MEMO# 14120

November 8, 2001

NYSE PROPOSED RULE CHANGE RELATING TO FEES AND CONDITIONS FOR NYSE OPENBOOK

[14120] November 8, 2001 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 42-01 RE: NYSE PROPOSED RULE CHANGE RELATING TO FEES AND CONDITIONS FOR NYSE OPENBOOK The Securities and Exchange Commission has issued a notice of the filing of a proposed rule change filed by the NYSE1 (a copy of which is attached) establishing a set of fees and conditions for the NYSE OpenBook service, a new service in which subscribers will be able to view limit orders contained in the NYSE limit order book. In particular, for every limit price, OpenBook will include the aggregate order volume associated with that price. The NYSE will make the OpenBook data feed available through its Common Access Point ("CAP") network and, initially, will update OpenBook every ten seconds. The NYSE is proposing two fees for the OpenBook service. First, the NYSE proposes to collect a fee of $5,000 per month from each entity that elects to receive the OpenBook data feed. Second, the NYSE proposes to collect an end-user fee of $50 per month for each terminal through which the end user is able to display the OpenBook. The NYSE also states that it will require each OpenBook data-feed recipient to enter into the existing form of the NYSE vendor agreement, which will authorize the data feed recipient to provide OpenBook display services to its customers or to distribute the data internally. In addition, the NYSE states that it will require each end user that receives OpenBook displays from a vendor or broker-dealer to execute the existing NYSE subscriber agreement. The NYSE intends to supplement the existing vendor and subscriber agreements with additional terms that are unique to OpenBook. The first additional term states that a data-feed recipient that redisseminates OpenBook outside of its organization may not integrate the limit orders of other markets or trading systems into the NYSE limit orders and, therefore, must display the NYSE's information in a separate "window" marked "NYSE OpenBook." The window requirement, however, would apply solely to vendors and not to trading desks that may display OpenBook for their own use. The second additional term would initially preclude data-feed customers from retransmitting the OpenBook data feed. In connection with the additional terms for these agreements, the SEC specifically requests comment on several aspects of the proposal. First, the SEC notes that the NYSE envisions two main categories of subscribers to OpenBook: (1) broker-dealers and institutions; 1 Securities Exchange Act Release No. 44962 (October 26, 2001), 66 FR 54562 (October 29, 2001) ("Release"). 2 and (2) traditional market data vendors that disseminate information to market participants, and that the NYSE's proposed restrictions on redissemination of OpenBook data would appear to affect these two types of subscribers differently. Specifically, while a broker-dealer or institution would be prohibited from enhancing, integrating, or consolidating the

OpenBook data with other markets' data for redissemination outside of the firm, it could enhance, integrate, or consolidate OpenBook data for its internal use, including distribution to specific trading desks and branch offices within the firm. At the same time, however, vendors would be unable to disseminate the data to their customers in a form other than the form prescribed by the NYSE. In addition, the SEC notes that all recipients of the data feed, including broker- dealers, vendors, institutions, and others, would initially be precluded from retransmitting the OpenBook data feed in any form. The SEC therefore states that the NYSE's proposed restrictions on OpenBook data may raise issues concerning unfair discrimination against different types of subscribers. In addition, the NYSE's proposed restrictions on consolidating OpenBook information with limit order information available from other market centers may raise questions concerning the fairness and usefulness of the form and content of such information. Specifically, in connection with the requirements of Section 11A of the Securities Exchange Act, which generally sets forth the standards under which an SRO may distribute information with respect to quotations, including limit orders, the SEC requests comment on whether the restrictions on vendor redissemination of the data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data, are unfairly discriminatory. The SEC also requests comment on whether the contract terms that restrict the use and redissemination of the OpenBook are fair and reasonable, as required under Section 11A, and whether the form and content of the OpenBook data are useful and fair in light of the restrictions on the form of display. Finally, the SEC requests comment on the proposal's potential impact on competition. In this regard, the SEC requests commenters' views on whether the prohibition on redisseminating OpenBook in an enhanced, integrated, or consolidated form prevents vendors from competing with the NYSE. Comments on the proposed rule change are due to the SEC no later than November 19, 2001. If you have any comments that you would like the Institute to consider including in its comment letter on the proposal, please provide them to the undersigned by phone at (202) 371-5408, by fax at (202) 326-5839, or by e-mail at aburstein@ici.org no later than November 13. Ari Burstein Associate Counsel Attachment Attachment (in .pdf format)
