IV. NASD Response to Comments

As a preliminary matter, NASD stated that suggestions that non-public arbitrators should be eliminated from arbitration panels were beyond the scope of the rule filing, which applies to the classification of arbitrators and not the composition of arbitration panels.[32]

NASD also stated that the current definitions of non-public arbitrator and public arbitrator, in conjunction with the proposed rule change, will properly exclude individuals with significant ties to the securities industry from being classified as public arbitrators.[33] It stressed that the proposed rule change eliminates from the definition of public arbitrator both persons with ''actual bias'' and those ''perceived as being biased.'' NASD noted that its rules already prohibit professionals from serving as public arbitrators if they have devoted 20 percent or more of their work in the last two years to securities industry clients. It also stated that it has taken the additional step in the current rule to exclude from the definition of public arbitrator professionals whose firm derived 10 percent or more of its annual revenue in the past two years from securities industry clients.[34]

NASD further commented that it is not necessary for its rules with respect to the classification of arbitrators to be identical to those of the NYSE, and noted existing differences, such as the 10 percent threshold for certain professionals, between its rules and the NYSE rule.[35] Regarding the proposed amendment to prohibit certain family members or relatives of certain family members who work for a controlled entity from serving as public arbitrators, NASD stated that it drafted this proposal to ensure that individuals with significant ties to the securities industry do not serve as public arbitrators.[36]

V. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6)[37] of the Act, which require, among other things, NASD's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[38]

The Commission believes that the proposed rule change will promote the public interest by limiting certain people who have ties to the securities industry from serving as public arbitrators. In particular, by expanding the list of entities controlled by companies engaged in the securities business, the rule will further limit the industry ties the public arbitrator may have. The inclusion of immediate family members within the list of controlled parties who may not be public arbitrators should have a similar result.[39] In addition, reminding persons registered with broker-dealers that they are associated persons of a broker-dealer should further assist in the correct classification of these persons as non-public arbitrators.[40]

The Commission appreciates the comments suggesting the elimination of non-public arbitrators, and the further restriction on persons who have any ties to the securities industry from serving as public arbitrators. While these comments are beyond the scope of this rule filing, they raise important questions regarding the arbitration process. We understand that SICA is actively considering proposals from its membership regarding these issues. We note that NASD has stated that it will review any rule regarding panel composition that SICA adopts to the UCA, and that it is considering further amendments to the definitions of public arbitrator and non-public arbitrator.[41]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[42] that the proposed rule change, as amended (SR–NASD–2005–094), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–17563 Filed 10–19–06; 8:45 am]

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[32] *See* letter from John D. Nachmann, Counsel, NASD, to Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, SEC, dated Aug. 23, 2006, available at: *http://www.sec.gov/rules/sro/nasd/nasd2005094/nasd2005094–65.pdf.*

[33] *Id.*

[34] *Id.* NASD noted that its rules already prohibit the following individuals from serving as public arbitrators: (1) Anyone associated with securities industry during the past five years, (2) anyone who has spent 20 or more years in the securities industry, and (3) anyone who is the spouse or immediate family member of a person who is associated with the securities industry. NASD Rules 10308(a)(4)–(5).

[35] Similar to the current NASD Rule 10308(a)(4)(C), NYSE Rule 607(A)(2)(iv) defines an industry arbitrator to include any attorney, accountant or other professional who has devoted 20 percent or more of his or her work to securities industry clients within the last two years.

[36] *Id.*

[37] 15 U.S.C. 78o–3(b)(6).

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

[39] Section 19(b)(2) of the Act requires the Commission to approve a proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Act, and the applicable rules and regulations thereunder. This standard does not require NASD rules to be identical to rules adopted by the NYSE or by SICA.

[40] The Commission notes that persons employed by a broker-dealer (other than in a clerical or ministerial capacity) are associated persons of a broker-dealer as defined in Section 3(a)(18) of the Act.

[41] Telephone conversation between John D. Nachmann, Counsel, NASD, and Michael Hershaft, Special Counsel, SEC (Oct. 3, 2006).

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54597; File No. SR–NYSEArca–2006–21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to NYSE Arca Data

October 12, 2006.

