

III. Summary of Comments

The Commission received 12 comment letters on the proposal.²³ All of the commenters generally supported the idea of NYSE's Liquidity Quote proposal. The commenters believed that with the advent of decimalization, the highest bid and lowest offer no longer reflects the true depth of the market. However, there were several issues raised by the commenters regarding the form and use of Liquidity Quote data.

First, four commenters believed that the Commission should require the NYSE to submit for public comment the vendor and subscriber agreements for the Liquidity Quote service or, at minimum, a description of the relevant terms of the agreements for Commission review.²⁴ Three commenters believed that the contracts constituted SRO rules and, as such, the contracts should be filed as a proposed rule change for Commission approval, pursuant to section 19(b)(2) of the Act.²⁵

Second, three commenters also believed that the restrictions of the vendor agreements are inconsistent with sections 6 and 11A of the Exchange Act.²⁶ Specifically, the commenters opposed NYSE's contractual restrictions on the integration, display, and redistribution of Liquidity Quote data, and stated that the restrictions were inconsistent with the standards of a national market system set forth in section 11A of the Exchange Act because access to this "critical" data should be offered on a reasonable and nondiscriminatory basis.

Third, three commenters said that the downstream restrictions of NYSE's vendor agreements would create a bifurcated market for data and transparency. These commenters believe that large broker-dealers would have the internal ability to reformat the NYSE data feed and take full advantage of the Liquidity Quote data. Conversely, small- and medium-sized broker-dealers that lack the internal resources to reformat the Liquidity Quote data feed would have to rely on market data vendors. The commenters concluded that the downstream restrictions of NYSE's vendor agreements impose unfair access restrictions on small- and medium-sized market participants that are financially unable to purchase a data feed directly from the NYSE and thus rely on vendors

to provide this market information for a reasonable fee.²⁷

Fourth, one commenter asserted that the downstream restrictions prevent market data vendors from providing value-added services to their customers, in contravention of the Display Rule.²⁸ This commenter believed that enhancing the format of the Liquidity Quote data and integrating it with data from other markets, or with analytics that use the data, would create a more useful product available for redistribution to its customers.²⁹ The commenter also believed that the vendor restrictions on integration are anticompetitive in contravention of section 6(b)(8) of the Exchange Act,³⁰ in that they impair other market centers from viewing Liquidity Quotes in tandem with the consolidated quote display, and inhibit competition with the NYSE for order flow in NYSE-listed securities.³¹

In response to the commenters' concerns about the Liquidity Quote data restrictions, NYSE stated that it intends to compete in the market for finished data products by producing and disseminating a distinguishable product identified to the NYSE. Therefore, to preserve NYSE's branding goal of an independent display of depth data, the NYSE's vendor agreements restrict the integration of Liquidity Quote data with other markets' data and preclude a vendor from displaying rows or columns of other markets' data intermingled with Liquidity Quote data.

In response to commenters' concerns regarding vendors' ability to provide value-added services to its customers, NYSE argued that the Commission should not prohibit NYSE from restricting the way in which vendors can package Liquidity Quote data. NYSE asserted that such restrictions allow the NYSE to compete with vendors in the market for finished data products, as well as compete with the other market centers for sizeable order flow. In addition, NYSE stated that the integration of Liquidity Quote data with other markets' quotation information would be misleading, in that its firm and executable liquidity bid or offer would be commingled with "fleeting" 100-share best bids and offers of its competitors.

IV. Discussion

Section 19(b) of the Act³² requires the Commission to approve the proposed rule change filed by the NYSE if the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. After careful review, the Commission finds, for the reasons discussed below, that NYSE's proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange, but only if the NYSE does not apply the restrictions on data integration currently contained in the vendor agreements.³³

Specifically, the Commission finds that the Liquidity Quote proposal, when viewed apart from the vendor agreements, is consistent with sections 6(b)(5)³⁴ and 6(b)(8)³⁵ of the Act. Section 6(b)(5) of the Act³⁶ requires, among other things, that the rules of NYSE 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 are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Section 6(b)(8) of the Act³⁷ requires, among other things, that the Exchange's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the Liquidity Quote proposal, when viewed apart from the NYSE vendor agreements, will substantially increase the amount of information available to the public and market participants with respect to quotations for, and transactions in, certain specified securities listed on the Exchange, consistent with sections 6(b)(5) and 6(b)(8) of the Act. In a decimal market environment, the highest bid and lowest offer of an exchange may not reflect where the actual market is, particularly for sizeable orders, because the increase in the number of price increments causes less depth to be available at each price point. Accordingly, the dissemination, in selected securities, of a liquidity bid or offer reflecting NYSE aggregate trading interest, including limit orders, trading crowd interest, and

with, or on the same page as, displays of OpenBook Information.").

²³ See *supra* note 6.

²⁴ See Schwab Letter; Bloomberg Letter II; CSE Letter; and Bloomberg Letter III.

²⁵ 15 U.S.C. 78s(b). See Bloomberg Letter I, II, III; CSE Letter; and Schwab Letter.

²⁶ Schwab Letter; Bloomberg Letter II; and CSE Letter.

²⁷ *Id.* The Schwab and Bloomberg II Letters also noted that the fees charged to retail investors for liquidity quote data are unduly excessive, discriminatory, and anticompetitive. See Schwab Letter and Bloomberg Letter II.

²⁸ 17 CFR 240.11Ac1-2. See Bloomberg Letter II.

²⁹ Bloomberg Letter II.

³⁰ 15 U.S.C. 78f(b)(8).

³¹ Bloomberg Letter II.

³² 15 U.S.C. 78s(b).

³³ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ 15 U.S.C. 78f(b)(8).

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ 15 U.S.C. 78f(b)(8).