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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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 available publicly. All submissions should refer to File Number SR–FINRA–2010–004 and should be submitted on or before February 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1662 Filed 1–27–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61403; File No. SR–NYSE Amex–2009–85]

Self-Regulatory Organizations; NYSE Amex, Inc.; Order Approving Proposed Rule Change To Establish the NYSE Amex Realtime Reference Prices Service

January 22, 2010.

I. Introduction

On November 30, 2009, the NYSE Amex, Inc. ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the NYSE Amex Realtime Reference Prices service and to establish a flat monthly fee and a per-query fee for that service. The proposed rule change was published for comment in the **Federal Register** on December 18, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

a. The Service

The Exchange proposes to establish the NYSE Amex Realtime Reference Prices service and to establish a flat monthly fee and a per-query fee for that service. The Exchange believes that the NYSE Amex Realtime Reference Prices service would provide a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices; and relieves vendors of administrative burdens. The Exchange states that the product would respond to the requirements for distribution of real-time last sale prices over the internet for reference purposes, rather than as a basis for making trading decisions.

The NYSE Amex Realtime Reference Prices service would allow internet service providers, traditional market data vendors, and others ("NYSE Amex-Only Vendors") to make available NYSE Amex Realtime Reference Prices on a real-time basis.[4] The NYSE Amex Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange, updated in real-time. In addition, the product also includes open, high and low prices and cumulative volume. The Exchange anticipates that it would update these data elements every second, though initially it would update them once per minute. The product does not include bid/ask quotations or the size of each trade.

The Exchange would not permit NYSE Amex-Only Vendors to provide NYSE Amex Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Amex-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires.

The Exchange states that the service would eliminate some of the administrative burdens associated with the distribution of real-time CTA prices. The service would feature a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

b. The Fees

The Exchange proposes to establish a $10,000 monthly flat fee that entitles an NYSE Amex-Only Vendor to receive access to the NYSE Amex Realtime Reference Prices datafeed. For that fee, the NYSE Amex-Only Vendor could provide unlimited NYSE Amex Realtime Reference Prices to an unlimited number of the NYSE Amex-Only Vendor's subscribers and customers. The Exchange does not propose to impose any device or end-user fee for the NYSE Amex-Only Vendors' distribution of NYSE Amex Realtime Reference Prices.

In addition, the Exchange proposes to establish as an alternative to the fixed monthly fee a fee of $.004 for each real-time reference price that a NYSE Amex-Only Vendor disseminates to its customers. The Exchange proposes to limit a NYSE Amex-Only Vendor's exposure under this alternative fee by setting $10,000, the same amount as the proposed fixed monthly rate, as the maximum fee that an NYSE Amex-Only Vendor would have to pay for real-time reference prices that it disseminates in any calendar month pursuant to the per-query fee.

In order to take advantage of the per-query fee, a NYSE Amex-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange states that it would impose the per-query fee only on the dissemination of real-time reference prices. NYSE Amex-Only Vendors may provide delayed data services in the same manner as they do today.

The per-query charge would be imposed on NYSE Amex-Only Vendors, not end-users, and would be payable on a monthly basis. NYSE Amex-Only Vendors may elect to disseminate NYSE Amex Realtime Reference Prices pursuant to the per-query fee rather than the fixed monthly fee.

c. Justification of Fees

The Exchange believes that the proposed flat monthly fee and per-query fee for the NYSE Amex Realtime Reference Prices service enable Internet service providers and traditional vendors to contribute to the Exchange's operating costs in a manner that is

[15] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61144 (December 10, 2009), 74 FR 67275.

[4] The Exchange notes that it will make the NYSE Amex Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA and Nasdaq/UTP Plans.

appropriate for the distribution of last sale price information in the form taken by the proposed service.

In setting the level of the NYSE Amex Realtime Reference Prices fee, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq, NYSE and NYSE Arca are charging for similar services;

(2) consultation with some of the entities that the Exchange anticipates would be the most likely to take advantage of the proposed service;

(3) the contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(4) the contribution that revenues accruing from the proposed fee would make to meet the overall costs of the Exchange's operations;

(5) the savings in administrative and reporting costs that the NYSE Amex Realtime Reference Prices service would provide to NYSE Amex-Only Vendors; and

(6) the fact that the proposed fees provide alternatives to existing fees under the CTA and Nasdaq/UTP Plans, alternatives that vendors would purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fixed monthly fee and the per-query fee are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees.[5] The Exchange submits that the NYSE Realtime Reference Prices constitute "non-core data;" *i.e.,* the Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange states that it distributes the product voluntarily. In addition, the Exchange believes that both types of the competitive forces that the Commission described in the NYSE Arca Order are present in the case of NYSE Amex Realtime Reference Prices: (i) The Exchange has a compelling need to attract order flow; and (ii) the product competes with a number of alternative products.