I. Introduction

On May 23, 2006, the NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 to establish fees for the receipt and use of certain market data that the Exchange makes available. The proposal was published for comment in the **Federal Register** on June 9, 2006.[3] The Commission received four comment letters regarding the proposal.[4] On July 25, 2006, and August 25, 2006, the Exchange filed letters responding to the issues raised in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53952 (June 7, 2006), 71 FR 33496.

[4] *See* letters from Gregory Babyak, Chair, Market Data Subcommittee, the Securities Industry Association (''SIA''), and Christopher Gilkerson, Chair, Technology and Regulation Committee, SIA, to Nancy M. Morris, Secretary, SEC, dated June 30, 2006 (''SIA Letter I''), and August 18, 2006 (''SIA Letter II''); web comment from Steven C. Spencer, Esq., dated June 18, 2006 (''Spencer Letter''); and letter from Markham C. Erickson, Executive Director and General Counsel, Netcoalition, to the Honorable Christopher Cox, Chairman, SEC, dated August 9, 2006 (''Netcoalition Letter''). SIA Letters I and II also provide comments concerning File No. SR–NYSE Arca–2006–23, NYSE Arca's proposal to establish a pilot program setting fees for the receipt and use of market data relating to NYSE Arca's best bids and offers. The Netcoalition Letter's comments also apply to File Nos. SR–NYSE Arca–2006–23; SR–NASD–2005–056; and SR–NASD–2006–072.

comment letters.[5] This order approves the proposal.

II. Description of the Proposal

Through NYSE Arca, LLC, the equities trading facility of NYSE Arca Equities, Inc., the Exchange makes available on a real-time basis ArcaBook,SM a compilation of all limit orders resident in the NYSE Arca limit order book. In addition, the Exchange makes available real-time information relating to transactions and limit orders in debt securities that are traded through the Exchange's facilities. The Exchange makes ArcaBook and the bond transaction and limit order information (collectively, ''NYSE Arca Data'') available to market data vendors, broker-dealers, private network providers, and other entities by means of data feeds. Currently, the Exchange does not charge fees for the use receipt and use of NYSE Arca Data.

The Exchange proposes to establish fees for the receipt and use of NYSE Arca Data. Specifically, the Exchange proposes to establish a $750 per month access fee for access to the Exchange's data feeds that carry the NYSE Arca Data.

The Exchange also proposes to establish professional and non-professional device fees for the NYSE Arca Data.[6] For professional subscribers, the Exchange proposes to establish a monthly fee of $15 per device for the receipt of ArcaBook data relating to exchange-traded funds (''ETFs'') and those equity securities for which reporting is governed by the CTA Plan (''CTA Plan and ETF Securities'') and a monthly fee of $15 per device for the receipt of ArcaBook data relating to those equity securities, excluding ETFs, for which reporting is governed by the Nasdaq UTP Plan (''Nasdaq UTP Plan Securities'').[7] For non-professional subscribers, the Exchange proposes to establish a monthly fee of $5 per device for the receipt of ArcaBook data relating to CTA Plan and ETF Securities and a monthly fee of $5 per device for the receipt of ArcaBook data relating to Nasdaq UTP Plan Securities.[8]

The Exchange also proposes a maximum monthly payment for device fees paid by any broker-dealer for non-professional subscribers that maintain brokerage accounts with the broker-dealer.[9] For 2006, the Exchange proposes a $20,000 maximum monthly payment. For the months falling in a subsequent calendar year, the maximum monthly payment shall increase (but not decrease) by the percentage increase (if any) in the annual composite share volume[10] for the calendar year preceding that subsequent calendar year, subject to a maximum annual increase of five percent.

Lastly, the Exchange proposes to waive the device fees for ArcaBook data during the duration of the billable month in which a subscriber first gains access to the data.

III. Summary of Comments

The Commission received four comment letters from three commenters regarding the proposal.[11] All of the commenters objected to the proposal. Two commenters argued that the advent of for-profit exchanges raises significant issues, including the potential for conflicts of interest between an exchange's self-regulatory obligations and its obligations to shareholders.[12] One commenter urged the Commission to consider significant market data proposals, such as the current proposal, in the context of its pending review of self-regulatory organizations (''SROs'').[13]

Two commenters argued that the proposal reflects changes in the Exchange's policies due to its recent merger with the New York Stock Exchange, Inc. (''NYSE'').[14] One commenter stated that the merger eliminated the Exchange's incentive to compete with the NYSE and resulted in the Exchange's proposal to implement fees for its market data.[15] This commenter argued that all investors should be allowed to view market data free of charge.

