

135b under the Securities Act of 1933. The amendment will clarify that an Options Disclosure Document prepared pursuant to rule 0b-1 under the Securities Exchange Act of 1934 is not a prospectus and therefore is not subject to liability under section 12(a)(2) of the Exchange Act.

For further information, please contact Ray Be, Office of Rulemaking, Division of Corporation Finance, at (202) 942-2910.

5. The Commission will consider whether to propose an amendment to rule 146 under the Securities Act of 1933. The proposed amendment provides a definition of the term "qualified purchaser" for purposes of section 18(b)(3) of the Securities Act and thus posits an additional "covered security" preempting state securities registration and review.

For further information, please contact Marva Simpson, Office of Small Business Policy, Division of Corporation Finance, at (202) 942-2950.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: December 11, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-30979 Filed 12-12-01; 11:43 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: 66 FR 63422, December 6, 2001.

Status: Closed meeting.

Place: 450 Fifth Street, NW., Washington, DC

Date and Time of Previously Announced Meeting: Thursday, December 13, 2001 at 10:00 a.m.

Change in the Meeting: Time Change.

The closed meeting scheduled for Thursday, December 13, 2001 at 10 a.m. has been changed to Friday, December 14, 2001 at 10 a.m.

Dated: December 12, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-31031 Filed 12-12-01; 4:02 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44138; File No. SR-NYSE-2001-42]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the New York Stock Exchange, Inc., Establishing the Fees for NYSE OpenBook™

December 7, 2001.

On October 15, 2001, 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 establishing the fees for its NYSE OpenBook service. The proposed rule change was published for comment in the *Federal Register* on October 29, 2001.³ The Commission received one comment letter on the proposed rule change.⁴ This order approves the proposed rule change.

I. Description of the Proposed Rule Change

A. Proposed Fees for NYSE OpenBook Service

The Exchange proposes to establish certain fees for its NYSE OpenBook service. NYSE OpenBook is a compilation of limit order data that the Exchange will provide to market data vendors, broker-dealers, private network providers, and other entities through a data feed. According to the Exchange, for every limit price, NYSE OpenBook will include the aggregate order volume. The Exchange will make the NYSE OpenBook data feed available through the Exchange's Common Access Point ("CAP") network. Initially, the Exchange will update NYSE OpenBook every ten seconds.

The Exchange has proposed two fees. First, the Exchange proposes to collect a fee equal to \$5,000 per month from each entity that elects to receive the NYSE OpenBook data feed. Second, the Exchange proposes to collect an end-user fee of \$50.00⁵ per month for each

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 44962 (October 19, 2001), 66 FR 54562.

⁴ See Letter from W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc. to Jonathan G. Katz, Secretary, Commission, dated November 20, 2001 ("Schwab Letter").

⁵ The Exchange noted that although no other exchange currently offers a limit order data compilation, a few markets offer services that provide a point of reference. According to the

terminal through which the end user is able to display the NYSE OpenBook.

B. NYSE OpenBook Service Agreements

The Exchange will require each NYSE OpenBook data feed recipient to enter into the existing form of "vendor" agreement. That agreement will authorize the data feed recipient to provide NYSE OpenBook display services to its customers or to distribute the data internally. In addition, the Exchange represents that it will require each end-user that receives NYSE OpenBook displays from a vendor or broker-dealer to execute the existing "subscriber" agreement.

The Exchange intends to supplement the vendor agreements with additional terms that are unique to NYSE OpenBook. First, the vendor agreements prohibit a data feed recipient that disseminates the NYSE OpenBook outside of its organization from enhancing, integrating, or consolidating the disseminated NYSE OpenBook data with limit order data of other markets or trading systems (*i.e.*, the data feed recipient may only disseminate the display of the NYSE's OpenBook in a separate "window"⁶ marked "NYSE OpenBook™"). A vendor, however, may place other markets' limit order displays on the same page as the NYSE OpenBook window. This restriction only applies to vendors that disseminate the NYSE OpenBook outside of their organization. It does not apply to those entities that receive the data feed for their own internal use. In other words, data feed recipients will be permitted to enhance, integrate, or consolidate the NYSE OpenBook data with other markets' or trading systems' limit order data for their own internal use.

Second, the vendor agreement precludes a data feed recipient from retransmitting the NYSE OpenBook data feed. Thus, any entity that wishes to receive the data feed so that it may enhance, integrate, or consolidate the data with other markets' data for its own internal use must obtain the data feed from the NYSE. The Exchange, however,

Exchange, the Nasdaq Stock Market charges \$50 per terminal for its Nasdaq Level II service for professional interrogation devices, which provides the best bid and offer from all market makers and ECNs (although it does not otherwise provide depth-of-book or depth-of-market information). The Exchange also believes that the London Stock Exchange charges \$144-\$219 per terminal for the price and size of limit orders in stocks that are included in the FTSE 250 index. Further, the Exchange believes that the Toronto Stock Exchange charges \$30 per terminal for its order books.