The Exchange states that it must compete vigorously for order flow to maintain its share of trading volume, which requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Amex Realtime Reference Prices. The Exchange hopes that NYSE Amex Realtime Reference Prices will enable vendors to distribute NYSE Amex last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[7] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[9] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[10] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[11]

Under this proposal, the Exchange would (1) establish a $10,000 monthly flat fee that entitles vendors to receive access to the NYSE Amex Realtime Reference Prices datafeed and (2) establish a usage-based fee alternative of $.004 for each real-time reference price that a vendor disseminates to its customers (capped at the monthly fee level). The $10,000 monthly fee would allow vendors to provide unlimited NYSE Amex Realtime Reference Prices to an unlimited number of subscribers and customers: (1) Without vendor reporting requirements, and (2) without professional or non-professional subscriber agreements. In order to take advantage of the usage-based fee alternative, a vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[12] In the NYSE Arca Order, the Commission stated that "when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory."[13] It noted that the "existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."[14] If an exchange "was subject to significant competitive forces in setting the terms of a proposal," the Commission will approve a proposal unless it determines that "there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder."[15]

There are a variety of alternative sources of information that impose significant competitive pressures on the Exchange in setting the terms for distributing its market data. The Commission believes that the availability of those alternatives, as well as the NYSE Amex's compelling need to attract order flow, imposed significant

[5] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) ("NYSE Arca Order").

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

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(8).

[10] 17 CFR 242.603(a).

[11] NYSE Amex is an exclusive processor of NYSE Amex depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[12] *See supra* note 5. In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[13] *Id.* at 74781.

[14] *Id.* at 74781–82.

[15] *Id.* at 74781.

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

Because the NYSE 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.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSEAmex–2009–85) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1695 Filed 1–27–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61406; File No. SR–NYSE–2009–120]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to Changes in NYSE Realtime Reference Prices Service

January 22, 2010.

I. Introduction

On November 27, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add data elements to its "NYSE Realtime Reference Prices" service, to reduce the fixed monthly fee that applies to that service, and to add a usage-based fee alternative for that service. The proposed rule change was published for comment in the **Federal Register** on December 18, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61145 (December 10, 2009), 74 FR 67287.

II. Description of the Proposal

The Exchange proposes several changes to the NYSE Realtime Reference Prices service. In a recent filing,[4] the Exchange established a fixed monthly fee for its NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange. The Exchange has found that the NYSE Realtime Reference Prices service provides a low-cost service that makes real-time prices widely available to many millions of casual investors, provides vendors with a real-time substitute for delayed prices, and relieves vendors of all administrative burdens. The service allows Internet service providers, traditional market data vendors, and others ("NYSE-Only Vendors") to make available NYSE Realtime Reference Prices on a real-time basis.[5] NYSE Realtime Reference Prices information includes last sale prices for all securities that are traded on the Exchange.

The Exchange proposes to make the following changes to the service and its fees:

a. Data Elements

Currently, the NYSE Realtime Reference Price Service includes only prices. It does not include the size of each trade and does not include bid/ask quotations. For each security, the Exchange is proposing to add the following data elements to the service:

- High price.
- Low price.
- Cumulative volume.

The Exchange states that it anticipates that it would update these data elements every second, though initially it would update them once per minute. A security's high (low) price would reflect the highest (lowest) price at which the security has traded on the Exchange during the trading session through the point in time at which it is disseminated. Further, the cumulative volume would reflect a security's aggregate volume during a trading session through the point in time at which it is last disseminated. The Exchange believes that adding these data elements would make the product more attractive to the customers of NYSE-Only Vendors.

[4] *See* Securities Exchange Act Release No. 60004 (May 29, 2009), 74 FR 26905 (June 4, 2009) (SR–NYSE–2009–42).

[5] The Exchange notes that it makes the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

b. Reduction in the Fixed Monthly Fee

Currently, the NYSE Realtime Reference Price service features a flat, fixed monthly vendor fee of $70,000 and no user-based fees. For that fee, a NYSE-Only Vendor may provide unlimited NYSE Realtime Reference Prices to an unlimited number of the NYSE-Only Vendor's subscribers and customers without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The Exchange states that it has now had experience with the product and has received feedback from its customers. As a result of the comments of the Exchange's customers, the response to the product from the vendors most likely to subscribe to the product, and the past year's market corrections, the Exchange is now proposing to reduce the fixed monthly fee to $60,000. In addition, in combination with the proposed usage-based fee and the proposed addition of new data elements to the product, the Exchange hopes that the fee reduction would allow the Exchange to broaden the universe of vendors that would find the product appropriate for their business models.

The Exchange believes that the proposed reduced fee would enable Internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution. The Exchange further believes that the proposed reduction in the fixed monthly fee for the NYSE Realtime Reference Prices service would make the product more attractive to vendors and that an increase in the number of vendors that determine to provide free access to NYSE Realtime Reference prices to their Internet users would benefit the investment community. The Exchange states that the fee reduction would also respond to the price competition provided by alternative exchanges, ECNs and the market for delayed data and would better reflect the perceived value of the NYSE product and provide a more equitable allocation of the Exchange's overall costs to users of its facilities.

c. Usage-Based Fee

The Exchange proposes to establish as an alternative to the fixed monthly fee a fee of $.004 for each real-time reference price that a NYSE-Only