Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–033. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–033 and should be submitted on or before April 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1479 Filed 4–1–05; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51438; File No. SR–NYSE–2004–32]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to NYSE Liquidity Quote℠

March 28, 2005.

I. Introduction

On June 24, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to include additional display requirements to the existing terms and conditions pursuant to which vendors may distribute to their customers NYSE Liquidity Quote℠ information. On July 16, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for public comment in the **Federal Register** on July 27, 2004.[4] The Commission has received one comment letter on the proposed rule change[5] and two responses from the NYSE.[6] This order approves the proposed rule change, as amended.

II. Background

The NYSE Liquidity Quote represents aggregated Exchange trading interest at a specific price interval below the NYSE best bid (in the case of a liquidity bid) or at a specific price interval above the NYSE best offer (in the case of a liquidity offer). The specific price interval above or below the NYSE best bid and offer (''BBO''), as well as the minimum size of the liquidity bid or offer, is established by the specialist in the subject security. Liquidity bids and offers include orders on the limit order book, trading interest of brokers in the trading crowd, and the specialist's dealer interest, at prices ranging from the best bid (offer) to the liquidity bid (liquidity offer).

NYSE distributes Liquidity Quote data as part of its OpenBook data feed service[7] and requires recipients to execute existing NYSE vendor agreements and subscriber agreements. Specifically, in order for a vendor to receive NYSE Liquidity Quote data from the Exchange for redistribution to its customers or subscribers, the Exchange requires the vendor to enter into its standard form of ''Agreement for Receipt and Use of Market Data'' (*i.e.*, ''Consolidated Vendor Form''). According to the Exchange, the Consolidated Vendor Form is the same form that vendors must execute to receive market data under the Consolidated Tape Association (''CTA'') Plan and the Consolidated Quotation (''CQ'') Plan. The Exchange describes the Consolidated Vendor Form as a generic, one-size-fits-all agreement that consists of a standard set of basic provisions that apply to all data recipients and accommodates a number of different types of market data, a number of different means of receiving access to market data, and a number of different uses of market data. Because the Consolidated Vendor Form is not specific to types and uses of certain market data, paragraph 19(a) of the Consolidated Vendor Form provides that ''Exhibit C, if any, contains additional provisions applicable to any non-standard aspects of Customer's Receipt and Use of Market Data.'' Accordingly, NYSE has drafted a proposed Liquidity Quote Exhibit C to provide certain display requirements for Liquidity Quote data.

In the original approval order, the Commission conditionally approved NYSE Liquidity Quote[8] because the Commission had substantial concerns about the display restrictions NYSE had drafted in its Exhibit C to the Consolidated Vendor Form for Liquidity Quote.[9] Specifically, as originally

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC, dated July 16, 2004 (''Amendment No. 1''). In Amendment No. 1, the NYSE clarified that the entire proposed Exhibit C represented new text.

[4] Securities Exchange Act Release No. 50040 (July 20, 2004), 69 FR 44701.

[5] *See* letters from Thomas F. Secunda, Bloomberg, L.P. (''Bloomberg'') to Annette L. Nazareth, Director, Division, SEC, (''Bloomberg Letter) dated July 7, 2004; and Jonathan G. Katz, Secretary, SEC, dated August 13, 2004. The letter dated August 13, 2004 merely resubmitted the July 7, 2004 Bloomberg Letter for Commission consideration.

[6] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC (''NYSE Response Letter'') dated November 11, 2004, and letter from Ronald Jordan, Senior Vice President, Market Data, NYSE, to Kelly Riley, SEC, dated January 26, 2005 (''NYSE 2nd Response Letter'').

[7] *See* Securities Exchange Act Release No. 45138 (December 7, 2001) 66 FR 66491 (December 14, 2001).

[8] *See* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55) (''April Order'').

