

May 5, 2010

Via E-Mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: SR-NYSE-2010-22: Notice of Filing of Proposed Rule Change to Make Permanent a Unit-of-Count Metric Alternative for NYSE OpenBook

Dear Ms. Murphy:

The Market Data Subcommittee of the Securities Industry and Financial Markets Association (“SIFMA”)¹ Technology and Regulation Committee appreciates the opportunity to comment on SR-NYSE-2010-22. The proposal includes a number of significant changes relating to the unit of count for assessing market data fees. SIFMA member firms’ experience under the current pilot program has generally been positive, so we applaud NYSE’s decision to make the pilot permanent. The unit of count approach under the proposal simplifies market data administration and better reflects how firms and individuals use and access market data today. These are points that SIFMA has advocated for years. Accordingly, SIFMA believes it should become the model and standard for other exchanges for both exchange-direct and consolidated data products.²

Significantly, the proposal makes clear that NYSE will not restrict how vendors (and broker-dealers) may use NYSE OpenBook data in their display services and encourages vendors to create and promote innovative uses of NYSE OpenBook information,” including “derived information displays, such as displays that

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

² We also note that it is unclear to what extent this policy will be employed by NYSE in Europe and we acknowledge that there may be different views about charging for such data in Europe.

aggregate NYSE OpenBook data with data from other markets.” This will enable SIFMA members to innovate and create market data displays that meet the particular needs of their employees and clients – provided that (i) other exchanges follow NYSE’s example and (ii) the Commission takes steps to assure that the fees for market data are fair and reasonable (matters outside the scope of this proposal).

In recently discussing the rule with NYSE market data representatives, SIFMA members raised a few questions and concerns, which are summarized below.

Subscriber Entitlements and Under- or Over-Reporting

The unit of count for assessing market data fees focuses on Subscriber Entitlements, with a focus on “counting people, not boxes.” This includes each unique individual who has access to the OpenBook data, whether through one device or many. The exchange’s main concern is that more than one individual should not be able to access market data simultaneously using the same entitlement resulting in an under-counting of Subscriber Entitlements and corresponding market data fee liability.

Although SIFMA understands the exchange’s legitimate concern, it leads to two potentially unfair situations: (1) one device serving multiple individuals who, through system controls, are prevented from accessing market data at the same time; and (2) a unique Subscriber who accesses more than one market data service using different entitlements (*i.e.*, different log-ins and passwords). In both of these cases the exchange would expect a firm to report more than one Subscriber Entitlement. This approach may unfairly impact firms who have employees share work stations in shifts, or who require for security or system reasons certain employees be assigned more than one system access code. If firms have adequate entitlement controls to prevent simultaneous access or log-ins or the sharing of access codes, then the exchange’s concern about under-counting Subscribers should be met and some flexibility for different firm models should be accommodated.

Entitlements for Support Functions

As noted in our comment letter last year on the pilot proposal, SIFMA members had concerns about how NYSE would count internal Subscriber Entitlements for support functions (which previously were generally exempt from fee liability). At that time, SIFMA received the following assurance from NYSE that we wanted to be reflected in the record for this filing:

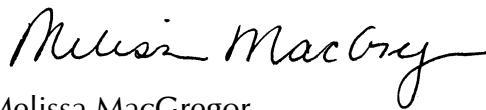
As currently drafted, the filing provides that all internal entitlement to data by external vendors is billable, even if that use is for feed monitoring, operations, support, and other similar functions related to making the external service available. We were originally going to

address this particular situation as part of a larger, separate filing, but we have changed our mind. We intend to articulate a policy that limits the liability of these entitlements to \$1,500 per month, or 25 devices. If we need to file this, we will, but because it will limit the amount customers need to pay, we are comfortable that we can implement this through the policy until such time as it may be formally filed and approved.³

Based on its experience during the pilot, and because this is a different approach than the one the CTA takes, NYSE is still reviewing the best approach for support function entitlement fees. Informally, NYSE staff has told us that the \$1,500 per month cap noted above will be the most that it will charge a firm for internal support function usage of the OpenBook data after the rule is final.

We appreciate the opportunity to comment on this rule proposal and believe that, on balance, it is a good step forward for rationalizing the market data unit of count. If you have any questions, please contact me at 202-962-7385.

Very truly yours,



Melissa MacGregor
Managing Director and Associate General Counsel

cc: Ron Jordan, NYSE

³ Email from Ron Jordan, EVP Market Data Services, NYSE Euronext to Christopher Gilkerson, Co-Chair of Market Data Subcommittee (Jan. 22, 2009).