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Via email to www.rule-comments@sec.gov

September 30, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

Re: NYSE OpenBook[®] Exhibit C
File No. SR-NYSE-2005-32

Dear Mr. Katz:

The New York Stock Exchange welcomes this opportunity to respond to the comments of Bloomberg L.P. on the captioned rule change, as set forth in Bloomberg's June 2, 2005, letter to Annette Nazareth ("Bloomberg's June Letter").¹

Background. In its April 2, 2003, order approving Liquidity Quote (the "2003 Order"),² the Commission opined that Liquidity Quote integration restrictions are more troublesome than NYSE OpenBook integration restrictions because OpenBook only contains a display of orders left with the specialist, while Liquidity Quote reflects orders in the book, interest in the crowd and the specialist's own interest at a price and size usually different from the NYSE best bid and offer.³

Nevertheless, the Commission specified in the 2003 Order that, even in the context of the "more troublesome" Liquidity Quote, it would be reasonable and consistent with the Securities and Exchange Act of 1934 (the "1934 Act") for NYSE to require vendors (a) to provide attribution

¹ See letter from Kim Bang, Bloomberg, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated June 2, 2005.

² See Release No. 47614 (April 2, 2003).

³ Id. at p. 18.

next to any integrated quote that includes NYSE data and (b) to make Liquidity Quote available as a separate branded package.⁴

NYSE then submitted a series of Liquidity Quote requirements that it believed to conform to the Commission's guidance⁵ and the Commission approved them, calling them "consistent with the requirements of the [1934] Act and the rules and regulations thereunder applicable to a national securities exchange."⁶

The Current Filing. Because the Exhibit C that NYSE proposes to implement for NYSE OpenBook under the captioned filing would establish a scaled-down version of the display and other requirements that the Commission approved for the Liquidity Quote Exhibit C, Bloomberg's June Letter simply repeats a subset of its arguments⁷ that the Commission rejected in the "more troublesome" Liquidity Quote context. Below, we respond to those comments in the NYSE OpenBook context.

NYSE OpenBook Requirements and the Vendor Display Rule. The filing's minimalist market-identification requirement is consistent with the Commission's vendor display rule for consolidated best bids and offers,⁸ which requires vendors to identify the market and number of shares for each order, just as NYSE proposes for NYSE OpenBook. It does no more than follow the long-standing industry practices of requiring displays to identify an order's source market and applying the market identification requirement only to displays that vendors offer to others outside of their organization (external vendors). The Commission just reaffirmed the continued appropriateness of the vendor display rule's NYSE OpenBook-like market-identification requirement in its promulgation of Regulation NMS.⁹

For reasons that we believe are obvious, practical, and appropriate, the Commission imposes the vendor display rule only on external distributions of market data, not on a company's internal distributions. The vendor display rule allows any broker or investor to distribute to its officers, partners and employees whatever displays of prices and quotes that it sees fit.¹⁰ NYSE proposes to adopt the same principle for NYSE OpenBook: its display requirements do not apply to any broker or investor internal displays of OpenBook orders.¹¹

⁴ Id. at p. 20, footnote 53.

⁵ See Release No. 34-50040; File No. SR-NYSE-2004-32 (July 20, 2004)

⁶ See Release No. 34-51438; File No. SR-NYSE-2004-32 (March 28, 2005).

⁷ See letter from Thomas F. Secunda, Bloomberg, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated July 7, 2004.

⁸ See Commission Rule 11Ac1-2(c)(2).

⁹ See Commission Rules 600(b)(14) and 603(c)(1) under Regulation NMS.

¹⁰ This Commission recently re-examined the vendor display rule for purposes of Regulation NMS and retained this dichotomy.

¹¹ Bloomberg's June Letter is incorrect in stating that "NYSE specifically exempts its members" from the market identification requirements. (See Bloomberg's June Letter at footnote 4.) Rather, NYSE exempts all distributions by any entity -- whether a member, an investor or anyone else -- as long as the distributions are limited to the distributor's officers, partners and employees.

Separate Branded Services. In the 2003 Order, the Commission stated that “it would be reasonable and consistent with the [1934 Act]” for NYSE to require a vendor to make Liquidity Quote available as a “separate branded package” if the vendor also makes available a service that integrates Liquidity Quote with other markets’ information.¹² Under that guidance, NYSE proposed a “separate branded package” requirement for Liquidity Quote. The Commission approved it as consistent with the requirements of the 1934 Act. We believe that the Commission’s view applies with just as much vigor in the OpenBook context. Requiring such vendors to make an NYSE-only service available to investors can only assist investors in making investment decisions.