[9] The NYSE did not file the original Exhibit C to the Consolidated Vendor Form for Liquidity Quote with the Commission. However, as described above, the Commission did consider the terms of the original Liquidity Quote Exhibit C and the issues

Continued

drafted, the Liquidity Quote Exhibit C would have prohibited data feed recipients from enhancing, integrating, or consolidating NYSE Liquidity Quote data with data from other market centers for retransmission. In addition, pursuant to the terms of the original Liquidity Quote Exhibit C, NYSE would have imposed a ''window requirement,'' which would have required Liquidity Quote data to be displayed as a separate window or with a line drawn between Liquidity Quote data and other markets' data.

In the April Order, the Commission stated that it believed that the terms and conditions set forth in the original Liquidity Quote Exhibit C that prohibited data feed recipients from enhancing, integrating, or consolidating NYSE Liquidity Quote data with data from other market centers for retransmission to be inconsistent with sections 6(b)(5) [10] and 6(b)(8) [11] of the Act. Accordingly, the Commission approved the Liquidity Quote data product on the condition that the proposal would not be effective until NYSE removed from its contracts the prohibitions on the ability of data feed recipients, including vendors, to integrate Liquidity Quote data with the display of other markets' data. The Commission did, however, state that it ''believe[d] that it would be reasonable and consistent with the statute for the NYSE to require that data feed recipients who choose to provide a value-added [L]iquidity [Q]uote data package to: (i) Give NYSE attribution next to any integrated quote that includes NYSE data; and (ii) make available to customers NYSE [L]iquidity [Q]uote product as a separate branded package.'' [12]

Thereafter, on April 9, 2003, NYSE informed the Commission that it agreed to the conditions set forth in the April Order to remove the prohibitions on integration in the Liquidity Quote Exhibit C to the Consolidated Vendor Form. In their place, NYSE drafted a new Liquidity Quote Exhibit C that permitted integration but imposed new display requirements. These display requirements were challenged by Bloomberg LP as constituting a denial of access to services under Sections 19(d) [13] and 19(f) [14] of the Act.

In January 2004, the Commission held that the Exchange's actions of imposing the new display requirements on vendors' use of the Liquidity Quote data and its rejection of certain proposed displays of such data based on the display requirements were a denial of access. Therefore, the Commission set aside the Exchange's actions.[15] Specifically, the Commission held that the contractual display requirements were Exchange rules that were required to be filed and approved pursuant to section 19(b) of the Act [16] and because they were not so filed and approved, could not provide a basis for the Exchange's denial of access to Liquidity Quote data.

The Exchange filed this proposed rule change, pursuant to section 19(b) of the Act,[17] to adopt display requirements for Liquidity Quote data that will be set forth in the Liquidity Quote Exhibit C to the Consolidated Vendor Form.

III. Description of the NYSE's Proposal

The NYSE filed a proposed Liquidity Quote Exhibit C to the Consolidated Vendor Form to set forth additional display requirements pursuant to which vendors may distribute to their customers or subscribers NYSE Liquidity Quote data. Specifically, if a vendor wishes to provide Liquidity Quote data to its customers or subscribers, the vendor must execute and comply with the terms of the proposed Liquidity Quote Exhibit C to the Consolidated Vendor Form. The proposed Exhibit C defines what is considered ''Liquidity Quote information'' [18] and what is considered ''Other Bids and Offers.'' [19] The proposed Exhibit C provides that the vendor may only use and display Liquidity Quote information to the extent provided in the agreement and only for as long as the agreement is in effect.[20] Vendors also are required, pursuant to the terms of proposed Exhibit C, to provide its customers or subscribers with a notice or agreement specified by NYSE and to have its customers or subscribers either acknowledge receipt of such notice or assent to such agreement as directed by NYSE.[21]

The proposed Liquidity Quote Exhibit C contains display requirements for Liquidity Quote information. Specifically, proposed Exhibit C sets forth requirements regarding ''Aggregated Displays,'' ''Montages,'' ''Attribution,'' ''Liquidity Quote-Only Displays,'' and ''Screen Shots.'' For ''Aggregated Displays,'' NYSE proposes that if a vendor aggregates Liquidity Quote bids and offers with Other Bids and Offers in its displays (*i.e.*, an ''Aggregated Display''), then the vendor is required to indicate the number of shares attributable to the Liquidity Quote bids and offers.[22] For ''Montages,'' NYSE proposes that if a vendor includes a Liquidity Quote bid or offer in a montage that includes an NYSE BBO, then the vendor must exclude the size of the NYSE BBO from any calculation of cumulative size within the montage.[23] NYSE also proposes that vendors identify each element or line of Liquidity Quote information that it includes in an Aggregated Display, Montage, or other integrated display with either ''NYSE Liquidity Quote ''or ''NYLQ.'' [24]

