-NYSE-2004-43; re: Real-Time OpenBook Proposal

Dear Mr. Katz:

The Market Data Subcommittee of the Technology and Regulation Committee of the Securities Industry Association ("SIA") is pleased to offer its comments in response to the above referenced rule proposal. The NYSE has proposed a rule change to convert its OpenBook market data service to real-time and establish a $60.00 per month terminal fee.

SIA supports the NYSE's overall goal of promoting transparency by disseminating more market data. However, SIA believes that this rule filing raises important questions about how such data is to be made available and how it relates to market structure that ought to be considered further by commenters and the SEC.

This rule proposal was filed as an SRO rule change and as such requires the SEC either to approve the filing within 35 days, designate a longer period for comments, or institute disapproval proceedings. SIA believes the Commission should designate a 90-day period for consideration of the rule change, require that the exchange amend its filing to include additional information to allow for informed comments, and then reopen or extend the comment period to allow sufficient time to consider the real-time OpenBook's impact on different market participants and whether any changes in the rule are necessary.

In support of its request for a longer comment period, SIA notes the following concerns with respect to the NYSE filing:

1. The NYSE filing states that "the fee for the real-time NYSE OpenBook service reflects an equitable allocation of its overall costs associated with using its facilities." SIA is concerned that the filing, like most market data fee filings submitted by exchanges, offers no data to support this contention. Whether the $60 per terminal fee bears any relation to costs, or is an equitable allocation, can

only be determined by looking at the expected number of subscribers and the costs that are being allocated. No such information is included in this filing.

As we have commented before, SIA believes that the SEC should play an active oversight role with respect to market data fee proposals. While SIA understands and agrees with the SEC that it should not be engaged in rate-setting, it is nevertheless important for the SEC to use its oversight authority to ensure that exchanges are to some degree accountable to investors for the costs it imposes on them. For example, the SEC could ask NYSE to make public the revenue and cost estimates it uses so the public can fairly assess whether the fee indeed reflects an equitable allocation of costs.

2. The proposal does not include a provision to make real-time OpenBook data available to non-professional investors at a reasonable rate. Exchange Act Section 6(b)(5), among other things, requires that the rules of the exchange be designed to promote a free and open market and a national market system, to protect investors and the public interest, and to prevent unfair discrimination between customers, brokers, and dealers. Like their professional counterparts, non-professional investors must have access to open book data in order to be able to evaluate the quality of the executions they receive. Their assessment of execution quality helps to impose discipline on the markets and ensure best execution. By comparison, the rate structure for Nasdaq's similar product, TotalView, includes a non-professional fee.

3. SIA believes NYSE should have filed its vendor and subscriber agreements as rules for public comment and Commission review and approval. Some of our members have questions about the competitive effects of various contractual provisions governing NYSE distribution of OpenBook data on vendors and their clients. Some members have suggested that the agreements may be anti-competitive because they restrict redistribution and consolidation with other markets' data. In its ruling on the dispute between Bloomberg and NYSE concerning the NYSE's LiquidityQuote product, the Commission concluded that the proposed vendor contract was illegal because the provisions restricting integration and redistribution were never filed as rules for review and approval.

4. SIA believes that exchange initiatives to sell depth-of-book information ought to be considered within the broader context of the Commission's market structure proposals. Depth-of-book information is important to understanding liquidity. How this information is disseminated, who has access to it and on what terms, has significant implications for customer order routing decisions, competitive quoting and the order handling obligations of exchange market makers and specialists. For example, the effectiveness of NYSE's own major market access initiatives, including amendments to Direct+ as part of the "hybrid market"

> proposal, would seem to depend at least in part on how much information market participants have about the market to be accessed.

As long as market information remains the key to competitive and efficient securities markets, it will be necessary for regulators and market participants to carefully consider the impact of exchange plans to sell market data. SIA respectfully requests the SEC to consider a longer comment period for the Real-Time OpenBook proposal in order to allow for such careful consideration. SIA remains committed to working with the various exchanges and the SEC to ensure that our markets remain the most liquid, transparent, and fair in the world.

SIA appreciates the opportunity to provide comments on the NYSE proposal. If you have any questions or require additional information please contact Scott Kursman, Vice President and Associate General Counsel, at 212-608-1500.

Very Truly Yours,

Eliot Wagner
Chair, Technology &
Regulation Committee

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Chair, Market Data
Subcommittee

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