

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54055; File No. SR-NYSE-2006-32)

June 28, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the NYSE Retail Trading Product and the NYSE Program Trading Product

I. Introduction

On May 9, 2006, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 relating to the NYSE Retail Trading Product and the NYSE Program Trading Product (collectively, the “NYSE Trading Information Products”).³ The proposed rule change was published for comment in the Federal Register on May 24, 2006.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE Retail Trading Product consists of: (A) a real-time data feed of certain execution report information that has been recorded as trades for the accounts of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A proposal to introduce the NYSE Trading Information Products without charge as a 60-day pilot program was effective upon filing with the Commission. See Securities Exchange Act Release No. 53835 (May 18, 2006), 71 FR 30456 (May 26, 2006).

⁴ See Securities Exchange Act Release No. 53834 (May 18, 2006), 71 FR 30011.

“individual investors;”⁵ and (B) an end-of-day summary of the retail trading activity on the Exchange for that day, including total buy and sell retail share volume for each stock traded. The NYSE Program Trading Product consists of: (A) a real-time data feed of certain execution report information that has been recorded as program trades;⁶ and (B) an end-of-day summary of program trading activity on the Exchange for that day, including total index arbitrage program trading volume. Each published report of a trade execution that is included in the data feed for either product will indicate such information as the security's symbol, the size of the trade, the time of the trade's execution, and other related information.

The NYSE proposes to establish fees for these data products. Specifically, NYSE proposes to charge a \$1500 monthly access fee for receipt of the NYSE Retail Trading Product data feed (for receipt of the real-time data feed, the end-of-day summaries, or both); a \$1500 monthly access fee for receipt of the NYSE Program Trading Product data feed (for receipt of the real-time data feed, the end-of-day summaries, or both); a \$2.00 monthly display fee for each display device receiving the NYSE Retail Trading Product information and/or the NYSE Program Trading Product information that the vendor makes available from the real-time data feed; and a \$250 monthly fee for vendors that only provide end of day summaries of NYSE Trading Information Products.

In addition, the NYSE proposes to provide each vendor of the NYSE Trading Information Products with a monthly credit of \$2 for each device that the vendor has

⁵ For purposes of the NYSE Retail Trading Product, the account of an "individual investor" means an account covered by Section 11(a)(1)(E) of the Act. 15 U.S.C. 78k(a)(1)(E).

⁶ For purposes of the NYSE Program Trading Product, "program trading" refers to program trading as defined in NYSE Rule 80A, Supplementary Material .40(b).

entitled to receive displays of the NYSE Trading Information Products, up to a maximum of either \$3,000 per month if the vendor pays the monthly access fees for both the NYSE Retail Trading Product data feed and the NYSE Program Trading Product data feed (which total monthly access fees total \$3,000); or \$1,500 per month if the vendor pays the monthly access fees for either the NYSE Retail Trading Product data feed or the NYSE Program Trading Product data feed, but not both (either of which monthly access fees equals \$1,500).

Finally, NYSE proposes to require vendors receiving the NYSE Trading Information Products, to provide subscribers, by link or otherwise, in a manner that is reasonably transparent and accessible to subscribers, a description of the NYSE Retail Trading Product and the NYSE Program Trading Product. The NYSE will require vendors to update their Exhibit A to their contract with NYSE for receipt and redistribution of NYSE Trading Information Products to describe how they will make this description available.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁸ which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In this regard, the Commission notes

⁷ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(4).

that the NYSE has represented that, in arriving at the fees for the NYSE Trading Information Products, the NYSE considered the cost of collecting, processing, and making the products available, and assessed the value of the products relative to other data products that the NYSE makes available, including NYSE OpenBook.⁹ Further, the Commission notes that its fees will be uniformly charged to all persons who wish to receive the data.

In addition, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to 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. Specifically, the Commission finds that NYSE's proposal to require vendors to provide subscribers with a description of the NYSE Trading Information Products is designed to explain and describe the NYSE Trading Information Products so that users will be better able to understand and use the data.

⁹ The Commission recently approved the fees for the real-time OpenBook service. See Securities Exchange Act Release No. 53585 (March 31, 2006), 71 FR 17934 (April 7, 2006) (order approving File Nos. SR-NYSE-2004-43 and SR-NYSE-2005-32).

¹⁰ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NYSE-2006-32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris
Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).