Another commenter noted that ''[i]n the aftermath of a merger promising the new owners of the [E]xchange new revenue opportunities, the [E]xchange has fundamentally altered the role and distribution of, and changed the rules regarding access to, [the Exchange's] market data.''[16] This commenter noted that the Exchange currently provides its data for free and that the Exchange's post-merger decision to charge fees for its data and require vendors to enter into contracts governing the distribution of its data diminish market transparency and impede competition, which the commenter asserted was inconsistent with the requirements of Section 6(b)(5) of the Act.[17] Further, the commenter stated that the proposed fees would be prohibitively expensive for the ''vast majority'' of retail investors and could result in a two-tier market for transparency.[18]

Two commenters also argued that the proposal was deficient because the Exchange failed to adequately justify the reasonableness of the proposed fees.[19] Specifically, one commenter argued that the Exchange failed to provide the information necessary to determine whether the proposed fees bear any relation to costs, or whether they constitute an equitable allocation of the costs associated with using the Exchange's facilities.[20] The commenter also noted that the Exchange failed to provide the methodology it used to determine the proposed fees.[21] The commenter asserted that without the foregoing information, the Commission lacks a legally sufficient foundation to approve the proposed fees.[22] Another commenter argued that the Exchange provided no basis for assessing how the

[5] *See* letters from Janet Angstadt, Acting General Counsel, NYSE Arca, Inc., to Nancy M. Morris, Secretary, SEC, dated July 25, 2006 (''NYSE Arca Response I'') and August 25, 2006 (''NYSE Arca Response II'').

[6] In differentiating between professional and non-professional subscribers, the Exchange proposes to apply the same criteria used by the Consolidated Tape Association Plan (''CTA Plan'') and the Consolidated Quotation System Plan (''CQ Plan'') for qualification as a non-professional subscriber.

[7] The ''Nasdaq UTP Plan'' is the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

[8] There will be no monthly device fees for limit order and last sale price information relating to debt securities traded through the Exchange's facilities.

[9] Professional subscribers may be included in the calculation of the monthly maximum amount so long as (i) nonprofessional subscribers comprise no less than 90 percent of the pool of subscribers that are included in the calculation; (ii) each professional subscriber that is included in the calculation is not affiliated with the broker-dealer or any of its affiliates (either as an officer, partner or employee or otherwise); and (iii) each such professional subscriber maintains a brokerage account directly with the broker-dealer (that is, with the broker-dealer rather than with a correspondent firm of the broker-dealer).

[10] ''Composite share volume'' for a calendar year refers to the aggregate number of shares in all securities that trade over NYSE Arca facilities for that calendar year.

[11] *See* note 4, supra.

[12] *See* SIA Letter I and Netcoalition Letter, *supra* note 4.

[13] *See* Netcoalition Letter, *supra* note 4. Specifically, the commenter urged the Commission to consider these issues in the context of the Concept Release concerning self-regulation. *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004).

[14] *See* SIA Letter I and Spencer Letter, *supra* note 4.

[15] *See* Spencer Letter, *supra* note 4.

[16] *See* SIA Letter I, *supra* note 4.

[17] *See* SIA Letter I, *supra* note 4. The commenter also argued that the Exchange failed to address whether the proposal imposed a burden on competition and the statutory basis for the proposal. *See also* SIA Letter II *supra* note 4.

[18] *See* SIA Letter I, *supra* note 4.

[19] *See* SIA Letters I and II, and Netcoalition Letter, *supra* note 4.

[20] *See* SIA Letters I and II, *supra* note 4.

