

the same customers on whose orders it depends for competitive survival.<sup>31</sup>

In addition to the need to attract order flow, the availability of alternatives to BX's TotalView data significantly affect the terms on which BX can distribute this market data.<sup>32</sup> In setting the fees for its BX TotalView data, BX must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data.<sup>33</sup> Of course, the most basic source of information generally available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.<sup>34</sup> In this respect, the core data feeds that include an exchange's own transaction information are a significant alternative to the exchange's market data product.<sup>35</sup>

For more specific information concerning depth, market participants can choose among products offered by the various exchanges and ECNs.<sup>36</sup> The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data are all sources of competition. In addition, market participants can assess depth with tools other than market data, such as "pinging" orders that search out both displayed and nondisplayed size at all price points within an order's limit price.<sup>37</sup>

In sum, there are a variety of alternative sources of information that impose significant competitive pressures on the BX in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as the BX's compelling need to attract order flow, imposed significant

competitive pressure on the BX to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the BX was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis. Further, the Commission did not receive any comment letters raising concerns of a substantial countervailing basis that the terms of the proposal failed to meet the requirements of the Act or the rules thereunder.

The Commission notes that BX is effectively entering the competitive markets for equities trading as a start-up venture. If its fees are not set at a level that will promote competition in these markets, potential users will simply continue to obtain services from the Exchange's multiple competitors. Accordingly, the Exchange must set fees for market data and transaction executions that promote the Exchange as a trading venue. If its fees are set at inappropriately high levels, market participants will seek to avoid using the Exchange, and the Exchange' market data will have little value to market participants. Thus, consistent with the analysis set forth in the NYSE Arca Order, the Exchange's operations, products and services must be designed to promote competition in order to succeed and provide market participants with viable and cost-effective alternatives to existing competitors.

#### B. Testing and Other Fees

The Exchange proposes to establish new fees for its testing facility at the rates of \$285 per hour for an active connection during the facility's normal operating hours and \$333 per hour for an active connection at other times. Under the proposal, the Exchange will waive fees for testing of new, enhanced, or modified services and/or software offered by the Exchange, as well as for modifications initiated by the Exchange and for a 30-day period for new subscribers to existing services, the testing fees will not be charged until the later of (i) approval of this filing, or (ii) 30 days after the launch of the NASDAQ OMX BX Equities System. Thereafter, fees will be waived for a 30-day period for each new market participant. The Commission notes that the Exchanges's new fees for its testing facility are at

levels identical to the fees for the NASDAQ Exchange's testing facility.<sup>38</sup>

In addition, the Exchange proposes new fee rules related to special data requests to allow the Exchange to recoup costs associated with responding to *ad hoc* requests for market data, such as requests that may be made by news reporters or academic researchers.<sup>39</sup> The Exchange also proposes fees for partial month charges to enable market data distributors to elect to be billed on a prorated basis during the month of initiation or termination of service.<sup>40</sup> The Commission notes that these new fees for special data requests and partial month charges are similar to corresponding NASDAQ Exchange rules.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change (SR-BX-2009-005) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-7085 Filed 3-30-09; 8:45 am]

**BILLING CODE**

#### DEPARTMENT OF STATE

[Public Notice 6562]

#### 60-Day Notice of Proposed Information Collection: DS-0174, Application for Employment as a Locally Employed Staff or Family Member, OMB Control Number 1405-XXXX

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Department of State Application for Employment as a Locally Employed Staff or Family Member.
- *OMB Control Number:* 1405-XXXX.
- *Type of Request:* New collection.

<sup>38</sup> See proposed Equity Rule 7030(d).

<sup>39</sup> See proposed Equity Rule 7030(b).

<sup>40</sup> See proposed Equity Rule 7031.

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 17 CFR 200.30-3(a)(12).

<sup>31</sup> See NYSE Arca Order at 74783.

<sup>32</sup> See Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed. 1998) (discussing the theory of monopolies and pricing). See also U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997) (explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. See, e.g., *FTC v. Whole Foods Market, Inc.*, 502 F. Supp. 2d 1 (D.D.C. 2007); *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. See, e.g., *Leegin Creative Leather Products v. PSKS, Inc.*, 127 S. Ct. 2705 (2007); *Atlanta Richfield Co. v. United States Petroleum Co.*, 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *State Oil Co. v. Khan*, 522 U.S. 3 (1997); *Northern Pacific Railway Co. v. U.S.*, 356 U.S. 1 (1958).

<sup>33</sup> See NYSE Arca Order at 74783.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See NYSE Arca Order at 74784.

<sup>37</sup> *Id.*

• *Originating Office:* Bureau of Human Resources, Office of Overseas Employment (HR/OE).

• *Form Number:* DS-0174.