Proposed Exhibit C also requires vendors to offer its customers or subscribers a non-integrated Liquidity Quote product, which would be a product separate and apart from information products that include other market centers' information.[25] Further, NYSE proposes that vendors provide it with sample screen shots of displays that include Liquidity Quote information at the time the vendor commences to provide the display to customers or subscribers.[26] Finally, proposed Exhibit C provides that the display requirements do not apply to vendors' internal Liquidity Quote displays.[27]

IV. Summary of Comments

The Commission received one comment letter on the proposal.[28] In its letter, Bloomberg argued that the Aggregated Display requirement, which requires vendors to indicate the number of shares attributable to NYSE Liquidity

raised by commenters to its terms in the April Order.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] *See* April Order footnote 53. The Commission later stated in the April Order that ''NYSE may require that vendors provide the NYSE attribution in any display that includes Liquidity Quote.''

[13] 15 U.S.C. 78s(d).

[14] 15 U.S.C. 78s(f).

[15] *See* In the Matter of the Application of Bloomberg L.P., For Review of Action taken by the New York Stock Exchange, Inc., Admin. Proc. File No 3–11129, Securities Exchange Act Release No. 49076 (January 14, 2004).

[16] 15 U.S.C. 78s(b).

[17] 15 U.S.C. 78s(b).

[18] ''Liquidity Quote information'' is proposed to be defined as ''any depth information and other information that NYSE makes available pursuant to the NYSE Liquidity Quote Service, including Liquidity Quote bids and offers, and any modified version of that information and any information derived from that information.'' *See* proposed Exhibit C 21(a)(i).

[19] ''Other Bids and Offers'' is proposed to be defined as ''bids and offers other than Liquidity Quote bids and offers. For example, Other Bids and Offers include the NYSE best bid or offer, another market center's best bid or offer and a national best bid or offer.'' *See* proposed Exhibit C 21(a)(ii).

[20] *See* proposed Exhibit C 21(b).

[21] *See* proposed Exhibit C 21(c).

[22] *See* proposed Exhibit C 21(d)(i).

[23] *See* proposed Exhibit C 21(d)(ii).

[24] *See* proposed Exhibit C 21(d)(iii).

[25] *See* proposed Exhibit C 21(d)(iv).

[26] *See* proposed Exhibit C 21(d)(v).

[27] *See* proposed Exhibit C 21(e).

[28] *See supra* note 5.

Quote, is not necessary to prevent investor confusion or to differentiate between NYSE Liquidity Quote data and other data it may wish to present in a quotation montage. Furthermore, Bloomberg noted that the Aggregated Display requirement would prevent Bloomberg from presenting a summary screen it currently provides to its customers. Bloomberg believes that its summary screen, which allows viewers to toggle to a detail screen that identifies Liquidity Quote data, has not caused any investor confusion.

Bloomberg also raised concerns regarding the NYSE's proposed Attribution requirement. Bloomberg stated that the NYSE's proposed Attribution requirement, if adopted, would require vendors to place the NYSE's identifier on analytics, including charts, graphs, and other derived presentations, regardless of whether the identifier would be necessary to prevent investor confusion. Bloomberg argued that the Attribution requirement would be unduly burdensome and anticompetitive and would provide NYSE with more attribution than what is given to other exchanges or market centers, therefore disadvantaging other market centers, and blocking entry of would-be competitors by denying them necessary screen space.