[21] *Id.*

[22] *See* SIA Letter I, *supra* note 4.

fees were determined and noted that the Exchange's only guidance was an assertion that its fees are in line with fees charged by other SROs.[23]

One commenter argued that the proposal should not be approved because the Exchange failed to include the contract terms which would govern the distribution and access to the NYSE Arca Data.[24] The commenter believed that the Exchange should have to file the terms of its vendor contract with Commission for public comment and review because they will ''restrict access and set material terms'' for access to the NYSE Arca Data.[25]

Further, the commenter argued that Regulation NMS established that broker-dealers can distribute their own data so long as the terms of distribution are fair and reasonable and not unreasonably discriminatory.[26] The commenter asserted that the Exchange failed to ''recognize [these] rights reflected in Regulation NMS'' or ''to negotiate with the industry a reciprocal licensing agreement.'' [27]

Finally, one commenter argued that the Exchange failed to consider the administrative burdens associated with implementing the proposal.[28] This commenter noted that firms would be required to track access and usage, which could impose ''significant development costs.'' [29]

IV. Exchange's Responses to Comments

In its responses to the commenters, the Exchange acknowledged that it was seeking to impose fees for data it currently distributes for free. The Exchange noted, however, that Regulation NMS allows each national securities exchange to distribute market data outside of the national market system plans so long as the terms of distribution are fair, reasonable, and not unreasonably discriminatory.[30] The Exchange argued that the proposal is consistent with these requirements and reflects an equitable allocation of the Exchange's overall costs to users of its facilities.[31] NYSE Arca also noted its ''desire to participate in a revenue stream that is growing increasingly significant for its primary competitors.'' [32]

The Exchange argued that the proposal establishes ''a framework for distributing data in which all vendors and end users are permitted to receive and use the Exchange's market data on equal, non-discriminatory terms.'' [33] The Exchange reiterated its assertion that the proposed professional and non-professional device fees for the NYSE Arca Data were fair and reasonable because they ''are far lower than those already established—and approved by the Commission—for similar products offered by other U.S. equity exchanges and stock markets.'' [34] In particular, the Exchange noted that the proposed $15 per month device fee for each of the ArcaBook data products is less than both the $60 per month and $70 per month device fees that the NYSE and Nasdaq, respectively, charge for comparable market data products.[35]

With respect to its proposed fees, the Exchange noted, further, that it had invested significantly in its ArcaBook products, including making technological enhancements that allowed the Exchange to expand capacity and improve processing efficiency as message traffic increased, thereby reducing the latency associated with the distribution of ArcaBook data.[36] The Exchange stated that ''[i]n determining to invest the resources necessary to enhance ArcaBook technology, the Exchange contemplated that it would seek to charge for the receipt and use of ArcaBook data.'' [37] The Exchange also emphasized the quality of its market data relative to other comparable products, asserting, for example, that ''NYSE Arca is at the inside price virtually as often as Nasdaq, yet the proposed fee for ArcaBook is merely one-fifth of the TotalView fee.'' [38]

The Exchange stated that it proposes to use the CTA and CQ Plan contracts to govern the distribution of NYSE Arca Data and that it was not amending the terms of these existing contracts or imposing restrictions on the use or display of its data beyond those that are currently set forth in the contracts.[39] Further, the Exchange specifically noted that these contracts do not prohibit a broker-dealer from making its own data available outside of the CTA and CQ Plans. Finally, the Exchange argued that by using this current structure, it believes that the administrative burdens on firms and vendors should be low.[40]

The Exchange also argued that it believes that the proposal would foster competition because the proposed fees (i) will apply equally to all subscribers; (ii) will allow the Exchange to further diversify its revenue stream to compete with its rivals; and (iii) may provide a competitive advantage to those markets that elect not to charge fees.[41]

V. Discussion

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(4) of the Act,[42] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[43] 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.[44]

As described more fully above, the proposal establishes fees for NYSE Arca Data, including a $750 per month access fee and device fees of $30 per month for professional subscribers and $10 per month for non-professional subscribers.[45] The Commission finds that these fees are consistent with Section 6(b)(4) of the Act because they are reasonable when compared to the fees charged by other markets for similar products. In this regard, the Commission notes that the NYSE has established an access fee of $5,000 per month for the receipt of its OpenBook data feed, with a $60 per month

[23] *See* Netcoalition Letter, *supra* note 4.

[24] *See* SIA Letters I and II, *supra* note 4.

[25] *See* SIA Letter I, *supra* note 4. *See also* SIA Letter II, *supra* note 4.

[26] *See* SIA Letters I and II, *supra* note 4.

[27] *Id.*

[28] *See* SIA Letter I, *supra* note 4.

[29] *See* SIA Letter I, *supra* note 4.

