

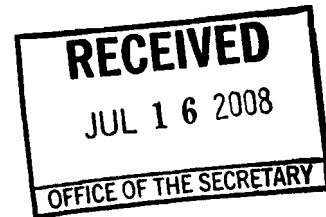


INTERNATIONAL SECURITIES EXCHANGE.

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July 10, 2008

Ms. Florence Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549



Re: Release No. 34-579¹⁹~~20~~, File No. SR-NYSEArca-2006-21

Dear Ms. Harmon:

The International Securities Exchange, LLC ("ISE") is pleased to comment on the Commission's release seeking comment on a draft order (the "Draft Order") effectively granting final approval of the above-referenced rule filing (the "Filing").¹ The Filing proposes fees for NYSE Arca's proposed "depth-of-market" data feed. We believe that the draft order fully addresses all relevant issues regarding the Filing and we urge the Commission to issue the order in its final form as quickly as practical.² In fact, we can summarize our comments on the proposed order as follows: "We agree."

In the Draft Order, the Commission reviews the statutory requirements governing exchange fee proposals. Generally speaking, such fees must be equitable, fair, reasonable, and not unreasonably discriminatory.³ The Commission then distinguishes between "core" and "non-core" market data: Core data consists of top-of-the-book quotation information and last sale information that the Commission requires to be consolidated among all market places; non-core data consists of other market data that exchanges voluntarily provide to the market place.

The Commission next proposes a process for reviewing non-core market data fee filings. First, the Commission would determine whether an exchange was subject to "significant competitive forces" in setting the terms of a proposal, including fees. If so, the Commission would approve the filing unless it finds a "substantial countervailing basis." If not, the Commission would require the exchange to provide "a substantial basis, other than competitive forces," to demonstrate that the fee is appropriate.

¹ Technically, the Draft Order would set aside previous Commission action staying the effectiveness of a Commission order, issued under delegated authority, approving the Filing. See Securities Exchange Act Release No. 55011 (December 27, 2006).

² The ISE also commented on this proposal at an earlier stage in these proceedings, in response to the Commission's request for comment on the NetCoalition's petition to set aside the original approval of the Filing. Letter dated January 17, 2007 from Michael Simon, Secretary, ISE, to Nancy Morris, Secretary, Commission. We hereby incorporate the comments in that letter into this comment letter.

³ See Sections 6(b)(4), (5), and (8) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

This proposed process correctly places the burden of proof on the right party when applying the statutory standards to non-core fee filings. If an exchange is subject to competition, there would be a rebuttable presumption that a fee for non-core market data meets the statutory standards. If competitive forces are not present, the exchange would have the burden of showing the fee to be compliant with the statute. We agree that this approach correctly recognizes the strong economic discipline that competition brings to the market, while also ensuring that the Commission reviews the particular circumstances surrounding every non-core market data fee. Competitive forces – or the lack of such forces – alone do not end the analysis, they just provide the starting point by determining the scope and breadth of the Commission's inquiry.

The key to this process is determining whether an exchange is subject to "significant competitive forces" when establishing a non-core market data fee. We agree that competitive forces will mitigate against any potential pricing abuse. Furthermore, the Commission is correct in analyzing competition both with respect to alternatives to purchasing the non-core market data, and in the overall context of attracting order flow. As the Commission notes, attracting order flow and distributing market data "are, in fact, two sides of the same coin, and cannot be separated."⁴

By way of example, since October, 2007, we have offered a proprietary depth-of-book options market data service in an effort to attract order flow to the ISE. Because the Commission has yet to approve our filing to impose fees for such market data,⁵ we have not been able to charge a fee for this service. To date, approximately 20 of our over 140 members have subscribed to this service or are in the process of subscribing. We view this service as an important way for us to advertise the prices that are available in our market outside of the best quotation, which is especially important in options that are quoted in pennies and that have less size at the inside market.⁶

As the Commission notes, there is no regulatory requirement that any person subscribe to such a non-core service.⁷ Indeed, we are providing the depth-of-market feed for free now, and only about 15 percent of our members subscribe to it. While we currently plan to charge for this data upon approval of our filing, we view this data as an important means to induce our members to send their orders to the ISE rather than one of the six other competing options exchanges. However, if, after the Commission approves our fees, we discover that these fees jeopardize our ability to provide members with data necessary for us to attract and retain order flow, we will seriously need to reevaluate the fees.⁸

⁴ Draft Order at note 195.

⁵ File No. SR-ISE-2007-97.

⁶ See ISE's Penny Pilot Analysis 3, February, 2008;
http://www.ise.com/assets/files/investors/Penny_Pilot_Analysis_3.pdf.

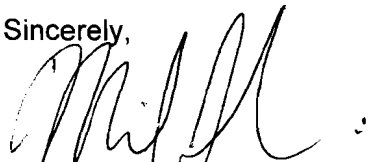
⁷ Draft Order at note 158.

⁸ Some markets provide depth-of-market data for free. That shows that there are multiple market models for this data and that competitive forces are working, and will continue to work, to help ensure that investors receive market data on commercially reasonable terms.

Simply stated, our goal is to attract order flow to the ISE. The great bulk of our revenue comes from transaction fees, and our market data services are ancillary to the transaction services. To the extent market data fees can enhance our revenues, that is fine. But the data is useless if there is no underlying trading. Thus, we focus first and foremost on attracting order flow. This is competition at work and there is no "substantial countervailing basis" requiring governmental intervention via rate-making regulation.

We thank the Commission for the opportunity to comment on the Draft Order. We look forward to the Commission's prompt issuance of the order and the rapid processing of the market data filings now awaiting approval, including our depth-of-market feed filing.

Sincerely,

A handwritten signature in black ink, appearing to read "M. J. Simon", written over a light blue horizontal line.

Michael J. Simon
Secretary

cc: Erik R. Sirri
Robert L.D. Colby