In its response, the Exhange argued that it believes that the proposed display requirements are minimal and comply with the Commission's orders on the display of Liquidity Quote.[29] NYSE believes that the display requirements assure that vendor displays identify the amount and source of liquidity so investors can make informed trading and order routing decisions.[30] The Exchange further argued that the display requirements afford market quality transparency, and enables markets to differentiate themselves on the basis of market quality and data products, which NYSE believes will invigorate inter-market competition.[31]

In response to Bloomberg's comment regarding attribution of analytics, NYSE confirmed that the proposed Exhibit C would require vendors to associate the identifier ''NYLQ'' or ''NYSE Liquidity Quote'' with information that a vendor may include in analytics, charts, graphs, and other derived data.[32] NYSE described the required attribution by way of example as follows: ''For example, if a user displays a line graph of information on the bid prices for all markets (including NYLQ), the page that displays the graph must delineate and identify the relevant contribution of NYSE to the graph.'' [33]

V. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In the April Order, the Commission conditioned approval of Liquidity Quote on the NYSE's agreement to remove from its contract those terms that strictly prohibited integration of Liquidity Quote data with other markets' data. The Commission found that the restrictions on integration were inconsistent with sections 6(b)(5) [35] and 6(b)(8) [36] of the Act. With this proposed rule change, NYSE has removed those terms that restricted integration. Accordingly, pursuant to the terms of the proposed Exhibit C, vendors will be permitted to enhance, integrate, or consolidate Liquidity Quote data with other markets' data. Therefore, the Commission finds that the removal of the terms that restricted integration of Liquidity Quote data with other markets' data to be consistent with the requirements of section 6(b)(5) of the Act,[37] which requires that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest and Section 6(b)(8) of the Act,[38] which requires that an exchange's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission also determined in the April Order that it would be reasonable and consistent with the Act for the NYSE to require those data feed recipients who choose to provide a value-added Liquidity Quote data package to: (i) Give the NYSE attribution next to any integrated quote that includes NYSE data; and (ii) make available to customers NYSE's Liquidity Quote product as a separate branded package.[39] The Commission believes that the proposed Exhibit C implements what the Commission has determined to be acceptable identification of NYSE Liquidity Quote data. Liquidity Quote bids and offers are not comparable to regular bids and offers.[40] Accordingly, the Commission determined that attribution next to an integrated quote would be permissible to alert investors that the quote they may be seeing reflects a quote that has been integrated with a Liquidity Quote and thus may include other price points. In proposed Exhibit C, NYSE requires vendors to provide it with attribution on each element or line that includes Liquidity Quote information and to indicate the number of shares attributable to Liquidity Quote in an Aggregated Display. The Commission believes that this attribution is consistent with the April Order.

The Commission notes that this order only approves the filing submitted by the Exchange for the proposed Exhibit C associated with the NYSE Liquidity Quote data. While Liquidity Quote data is distributed as part of the NYSE's OpenBook data service, the terms of the proposed Exhibit C for Liquidity Quote do not apply and have not been considered or approved by the Commission as acceptable for the distribution of NYSE OpenBook data.[41]

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [42] the proposed rule change (SR–NYSE–2004–32), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1475 Filed 4–1–05; 8:45 am]

BILLING CODE 8010–01–P

[29] *See* NYSE Response Letter, *supra* note 6.

[30] *Id.*

[31] *Id.*

[32] *See* NYSE 2nd Response Letter, *supra* note 6.

[33] *Id.*

[34] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78f(b)(8).

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78f(b)(8).

[39] *See supra* note 12 and accompanying text.

[40] NYSE has indicated that in some instances Liquidity Quotes and NYSE BBOs could be the same and that at such times both Liquidity Quotes and NYSE BBOs would be disseminated via the CTA/CQ Plan and via the NYSE Liquidity Quote data service.

[41] On December 7, 2001, the Commission approved a proposed rule change to establish fees for the NYSE OpenBook service. *See* Securities Exchange Act Release No. 44138 (December 7, 2004), 66 FR 64895 (December 14, 2004) (SR–NYSE–2001–42). On August 11, 2004, the NYSE filed a proposed rule change to establish fees for the NYSE OpenBook service on a real-time basis. *See* Securities Exchange Act Release No. 50275 (August 26, 2004), 69 FR 53760 (September 2, 2004) (SR–NYSE–2004–43). The NYSE has not filed the proposed restrictions on vendor redissemination of OpenBook data.

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).