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July 22, 2005

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

Re: File No. SR-NYSE-2005-32
Display/Dissemination Requirements for NYSE OpenBook

Dear Mr. Katz:

The Market Data subcommittee of the Technology and Regulation Committee of the Securities Industry Association[1] ("SIA") is pleased to comment on this proposed rule change. The SIA supports the New York Stock Exchange's ("NYSE") overall goal of promoting transparency by disseminating more market data through the OpenBook product.

As NYSE points out in its statement of purpose for this rule change, pending before the Commission is another significant proposed rule to provide NYSE OpenBook data on the basis of real-time updates. In our comment letter on that proposal dated October 22, 2004, among other things we asked that NYSE file its contractual provisions governing the distribution of OpenBook data as rule changes. We are therefore pleased that NYSE has filed the proposed amendment relating to Exhibit C of its OpenBook agreement for Commission review and public comment. However, as we stated in our prior comment letter on OpenBook, some members are concerned about the potential impact of the overall OpenBook proposal on the costs and availability of market data. We write again to express our concerns about the most recent filing and, in particular, the anti-competitive effects of rules and contractual provisions that effectively restrict redistribution and consolidation with other data.

The Commission has already stated that the terms of the NYSE agreements restricting the display and redissemination of OpenBook data "are on their face discriminatory and may raise fair access issues under the Act." (Securities Exchange Act Release No. 45838, December 7, 2001.) The Commission has subsequently made clear that prohibitions on the commingling of essential market data with data from other market centers are unacceptable. As originally proposed, the NYSE OpenBook agreement contained just such a prohibition. In its most recent filing with the

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[1] The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated an estimated $227.5 billion in domestic revenue and $305 billion in global revenues. (More information about SIA is available at: www.sia.com.

Commission, the NYSE has withdrawn any express prohibition on commingling OpenBook data with data from other market centers, but in its place, the NYSE proposal imposes attribution and other requirements that could result in a de facto ban on commingling.

Many of our members depend on vendors to provide them with market data both to use internally and to disseminate to investors. The NYSE proposal mandates that vendors provide a special "attribution" for all NYSE OpenBook data. Each element or line of NYSE OpenBook data would have to include the displayed identifier "NYSE". This compulsory identifier would consume finite screen space, reducing the amount of trading depth vendors could display, undermining their ability to create analytics, and negatively impacting the market data ultimately made available to our members and clients. At the same time, the NYSE attribution requirement would crowd competing market centers off data vendor screens. These restrictions could significantly decrease the transparency of the securities markets and inhibit competition among markets.

We appreciate the Commission's specific requests for comment and focus on the requirements of Section 11A of the Securities Exchange Act of 1934 and whether NYSE has shown they are met here. We do not think NYSE's summary statement of statutory basis that the proposed rule change is consistent with Section 6(b) of the Act is sufficient. On their face, the attribution requirement for integrated displays, aggregated display identifier, redundant stand-alone product requirement, and pre-approval of integrated display screen shots are burdensome, costly, and not "fair and reasonable" terms. Nor do we think these display and dissemination restrictions meet the requirements of the Act that the form and content of market information be "useful and fair." Instead, these requirements would impose a burden on competition because they impede alternative uses of data and require a particular display that gives preeminence to NYSE's data and branding. Although we understand why these requirements seem to make sense to NYSE in terms of its competitive positioning, the rule filing offers no policy rationale under the Act and no analysis as to how the additional burdens are justified as "necessary and appropriate in furtherance of the Act."

The NYSE's proposal on OpenBook stands in contrast to Nasdaq's offering on TotalView, which does not come with data integration strings attached. As we understand it, with the TotalView entitlement a vendor or broker-dealer is free to commingle and integrate the TotalView data into internally-facing or externally-facing applications without cumbersome and intrusive branding and display requirements. As the SIA observed in its July 18, 2005 comment letter on the enterprise fee for TotalView, this approach enables greater utility for the data and should spur more competition and innovation for designing integrated data products.

The SIA also remains concerned about the cost of the NYSE's OpenBook product as currently proposed. In its filing for providing OpenBook in real time, the NYSE offered no information to support charging a $60 per month per terminal fee for the proposed OpenBook service. The NYSE claims that this and other fees it charges for its market data reflect an equitable allocation of the overall costs of using its facilities. But nowhere in the NYSE's filings with the Commission, whether for OpenBook or any of its other data services, has the NYSE provided data on its costs or on the formulae it uses to determine the equitable allocation of those costs.

Additionally, the proposal continues to lack any 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 need access to OpenBook data in order to be able to understand the price they are likely to receive for an order of more than the few hundred shares that typically are reflected in the NBBO today, and to evaluate the quality of the executions they receive. Investor ability to assess their own execution quality helps 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.

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. As we've previously stressed, 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, we agree with the Commission's statement in its request for comments here that "OpenBook contains important market data that provides investors with a view of available liquidity . . . . likely to become ever more pertinent if the NYSE Hybrid Market Proposal is approved and implemented." The terms of access to that data become all the more pressing in light of the NYSE's plans to become a for-profit entity.

Market information is the key to competitive, fair and efficient securities markets. As stated in our comment letter earlier this week on Nasdaq's TotalView enterprise fee proposal, it is not effective or fair to market participants and investors to address these issues in piecemeal fashion through the routine SRO filing process with short time periods for review and comment. SIA respectfully requests the SEC to designate a longer period for consideration of the rule change, and to require NYSE to amend its filing to include additional analysis and information to respond to the above issues. Through this process, 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.

Very truly yours,

Christopher Gilkerson, Chair
SIA Technology & Regulation Committee

Andrew Wels, Chair
SIA Market Data Subcommittee

CC: The Honorable Cynthia A. Glassman, Acting Chairman
The Honorable Harvey J. Goldschmid
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
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