[30] *See* NYSE Arca Response I and II, *supra* note 5.

[31] *See* NYSE Arca Response I, *supra* note 5.

[32] *See* NYSE Arca Response II, *supra* note 5.

[33] *See* NYSE Arca Response I, *supra* note 5.

[34] *See* NYSE Arca Response I, *supra* note 5.

[35] *See* NYSE Arca Response I, *supra* note 5. *See also* NYSE Arca Response II, *supra* note 5.

[36] *See* NYSE Arca Response II, *supra* note 5.

[37] *See* NYSE Arca Response II, *supra* note 5.

[38] *See* NYSE Arca Response II, *supra* note 5.

[39] *See* NYSE Arca Response I, *supra* note 5.

[40] *See* NYSE Arca Response I, *supra* note 5.

[41] *See* NYSE Arca Response I, *supra* note 5.

[42] 15 U.S.C. 78f(b)(4).

[43] 15 U.S.C. 78f(b)(5).

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

[45] Professional subscribers would pay a monthly fee of $15 per device for the receipt of ArcaBook data relating to CTA Plan and ETF Securities, and $15 per device for the receipt of ArcaBook data relating to Nasdaq UTP Plan Securities. Non-professional subscribers would pay a monthly fee of $5 per device for the receipt of ArcaBook data relating to CTA Plan and ETF Securities, and $5 per device for the receipt of ArcaBook data relating to Nasdaq UTP Plan Securities.

terminal fee.[46] Similarly, Nasdaq charges access fees ranging from $1,000 to $5,000 per month for its TotalView product, and $1,000 to $5,000 per month for its OpenView product, with a combined monthly device fee of $76 for both products for professional subscribers and a monthly fee of $14 for non-professional subscribers to TotalView.[47]

In the proposal, the Exchange analyzes its proposed fees in comparison with the fees that other U.S. markets, and the CTA and Nasdaq UTP Plans, charge for comparable products.[48] As described more fully above,[49] the Exchange also asserts that it devoted resources to enhancing ArcaBook's technology and that it considered the quantity and quality of ArcaBook data relative to comparable market data products in setting fees for NYSE Arca Data.[50] Accordingly, the Commission disagrees with commenters' assertion [51] that the Exchange has failed to justify its proposed fees.

As discussed more fully above, one commenter also asserts that the imposition of fees for NYSE Arca Data, which previously was distributed without charge, would diminish market transparency and impede competition,[52] and make NYSE Arca Data prohibitively expensive for most retail investors, thereby creating a ''two-tier market for transparency'' that is ''contrary to the fairness goals of the Order Protection Rule.'' [53] Another commenter believes that investors should be able to view market data free of charge.[54]

As the Commission stated in adopting Regulation NMS, Exchange Act Rule 601 [55] rescinded the prohibition on SROs and their members disseminating their trade reports independently, with or without fees.[56] The Commission noted, further, that Exchange Act Rule 603(a) [57] establishes uniform standards for the distribution of quotations and trades that creates an equivalent regulatory regime for all types of markets.[58] In this regard, Exchange Act Rule 603(a)(1) requires that any market information distributed by an exclusive processor, or by a broker or dealer that is the exclusive source of information, be made available to securities information processors on terms that are fair and reasonable.[59] Exchange Act Rule 603(a)(2) requires any SRO, broker, or dealer that distributes market information to do so on terms that are not unreasonably discriminatory. As the Commission stated:

> These requirements prohibit, for example, a market from making its 'core data' (*i.e.*, data that it is required to provide to a Network processor) available to vendors on a more timely basis than it makes available the core data to a Network processor.[60]

The Commission believes that the commenter's assertion that the proposal is inconsistent with the fairness goals of the Order Protection Rule fails to recognize that Exchange Act Rules 601 and 603 permit, and establish general conditions for, the distribution of quotation and transaction information by SROs and other entities. Accordingly, the Commission believes that the proposal, which establishes fees and terms for the distribution of the Exchange's limit order data, involve activities permitted under Exchange Act Rule 603, subject to the requirements of Exchange Act Rule 603(a).