• *Respondents:* Candidates seeking employment at U.S. Missions abroad, including family members of Foreign Service, Civil Service, and uniformed service members officially assigned to the Mission and under Chief of Mission authority.

• *Estimated Number of Respondents:* 40,000.

• *Estimated Number of Responses:* 40,000.

• *Average Hours per Response:* 1 hour.

• *Total Estimated Burden:* 40,000.

• *Frequency:* On occasion.

• *Obligation to Respond:* Required to obtain a benefit.

**DATES:** The Department will accept comments from the public up to 60 days from March 31, 2009.

**ADDRESSES:** You may submit comments by any of the following methods:

• *E-mail:* [McCoyFV@state.gov](mailto:McCoyFV@state.gov).

• *Mail (Paper, Disk, or CD-ROM Submissions):* U.S. Department of State—SA-1, HR/OE, Room 615H, Attention: Frank Venson McCoy, 2401 E Street NW., Washington, DC 20522.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Frank Venson McCoy, Bureau of Human Resources, Office of Overseas Employment, U.S. Department of State, Washington, DC 20520, who may be reached on 202-261-8836 or at [McCoyFV@state.gov](mailto:McCoyFV@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

**Abstract of Proposed Collection**

The DS-0174, Application for Employment as a Locally Employed Staff or Family Member, is needed to meet information collection requirements for recruitments conducted at approximately 170 U.S. embassies and consulates throughout the world. Current employment application forms do not meet the unique requirements of Mission recruitment (e.g., language skills and hiring preferences) under the FS Act of 1980 and 22 U.S.C. 2669(c). The DS-0174 is needed to improve data gathering and to clarify interpretation of candidate responses.

**Methodology**

Candidates for employment use the DS-0174 to apply for Mission-advertised positions throughout the world. Mission recruitments generate approximately 40,000 applications per year. Data that HR and hiring officials extract from the DS-0174 determines eligibility for employment, qualifications for the position, and selections according to Federal policies.

Dated: March 4, 2009.

**Ruben Torres,**

*Director, HR/EX, Department of State.*

[FR Doc. E9-7212 Filed 3-30-09; 8:45 am]

**BILLING CODE 4710-15-P**

**TENNESSEE VALLEY AUTHORITY**

**Sunshine Act**

**AGENCY HOLDING THE MEETING:**

Tennessee Valley Authority (Meeting No. 09-02).

**TIME AND DATE:** 10 a.m. (EDT), April 2, 2009, The Millennium Center, Appalachian Ballroom A, 2001 Millennium Place, Johnson City, Tennessee.

**STATUS:** Open.

**Agenda**

*Old Business*

Approval of minutes of February 12, 2009, Board Meeting.

*New Business*

1. Chairman's Report.
2. President's Report.
3. Report of the Finance, Strategy, Rates, and Administration Committee.
  - A. Annual price quote for directly served customer.
  - B. Seasonal Time-Of-Use and Seasonal Market Days pilot pricing for summer season.
4. Report of the Operations, Environment, and Safety Committee.

A. Contract with Siemens Energy, Inc., for parts and services for nuclear and fossil plants.

B. Contracts with AREVA NC, Inc., and Urenco Enrichment Company for uranium (nuclear fuels).

C. Contract extension with United States Enrichment Corporation for uranium hexafluoride and enrichment.

D. Contract with G-UB-MK for maintenance and modification work for fossil and hydro plants.

E. Contract with GE for combustion turbines alliance.

F. Renewables and clean energy purchases.

5. Report of the Community Relations and Energy Efficiency Committee.

A. Beech River Watershed Development Agency land sale.

*For more information:* Please call TVA Media Relations at (865) 632-6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632-6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: March 26, 2009.

**Maureen H. Dunn,**

*General Counsel and Secretary.*

[FR Doc. E9-7266 Filed 3-27-09; 11:15 am]

**BILLING CODE 8120-08-P**

**TENNESSEE VALLEY AUTHORITY**

**Privacy Act of 1974: Notice of System of Records**

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Notice; correction of system of records.

**SUMMARY:** In accordance with 5 U.S.C. 552a(e)(4), the Tennessee Valley Authority (TVA) republished in full a notice of the existence and character of each TVA system of records. The notices were published at 73 FR 62788-62814, Oct. 21, 2008.

TVA is correcting the system of records notice, TVA-31, OIG Investigative Records-TVA.

**DATES:** This correction is effective March 31, 2009.

**ADDRESSES:** Address all comments concerning this notice to Mark R. Winter, Privacy Coordinator, TVA, 1101 Market Street (MP 3C), Chattanooga, TN 37402-2801.

**FOR FURTHER INFORMATION CONTACT:** Mark R. Winter at (423) 751-6004.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 552a(e)(4),