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Via email to rule-comments@sec.gov

November 30, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

Re: Response to Comment Letters on Fee for NYSE Real-Time Trade Prices (SR-NYSE-2007-04; Release No. 34-55354)

Dear Secretary Morris:

On January 12, 2007, the New York Stock Exchange (the "Exchange") submitted the captioned proposed rule change (the "NYSE Real-Time Prices Filing") to the Commission. It seeks to establish as a one-year pilot test NYSE Real-Time Trade Prices, a NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange and to establish a flat $100,000 monthly fee for that service. The service would provide a real-time substitute for delayed services and would relieve vendors of almost all administrative burdens. The proposed fee for NYSE Real-Time Trade Prices will allow large internet service providers and media outlets, such as Google and CNBC, to provide millions of investors with real-time prices of transactions that take place on the Exchange, at no charge to investors and with no administrative overhead.

The Commission published the proposed rule change in the Federal Register on February 26, 2007 and received six comment letters. Two of the comment letters supported the proposal.[1] Three comment letters essentially opposed the proposal on the misguided notion that it discriminates against all but the largest internet distributors.[2]

Those three comment letters came from data distributors who are comfortable with the Exchange's traditional contract, metering and reporting requirements. However, the Exchange designed NYSE Real-Time Trade Prices specifically in response to the requests of large distributors who want a flat fee for unlimited

1 See letter dated February 16, 2007, to Ms. Nancy Morris, Secretary, Securities and Exchange Commission, from Scott Drake, VP Digital Products, CNBC, and letter dated June 12, 2007, to U.S. Securities and Exchange Commission from Alan Davidson, Senior Policy Council, Google Inc.

2 See letter dated January 16, 2007, to Ms. Morris from Clem Chambers, CEO, ADVFN, letter dated January 17, 2007, to Mr. Christopher Cox, Chairman, Securities and Exchange Commission, from David Keith, Vice President, Web Products and Solutions, The Globe and Mail, and letter dated March 27, 2007, to Ms. Morris from Chuck Thompson, President, eSignal.

distribution, who do not provide trading functionality and whose business model makes burdensome the procurement of end-user contracts and reports of data usage.[3]

If smaller distributors believe that a different real-time prices product would better suit their business models, we encourage them to approach the Exchange. In fact, the Exchange has already held discussions to tailor a real-time prices product for smaller distributors and will continue to do so.

In addition, aside from the small distributors' ability to continue their current practice of providing delayed prices and CTA consolidated prices on a real-time basis (frequently at no charge to the investor), the proposal's syndication rights should address the three commenters' concerns about small data distributors. Syndication allows a vendor that has paid the proposed fee to arrange with other website proprietors to link any such other proprietor's website to the vendor's NYSE Real-Time Trade Prices service for no additional charge.

The sixth comment letter came from an industry trade association that has been a frequent critic of most of the new and innovative market data products and fees that the securities markets have proposed in recent years.[4] That comment letter mostly rehashes arguments that the trade association has raised in earlier comment letters, especially two comment letters[5] that it submitted in opposition to a proposed rule change that NYSE Arca, LLC ("NYSE Arca") submitted to the Commission to establish fees for its Arca Book depth-of-book product (the "Arca Book Fees").[6] Many of those comments apply to matters well beyond an assessment of whether NYSE Real-Time Trade Prices meet the statutory requirements under the Securities Exchange Act of 1934 and Regulation NMS. The Exchange has previously responded to the comments raised in those letters, as well as to the similar comments of another trade association,[7] and hereby incorporates the Exchange's previous responses by reference.[8] To facilitate your review of the matter, we have attached those NYSE responses to this letter.

On a more specific level, the trade association is incorrect when it comments that broker-dealers cannot subscribe to the NYSE Real-Time Prices Service. They can. Regarding the product's

[3] The Exchange anticipates that, though the product may provide real-time prices to millions of investors, only a small number of vendors will subscribe and pay the proposed fee. While the Exchange is unable to predict the success of the product, the Exchange's best guess is that between two and five vendors will initially subscribe to receive NYSE Real-Time Trade Prices.

[4] See letter dated March 26, 2007, to U.S. Securities and Exchange Commission, from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee of the SIFMA Technology and Regulation Committee, Securities Industry and Financial Markets Association.

[5] See letters dated June 30, 2006, and August 18, 2006, both to Ms. Morris from Messrs. Babyak and Gilkerson.

[6] Release No. 34-54597; File No. SR-NYSEArca-2006-21 (October 12, 2006).

[7] See NetCoalition Notice of Intention to Petition for Commission Review of SR-NYSEArca-2006-21, dated November 14, 2006.

[8] See letters dated July 25, 2006, and August 25, 2006, to Ms. Morris from Janet Angstadt, Acting General Counsel, NYSE Arca, Inc., to Ms. Morris and letter dated November 8, 2006 to Mr. Cox from Mary Yeager, Secretary, NYSE Arca, Inc.

branding requirement, the Exchange believes that it has every right to brand market data. More significantly, the Exchange believes that the Commission should *require* branding in order to eliminate investor confusion. Without it, an investor would be unable to determine which of the 11 equities markets has reported a price in an NYSE-listed security. In fact, the absence of branding would enable one market to palm off another market's data product as its own. If a vendor believes that the NYSE branding requirement is too costly or intrusive, it may simply decline to receive the product.[9]

In addition, the trade association's comment letter requested the Exchange to submit to the Commission Exhibit C to the Consolidated Vendor Form, the standard form of agreement that the Exchange will require vendors of the NYSE Real-Time Trade Prices product to sign. Exhibit C contains contract terms and conditions that apply uniquely to the NYSE-Real-Time Trade Prices pilot program. NYSE amended NYSE Real-Time Prices Filing by submitting that Exhibit C as a supplement to the filing.[10]

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In light of the fact that the comment letters raise no issues that the Commission and the Exchange have not addressed previously, we respectfully request the Commission to approve the NYSE Real-Time Trade Prices filing.

Sincerely yours,

Mary Yeager
Assistant Secretary

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Annette L. Nazareth, Commissioner
The Hon. Kathleen L. Casey, Commisssioner
Erik Sirri, Director, SEC Division of Market Regulation
Robert Colby, Deputy Director, SEC Division of Market Regulation

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9 It is worth noting that the Exchange proposed the branding requirement only after discussing it with potential vendors of NYSE Real-Time Trade Prices. Those vendors endorsed the product in the form in which the Exchange filed it.

10 See Amendment No.1 to the NYSE Real-Time Trade Prices Filing, dated March 7, 2007.