

MEMO# 15896

April 11, 2003

SEC CONDITIONALLY APPROVES NYSE LIQUIDITY QUOTE PROPOSAL

[15896] April 11, 2003 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 5-03 RE: SEC CONDITIONALLY APPROVES NYSE LIQUIDITY QUOTE PROPOSAL The Securities and Exchange Commission has issued an order conditionally approving a proposed rule change filed by the New York Stock Exchange ("NYSE") relating to the dissemination of "Liquidity Quotes."¹ The rule change amends NYSE rules to permit the dissemination of a "liquidity bid" and a "liquidity offer" which would reflect aggregated trading interest at a specific price interval below the best bid or above the best offer. Liquidity Quotes would include orders on the specialist's book, trading interest of brokers in the trading crowd, and the specialist's dealer interest, at prices ranging from the best bid (offer) down to the liquidity bid (up to the liquidity offer).² All disseminated liquidity bids and liquidity offers would be deemed to be "firm quotations" that are available for interaction with trading interest. Orders seeking to trade against the Liquidity Quotes would be executed in accordance with NYSE auction procedures and NYSE procedures governing the execution of XPress orders.³ Liquidity Quote data feed recipients would be subject to the terms of existing NYSE vendor agreements. The vendor agreements generally authorize a data feed recipient to provide a display of the Liquidity Quote data for retransmission, or to distribute the Liquidity Quote data internally. The vendor agreements prohibit such recipients, however, from enhancing, integrating, or consolidating NYSE market data with data from other market centers for retransmission. The NYSE also requires that Liquidity Quote data be displayed in a separate window, or with a line drawn between the NYSE data and other markets' data. 1 Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) ("Release"). A copy of the Release is attached. 2 The specific price interval, as well as the minimum size of the liquidity bid or offer, would be established by the specialist in each security. It would not be mandatory, however, for a specialist to disseminate a separate Liquidity Quote. 3 The proposed rule change provides that a liquidity bid or offer, regardless of size, will be XPress eligible if it has been published for at least 15 seconds. In addition, the proposed rule change provides that an XPress order may be priced at either the best bid or offer price if XPress eligible, or priced at the liquidity bid or offer price, again if XPress eligible. 2 The Commission found that the Liquidity Quote proposal is consistent with the requirements of the federal securities laws but only if the NYSE does not apply the restrictions on data integration currently contained in the vendor agreements. The Commission stated that it is concerned that the restrictions in the vendor agreements that preclude vendors from providing an enhanced, integrated, or consolidated data product to customers raise significant fair and reasonable access issues for data recipients. The Commission also is concerned that the restrictions on integrating Liquidity Quote data and the requirement that the Liquidity Quote data be displayed in a separate window raise substantial concerns

about burdens on competition. The Release states that the NYSE argued that these restrictions are designed to maintain the integrity of its data so that it is uniquely identified to the NYSE. The Commission stated, however, that it is not persuaded by this argument and believes that a less restrictive labeling requirement, such as one that simply would require the clear identification of the data as the NYSE Liquidity Quote, might achieve this objective. The Commission, therefore, approved the proposal on the condition that the proposed rule change will not be effective until the NYSE accepts the condition to remove from its contracts the prohibition on the ability of data feed recipients to integrate the data with the display of other markets' data, and demonstrates its acceptance of this condition to the Commission. If the NYSE accepts the condition, it may not implement the Liquidity Quote proposal until the prohibition is removed from its vendor contracts. If the NYSE does not demonstrate its acceptance of the condition to the Commission, the Commission will issue an order beginning proceedings to disapprove the proposed rule change.⁴ Ari Burstein Associate Counsel Attachment (in .pdf format) 4 The Commission did state that it would be reasonable and consistent with the federal securities laws for the NYSE to require that data feed recipients who choose to provide a Liquidity Quote data package: (i) give the NYSE attribution next to any integrated quote that includes NYSE data; and (ii) make available to customers NYSE's Liquidity Quote product as a separate branded package.

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