The Commission does not believe that the imposition of fees for NYSE Arca Data will diminish market transparency or impede competition. In this regard, the Commission notes that NYSE Arca Data will continue to be available, and that, like the Exchange, other SROs, as well as brokers and dealers, will be free to distribute their market information. In addition, the Exchange believes that the fees for NYSE Arca Data could help it to compete more effectively with other markets.[61] The Exchange also notes that its fees will apply equally to all professional and non-professional subscribers, and that its fee structure will not advantage any one subscriber relative to another.[62] Accordingly, the Commission does not believe that the proposal will impede competition.

One commenter also raises concerns regarding the contract terms that will govern the distribution of NYSE Arca Data. In particular, the commenter asserts that the Exchange has not filed its vendor distribution agreement with the Commission for public notice and comment and Commission approval, or with the CTA.[63]

The Commission disagrees with this assertion, and notes that the Exchange stated in its proposal that it planned to use the vendor and subscriber agreements used by CTA and CQ Plan Participants (the ''CTA/CQ Vendor and Subscriber Agreements'') to govern the distribution of NYSE Arca Data. According to the Exchange, the CTA/CQ Vendor and Subscriber Agreements ''are drafted as generic one-size-fits all agreements and explicitly apply to the receipt and use of certain market data that individual exchanges make available in the same way that they apply to data made available under the CTA and CQ Plans,'' and the contracts need not be amended to cause them to govern the receipt and use of the Exchange's data.[64] The Exchange maintains that because ''the terms and conditions of the CTA/CQ contracts do not change in any way with the addition of the Exchange's market data * * * there are no changes for the industry or Commission to review.'' [65]

The Commission believes that the Exchange may use the CTA/CQ Vendor and Subscriber Agreements to govern the distribution of NYSE Arca Data.[66]

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[46] *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).

[47] According to the Exchange, Nasdaq does not offer a nonprofessional subscriber rate for OpenView.

[48] The Exchange provides an additional discussion of its proposed fees in NYSE Arca Responses I and II, *supra* note 5.

[49] *See* notes 30—32, *supra*, and accompanying text.

[50] *See* NYSE Arca Response II, *supra* note 5. In this regard, the Exchange states that ''[f]or ArcaBook, the Exchange examined the quantity and quality of the market data relative to other similar products and determined to comparatively under-price the product so as to minimize the impact on market data budgets as ArcaBook transitions to a fee-liable product.'' *See* NYSE Arca Response II, *supra* note 5.

[51] *See* SIA Letters I and II and Netcoalition Letter, *supra* note 4.

[52] *See* SIA Letter I, *supra* note 4.

[53] *See* SIA Letters I and II, *supra* note 4.

[54] *See* Spencer Letter, *supra* note 4.

[55] 17 CFR 242.601.

[56] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release''), at Section V.B.3.a.

[57] 17 CFR 242.603(a).

[58] *See* Regulation NMS Adopting Release, *supra* note 56, at Section V.B.3.a.

[59] *See* Regulation NMS Adopting Release, *supra* note 56, at Section V.B.3.a.

[60] *See* Regulation NMS Adopting Release, *supra* note 56, at Section V.B.3.a.

[61] *See* NYSE Arca Response I, *supra* note 5.

[62] *See* NYSE Arca Response I, *supra* note 5.

[63] *See* SIA Letters I and II, *supra* note 4. In this regard, the commenter states that, procedurally, the Exchange ''is amending and adding to the CTA vendor agreement without first submitting its contractual changes through the CTA's processes, which are subject to industry input through the new Advisory Committee mandated by Regulation NMS.'' *See* SIA Letter I, *supra* note 4.

[64] *See* NYSE Arca Response I, *supra* note 5.

[65] *See* NYSE Arca Response I, *supra* note 5.

[66] The Commission is not approving the CTA/CQ Vendor and Subscriber Agreements, which the CTA and CQ Plan Participants filed with the Commission as amendments to the CTA and CQ Plans that were effective on filing with the Commission pursuant to Exchange Act Rule 11Aa3–2(c)(3)(iii) (redesignated as Rule 608(b)(3)(iii) of Regulation NMS). *See, e.g.*, Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4–2811) (notice of filing and immediate effectiveness of amendments to the Consolidated Tape Association Plan and the Consolidated Quotation Plan). Exchange Act Rule 11Aa3–2(c)(3)(iii) (redesignated as Rule 608(b)(3)(iii) of Regulation NMS) allows a proposed amendment to a national market system plan to be put into effect upon filing with the