⁶ The "window" requirement does not literally require a separate window, only separate displays. In other words, a vendor could format multiple displays in a single window.

has represented that once it and the marketplace gains experience with the product, the Exchange will permit retransmission of the NYSE OpenBook data feed by vendors.

II. Summary of Comments

The Commission received one comment letter on the proposal.⁷ Generally, the commenter supports the Exchange's efforts in making its depth-of-book information available to investors as soon as possible. However, the commenter believes that the fee structure and the restrictions on how the NYSE OpenBook data can be used are unreasonable and unfairly discriminate against individual retail investors.

The commenter believes that the proposed fee structure deprives retail investors of equal and fair access to the same type of information as institutions and professionals because the proposed end-user fee is prohibitively expensive. Therefore, the commenter believes that retail firms, and in particular, firms with a large online retail client base, are placed at an unfair competitive disadvantage to firms that cater to institutional investors or serve their clients solely through telephone and in-person service. The commenter also states that the NYSE did not justify or attempt to explain the reasonableness of the \$50 per device or end-user fee. Therefore, without a cost-effective alternative for retail investors, the commenter believes that the proposal does not meet investor protection standards.

In addition, the commenter states that the proposal unduly restricts the availability of critically important market data on a fair and equal basis. The commenter believes that the restrictions on the form and content of OpenBook would result in retail investors getting an inferior information product than would be available to institutions and professionals because retail investors would only receive a one-size-fits-all information product (i.e., the NYSE OpenBook display), as opposed to enhanced or consolidated market information.⁸

In response to the commenter, the Exchange stated that the commenter's concerns generally focused on the absence of a retail online fee. The Exchange argued that as a product

innovator, it was simply exercising its prerogative to roll out NYSE OpenBook in phases, as dictated by demand.

III. Discussion

After careful review, the Commission finds that the Exchange's proposed rule change to establish fees for NYSE OpenBook service is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the fee proposal is consistent with section 6(b)(4) of the Act,¹⁰ which requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

Specifically, the Commission believes that the Exchange's proposed charges of \$5,000 per month for receipt of the NYSE OpenBook data feed, and \$50 per month for the end-user fee per terminal are reasonable when compared to similar types of service provided by other markets.¹¹

The Commission considered the commenter's concern that the Exchange's proposed fees unfairly discriminate against retail investors. The Exchange, however, has represented that as it gains experience with NYSE OpenBook, it may design a data product that is more suitable for use by registered representatives, and should ademand develop, it would consider designing a limit order data product for the retail, nonprofessional customer.

The Commission notes that this order only approves the filing submitted by the NYSE, for the fees for the NYSE OpenBook service. Therefore, the Commission is not approving or disapproving the terms of the NYSE's vendor or subscriber agreements. The NYSE's proposed restrictions on vendor dissemination of OpenBook data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data found in these agreements are on their face discriminatory, and may raise fair access under the Act.¹²

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the

proposed rule change (SR-NYSE-2001-42) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-30879 Filed 12-13-01; 8:45 am]
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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3379]

State of Tennessee (and Contiguous Counties in the State of Arkansas, Kentucky and Mississippi)

Henry and Shelby Counties and the contiguous Counties of Benton, Carroll, Fayette, Stewart, Tipton and Weakley in the State of Tennessee; Crittenden County in the State of Arkansas; Calloway and Graves Counties in the State of Kentucky; and DeSoto and Marshall Counties in the State of Mississippi constitute a disaster area due to damages caused by tornadoes and heavy rains that occurred on November 21, 2001 and continued through November 30, 2001.

Applications for loans for physical damage may be filed until the close of business on February 5, 2002 and for economic injury until the close of business on September 6, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners With Credit Available Elsewhere	6.500
Homeowners Without Credit Available Elsewhere	3.250
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
<i>For Economic Injury:</i>	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ...	4.000

The numbers assigned to this disaster for physical damage are 337912 for Tennessee; 338012 for Arkansas; 338112 for Kentucky; and 338212 for Mississippi. For economic injury, the

¹⁴ 17 CFR 200.30-3(a)(12).

⁹ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See note 5, *supra*.

¹² For a complete discussion of the relevant provisions of the Act, see Securities Exchange Act Release No. 44962 (October 19, 2001), 66 FR 54562 (October 29, 2001).

¹³ 15 U.S.C. 78s(b)(2).

⁷ See Schwab Letter, note 4, *supra*.

⁸ The commenter questioned whether the restriction on dissemination applied only to the dissemination of the data feed itself for whether it was a complete ban on external redistribution of the OpenBook display. The NYSE clarified that the restriction on dissemination applied only to the dissemination of the data feed.