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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:

In a separate letter, the New York Stock Exchange responded to the comments of Bloomberg L.P. on the captioned rule change. In this letter, the Exchange welcomes the opportunity to respond to comments on the same rule change that Ameritrade,¹ the National Stock Exchange,² the Securities Industry Association (“SIA”),³ and the United States Chamber of Commerce⁴ have submitted.

NYSE OpenBook Display Requirements. The four letters raise the same issues. (In fact, three of the four letters share multiple instances of common language.⁵) They assert that NYSE’s proposed OpenBook attribution requirements consume too much space, thereby crowding competing markets off of vendor screens and making the display requirements a *de facto* ban on commingling.

¹ See letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Phylis M. Esposito, Executive Vice President, Ameritrade Holding Corporation, dated July 22, 2005.

² See letter to the Securities and Exchange Commission from David Colker, Chief Executive Officer, National Securities Exchange, dated July 20, 2005.

³ See letter to Mr. Katz from Christopher Gilkerson, Chair, SIA Technology & Regulation Committee and Andrew Wels, Chair, SIA Market Data Subcommittee, dated July 22, 2005.

⁴ See letter to the Honorable Cynthia Glassman, Acting Chairman, Securities and Exchange Commission, from R. Bruce Josten, Executive Vice President, Chamber of Commerce of the United States of America, dated July 22, 2005.

⁵ See the National Securities Exchange, SIA and Chamber of Commerce letters.

For more than 25 years, the Commission has required all quotation displays that vendors make available under Rule 11Ac1-2 to identify the market responsible for each quote and affirmed the need for market identifiers in its recent approval of Regulation NMS. Over those more than 25 years, vendors seem to have had little difficulty in creating compliant displays and, as far as we are aware, have not complained that Rule 11Ac1-2's market-identification requirement consumes too much space or crowds out competing markets. OpenBook market-identifiers would be just as simple to provide.

The reasons that underlie the need for Rule 11Ac1-2's market-identifier requirements apply with equal force to market identifiers for displays of OpenBook information. The requirement both makes it possible for investors to identify readily the source of displayed orders and fosters and facilitates markets' posting of competitive quotes.

In addition to the parallels with Rule 11Ac1-2, OpenBook market identifiers enable the Exchange to compete for orders in the marketplace on the basis of (1) the attractiveness of its bids and offers, both as to price and size; and (2) the quality of the information it provides to investors. If other markets were to do likewise, investors would reap the benefit. However, absent attribution, markets will not be able to compete in this way because investors will have no way to recognize which market is a quote's source.

NYSE OpenBook Fees. Currently, the Exchange charges a vendor a monthly \$5000 fee for access to the NYSE OpenBook data feed and a monthly \$50 per terminal fee for end-user receipt and use of the data. When approved, the service to which those fees apply updated NYSE OpenBook data once every 10 seconds. (It now updates the data once every five seconds.) One year ago, the Exchange submitted a filing (the "NYSE OpenBook \$60 Fee Filing")⁶ to make NYSE OpenBook data available on a real-time basis for a monthly fee of \$60 per terminal (leaving the monthly access fee untouched).

Three of the four commenters also commented on NYSE OpenBook fees even though the comment period expired a year ago.⁷ As we stated in the NYSE OpenBook \$60 Fee Filing, we believe that the proposed \$60 fee for receipt and use of real-time OpenBook data reflects an equitable allocation of the overall costs of using the Exchange's facilities.

When the Commission approved the OpenBook fees currently in effect,⁸ it found as follows:

After careful review, the Commission finds that the Exchange's proposed rule change to establish fees for NYSE OpenBook service is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the fee proposal is consistent with Section 6(b)(4) of the Act, which requires that exchange rules provide for the equitable allocation of

⁶ Release No. 34-50275, SR-NYSE-2004-43 (August 26, 2004).

⁷ The Commission established September 23, 2004 as the deadline for comments on File No. SR-NYSE-2004-43.

⁸ See Release No. 44138, File No. SR-NYSE-2001-42 (December 7, 2001).

reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities. Specifically, the Commission believes that the Exchange's proposed charges of \$5,000 per month for receipt of the NYSE OpenBook data feed, and \$50 per month for the end-user fee per terminal are reasonable when compared to similar types of services provided by other markets.

These commentators also called for NYSE to establish a lower fee for retail investors. We note that retail investors -- as opposed to many day traders -- do not ordinarily rely on depth-of-book data. Indeed, we have noted no discernible demand for OpenBook from retail investors. That said, NYSE will survey broker-dealers and vendors in an attempt to identify any demand. Should demand materialize, NYSE will endeavor to develop a suitable depth-of-book data product for retail investors.

One commentator compared NYSE OpenBook to Nasdaq Level II service. Here, we note that the information that Nasdaq provides through its Level II service (the best bid and offer of each contributor) is closer in nature to the information that the Exchange and the other Network A Participants make available under the CQ Plan (the best bid and offer of each Participant). Rather, Nasdaq's TotalView product (a depth-of-book product) is more closely comparable with NYSE OpenBook. The Commission has approved a monthly \$70 charge for professional subscribers to Nasdaq's TotalView service.

We thank the Commission for allowing us to respond and are prepared to answer any questions that the Commission may have.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mary Yeager".

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