

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

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53834; File No. SR-NYSE-2006-32]

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

May 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 9, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish fees for two new market data products: The NYSE Retail Trading Product and the NYSE Program Trading Product. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to a separate proposed rule change that NYSE has filed contemporaneously with the proposed rule change (see SR-NYSE-2006-31; the "Pilot Program Filing"), NYSE proposes to make available to vendors and investors the following:

(1) The NYSE Retail Trading Product will consist of (A) a real-time datafeed of certain execution report information that has been recorded as trades for accounts of "individual investors"³ 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 "End-of-Day Retail Trading Summary").

(2) The NYSE Program Trading Product will consist of (A) a real-time datafeed of certain execution report information that has been recorded as program trades⁴ and (B) an end-of-day summary of program trading activity on the Exchange for that day, including total index arbitrage (as opposed to non-index arbitrage) program trading volume (the "End-of-Day Program Trading Summary").

Each published report of a trade execution that is included in the datafeed for either product shall indicate such information as the security's symbol, the size of the trade, the time of the trade's execution and other related information.⁵ (More information regarding the NYSE Retail Trading Product and the NYSE Program Trading Product can be found on the NYSE Web site at <http://www.nysedata.com/InfoTools>.)

The Exchange believes the NYSE Retail Trading Product should provide investors with increased information

³ For this purpose, the "account of an individual investor" means an account covered by Section 11(a)(1)(E) of the Act. That section refers to the "account of a natural person, or a trust created by a natural person for himself or another natural person."

⁴ For this purpose, "program trading" has the definition that Supplementary Material .40(b) to NYSE Rule 80A ("Index Arbitrage Trading Restrictions") gives to that term.

⁵ NYSE will only include in the NYSE Retail Trading Product and the NYSE Program Trading Product information that is attached to execution reports. While the NYSE believes the information contained in the NYSE Retail Trading Product and the NYSE Program Trading Product is accurate, the NYSE does not guarantee the completeness or accuracy of account information submitted by order entry firms on which the InfoTools product is based.

regarding individual investors' trading activity on the Exchange. Similarly, the NYSE Program Trading Product should provide investors with increased information regarding program trading activity.

Pursuant to the proposed rule change, NYSE proposes to establish:

(1) A monthly access fee of \$1,500 for receipt of the NYSE Retail Trading Product datafeed (for receipt of the real-time datafeed, the end-of-day summaries, or both);

(2) A monthly access fee of \$1,500 for receipt of the NYSE Program Trading Product datafeed (for receipt of the real-time datafeed, the end-of-day summaries, or both);

(3) A monthly display fee of \$2.00 that the vendor or its subscribers are to pay for each display device receiving NYSE Retail Product information and/or NYSE Program Trading Product information (collectively, "NYSE Trading Information") that the vendor makes available from the real-time datafeed; and

(4) A monthly fee of \$250 if the vendor makes NYSE Trade Information available from the end-of-day summaries, rather than from the real-time datafeeds.

In addition, each vendor of NYSE Trading Information will receive a monthly credit of \$2 for each device that the vendor has entitled to receive displays of NYSE Trading Information, up to a maximum of:

(1) \$3,000 per month if the vendor pays the monthly access fees for both the NYSE Retail Trading Product datafeed and the NYSE Program Trading Product datafeed (which two monthly access fees total \$3,000); and

(2) \$1,500 per month if the vendor pays the monthly access fees for either the NYSE Retail Trading Product datafeed or the NYSE Program Trading Product, but not both (either of which monthly access fees equals \$1,500).

The Exchange would commence to impose those fees 30 days after the Commission approves them. NYSE believes that the access and device fees for the NYSE Retail Trading Product and the NYSE Program Trading Product would reflect an equitable allocation of NYSE's overall costs to users of its facilities.

The access fees, the device fees and the device fee credit apply equally to every vendor. The Exchange notes that it proposes to set the device fee offset of access fees (*i.e.* the device fee credit) at such low levels (*i.e.*, a \$1500 access fee is offset in full if only 750 of a vendor's customers subscribe to the service) that the vast majority of vendors that wish to

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

provide displays of this information are likely, in effect, not to pay access fees.

In arriving at the monthly \$1500 access fee, the \$2 device fee and the \$250 redistribution fee, the Exchange took into account the cost of collecting, processing and making available NYSE Trading Information, and assessed the value of the two products relative to other data products that the Exchange makes available, such as NYSE OpenBook and NYSE Alerts. The Exchange believes that the fees would enable the users of NYSE Trading Information to make an appropriate contribution to the recovery of the overall costs of NYSE's operations and that the fees are reasonably related to the value that the two products provide to those who use them.

The Exchange is not proposing to impose any attribution requirements on vendors displaying NYSE Trading Information. However, the Exchange believes that it is incumbent on vendors to identify and display information in a manner that avoids investor confusion. This is especially true at a time when markets are offering investors, who have grown accustomed to viewing consolidated information over the past three decades, many new exchange-specific information services.

Thus, while the Exchange is not proposing to impose any attribution requirement, it does propose to have vendors provide, by link or otherwise, a description of the NYSE Retail Trading Product and NYSE Program Trading Product in a manner that is reasonably transparent and accessible to subscribers of the two products. The Exchange will require the Exhibit A to each vendor's contract with the Exchange for the receipt and redistribution of the NYSE Retail Trading Product and NYSE Program Trading Product to describe how the vendor will make the description available.

The description should read substantially as follows:

NYSE Rule 132B requires each NYSE member firm to record for each order that it submits to the Exchange such information as whether the firm is placing the order for the account of a retail customer or whether the order results from program trade trading activity. NYSE uses this information to produce the NYSE Retail Trading Product and NYSE Program Trading Product, each of which includes real-time information relating to retail trading and program trading activity, respectively, as well as daily summaries and historical databases of that information.

While the NYSE believes the information contained in the NYSE Retail Trading Product and NYSE Program Trading Product

is accurate, Customer understands that its agreement with NYSE provides that NYSE (1) Reserves all rights to that information, (2) does not guarantee the completeness or accuracy of account information submitted by order entry firms on which the InfoTools product is based, and (3) shall not be liable for any loss due either to their negligence or to any cause beyond their reasonable control.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among Exchange participants, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2006-32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-32. 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 the Exchange. 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 publicly available. All submissions should refer to File Number SR-NYSE-2006-32 and should be submitted on or before June 14, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Nancy M. Morris,
Secretary.

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⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 17 CFR 200.30-3(a)(12).