The Commission notes that the NYSE used the CTA Vendor Agreement to govern the distribution of its OpenBook and Liquidity Quote market data products.[67] In addition, according to NYSE Arca, the CTA/CQ Vendor and Subscriber Agreements ''have been in effect for many years and enjoy widespread use and acceptance.'' [68] The Exchange represents that, following consultations with vendors and end-users, and in response to client demand, the Exchange:

> chose to fold itself into an existing contract and administration system rather than to burden clients with another set of market data agreements and another market data reporting system, both of which would require clients to commit additional legal and technical resources to support the Exchange's data products.[69]

In addition, the Commission notes that the Exchange has represented that it is not imposing restrictions on the use or display of its data beyond those set forth in the existing CTA/CQ Vendor and Subscriber Agreements.[70] Because the Exchange has not proposed changes to the CTA/CQ Vendor and Subscriber Agreements, the Commission disagrees with one commenter's assertion that the Exchange is ''amending and adding to the CTA vendor agreement.'' [71]

This commenter also believes that the Exchange has not recognized the rights of a broker or dealer, established in Regulation NMS, to distribute its order information, subject to the condition that it does so on terms that are fair and reasonable and not unreasonably discriminatory.[72] In response, the Exchange states that the CTA/CQ Vendor and Subscriber Agreements do not prohibit a broker-dealer member of a Plan Participant from making available to the public information relating to the orders and transaction reports that it provides to Plan Participants.[73] Accordingly, the Commission believes that the Exchange has acknowledged the rights of a broker or dealer to distribute its market information, subject to the requirements of Exchange Act Rule 603(a).

One commenter also asserts that the Exchange has failed to consider the administrative burdens that the proposal would impose, including the need for broker-dealers to develop system controls to track ArcaBook access and usage.[74] In response, the Exchange represents that it has communicated with its customers to ensure system readiness and is using a long-standing and broadly-used administrative system to minimize the amount of development effort required to meet the administrative requirements associated with the proposal.[75] Accordingly, the Commission believes that the Exchange has considered the administrative requirements associated with the proposal.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[76] that the proposal (SR–NYSEArca–2006–21), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[77]

Jill M. Peterson,

Assistant Secretary.

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Commission if the plan sponsors designate the proposed amendment as involving solely technical or ministerial matters.

[67] *See* Securities Exchange Act Release Nos. 53585 (March 31, 2006), 71 FR 17934 (April 7, 2006) (order approving File Nos. SR–NYSE–2004–43 and NYSE–2005–32) (relating to OpenBook); and 51438 (March 28, 2005), 70 FR 17137 (April 4, 2005) (order approving File No. SR–NYSE–2004–32) (relating to Liquidity Quote). For both the OpenBook and Liquidity Quote products, the NYSE attached to the CTA Vendor Agreement an Exhibit C containing additional terms governing the distribution of those products, which the Commission specifically approved. NYSE Arca is not including additional contract terms in its proposal.

[68] *See* NYSE Arca Response I, *supra* note 5.

[69] *See* NYSE Arca Response I, *supra* note 5.

[70] *See* NYSE Arca Response I, *supra* note 5.

[71] *See* SIA Letter I, *supra* note 4.

[72] *See* SIA Letters I and II, *supra* note 4.

[73] *See* NYSE Arca Response I, *supra* note 5.

[74] *See* SIA Letter I, *supra* note 4.

[75] *See* NYSE Arca Response I, *supra* note 5.

[76] 15 U.S.C. 78s(b)(2).

[77] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Orlando Sanford International Airport, Sanford, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program modification submitted by the Sanford Airport Authority under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 22, 2005, the FAA determined that the noise exposure maps submitted by the Sanford Airport Authority under part 150 were in compliance with applicable requirements. On August 23, 2006, the FAA approved the Orlando Sanford International Airport modification to the noise compatibility program. All of the recommended modifications of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

DATES: *Effective Date:* The effective date of the FAA's approval of the Orlando Sanford International Airport modification to the noise compatibility program is August 23, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 130. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval of a modification to the noise compatibility program for Orlando Sanford International Airport, effective August 23, 2006.

Under Section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. the noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;