NSX National Stock℠ Exchange

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July 20, 2005

U. S. Securities and Exchange Commission
100 F Street N. E.
Washington, DC 20549
Attention: Mr. Jonathan G. Katz, Secretary
RE: File No. SR-NYSE-2005-32

Ladies and Gentlemen:

The National Stock Exchange is submitting this letter on the above captioned filing, specifically commenting on the restrictions the NYSE is proposing to place on the ability of vendors to utilize and display OpenBook data.

In 2001, the Commission approved OpenBook fees at a time when the product was only available on a delayed basis. At that time, the Commission raised serious concerns regarding access issues and other defects of the OpenBook contract:

> The Commission notes that this order only approves the filing submitted by the NYSE, for the fees for the NYSE OpenBook service. Therefore, the Commission is not approving or disapproving the terms of the NYSE's vendor or subscriber agreements. The NYSE's proposed restrictions on vendor redissemination of OpenBook data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data found in these agreements are on their face discriminatory, and may raise fair access issues under the Act. (Securities Exchange Act Release No. 45838, December 7, 2001).

Despite the Commission's warning, the NYSE last year proposed mandating that vendors be prohibited from commingling OpenBook data with data from other markets. This clearly would have reduced transparency and seriously disadvantaged competing market centers. In light of the Commission's Liquidity Quote order – in which the SEC barred the NYSE from enforcing similar restrictive contracts in a different context in part because of their anti-competitive impact on rival market centers – the NYSE retreated from an express ban on commingling of data.

Unfortunately, the NYSE's current proposal for real-time OpenBook data may replace an express ban on commingling with a de facto ban on

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commingling. The new proposal would require that vendors provide "attribution" for all NYSE OpenBook data. Specifically, each element or line of NYSE OpenBook data must display the identifier "NYSE". The NYSE identifier will consume valuable screen space, limiting the visibility of competing market centers and diminishing the amount of depth that can be displayed. The attribution requirement may well have the same effect as the rejected ban on commingling of data.

The SEC should not allow these restrictions to take effect. We'd urge that the SEC either permit a full 90 day comment period on this important issue or consider this issue in the context of the broader array of market data/market access issues that the Commission will be addressing in the months ahead.

Sincerely,

David Colker

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