Software Design. The use of screen space by market identifiers has never posed a problem for vendors and does not pose a problem for vendors that integrate NYSE OpenBook orders with the orders of other markets. Many vendors have designed screens that demonstrate this. The technology to display vast amounts of information in a customer-friendly manner is not at issue, especially for Bloomberg and other companies that hold themselves out as technology leaders.

Despite this, Bloomberg characterizes NYSE’s requirement to place the four letters “NYSE” adjacent to its information as a limitation so burdensome that it is tantamount to prohibiting integration. Bloomberg does so not because Bloomberg cannot design its display screens to comply; but rather because Bloomberg prefers to force-fit the market’s new information requirements into its existing software designs. Bloomberg’s reluctance to comply derives either from the fact that it would require Bloomberg to modify its software or from the fact that it would prevent Bloomberg from obscuring the source of the data, something that serves Bloomberg’s competitive interests as an execution venue.¹³

Innovation. NYSE’s provision of useful and innovative market data products to investors is one of the bases on which NYSE competes for order flow. NYSE seeks to position itself as the market most forthcoming with information that is useful to investors. Regulation NMS’s structural changes to the market data business provides strong new incentives to induce NYSE and other market centers to introduce even more innovative data products into the marketplace.

However, market identifiers are the keys to activating those incentives. If investors have no way of discerning NYSE as the source of the information, NYSE will be unable to distinguish itself on the basis of its market information services. More significantly, eliminating the market identification requirement would deprive investors of the ability (1) to readily identify the source of displayed orders and (2) to interpret an order in the context of the rules and procedures of the

¹² See 2003 Order at footnote 53.

¹³ We also note that Bloomberg appears to have little trouble in inserting its own name on every screen page, regardless of whether the page displays orders that investors have left with Bloomberg’s execution facility. Bloomberg seems keenly intent on promoting its own brand while attempting to hide all other brands. Its control over desk terminals leaves it uniquely positioned to do so.

market that displays it. As Bloomberg's June Letter states, a vendor's principal task should be to "highlight choices they [investors] can make in seeking best execution." Yet Bloomberg seeks to do just the opposite: it seeks to hide the identities of the markets providing the execution alternatives.

In addition, if a vendor that also provides execution functionality is able to not only hide NYSE's identity, but also to make NYSE's orders appear to be its own orders, the vendor will have expropriated NYSE's competitive initiative and mark quality. No market would willingly offer new data products if vendors can readily display them as their own products. In the end, it is the investors that would suffer.

Expropriation of Order Flow. Eliminating the identification requirement would allow Bloomberg to gain an unfair edge in intermarket competition for order flow. Unlike most other vendors (who have remained mostly silent on the identification requirement), Bloomberg is a dual-purpose entity. Through its Tradebook subsidiary, it is also a market center that competes with NYSE and all other market centers for order flow.

Permitting a dual-purpose entity that controls the desktop device and also provides execution functionality to hide or dilute the identity of a competing trading center effectively permits the entity to present the competing trading center's information and innovation as its own. It also places excessive control with the dual-purpose entity, enabling it to deter investors from routing orders away from the entity's trading platform and to deprive those investors of useful market information. Each order that the dual-purpose entity can direct to its trading system maximizes its revenues. It gets paid if its trading system executes that order and it gets paid if its trading system routes the order to another execution destination.

In short, eviscerating the requirement to identify other market centers as the source of liquidity would enable Bloomberg to expropriate the other market centers' order flow for its own trading system, creating a false appearance of liquidity on Tradebook. The market identification requirement is a non-obtrusive, time-tested method that prevents this expropriation.

* * *

In the Exchange's view, the requirements that NYSE proposes in the NYSE OpenBook Exhibit C are fair, reasonable and unobtrusive. They increase market transparency and enable markets to compete on the basis of the information that they provide to investors. They prevent other trading systems, in particular those associated with vendors that control the desktop device, from taking unfair advantage of another trading center's innovation and market quality. And they are consistent with the Commission's findings regarding attribution in the Liquidity Quote context.

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We thank you for this opportunity to respond and would be pleased to answer any questions that you may have.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mary Yeager", with a long horizontal flourish extending to the right.

Mary Yeager
Assistant Secretary

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Annette L. Nazareth
Robert L. D. Colby
David S. Shillman
Nancy J. Sanow
Kelly M. Riley