

IV. Summary of Comments

The Commission received one comment letter on the proposal.²⁰ In its letter, the commenter raised concerns with respect to four subjects: the proposed rule's application to manual orders, how the order identifier would be used, the proposed rule's requirement to record Online Comparison System ("OCS") control numbers, and the proposed rule's requirement to include a Bunched Order Route Indicator.

A. Manual Orders

The commenter objected to both the proposal's general requirement that firms be required to record information, including time of receipt, regarding manual orders and in particular the requirement that they assign manual orders an order identification number. The commenter explained that at many small firms, recordation of order information is still done primarily by order ticket. According to the commenter, in these cases, the order information is not electronically captured and cannot be linked to other data for the purpose of creating a complete systemic record of the order. The commenter contends that in order to comply with the NYSE's proposed rule to capture order information relating to manual orders, there would be costs in addition to the cost of new technology needed for compliance by members. The commenter believes that there would be a "huge cost" to investors because, the commenter argues, sales-traders would need to divert their attention from handling customer orders in order to collect and electronically all the data elements required by the proposed rule. The commenter believes that a "legion of sales-traders performing clerical duties rather than monitoring markets for execution opportunities will make the markets riskier, less efficient and less accessible to investors."

B. Order Identifier

The commenter also explained that because manual orders are typically written down and are not entered into the receiving firm's system, no systemic order identifier is generated. The commenter believes that assigning a trader the responsibility of generating and appending an order identifier to manual orders could result in inefficient handling of orders. The commenter further believes that the risk of confusion, duplication, and bad data will be exacerbated as the order identifier is then orally relayed and

recorded. Lastly, the commenter argues that because the NYSE rules contain an exception from the order tracking requirements for orders transmitted to the NYSE floor via SuperDot, market centers that are not already hard-wired to a member firm would be at a competitive disadvantage.

C. Online OCS Control Number

Pursuant to proposed NYSE Rule 123(f), members would be required to record an Online OCS Control Number as part of the order execution report entered into FESC. This identifier would allow members to check on settlement problems that may occur between a member and the Exchange. The commenter contends that the proposed rule's requirement to record an OCS Control Number is not reasonable, and the cost to build a feed to incorporate this information would be significant. The commenter also argues that this information should not be required as part of the audit trail, but instead should be maintained by members in a manner that they find efficient for use by regulators upon request.

D. Bunched Order Route Indicator

The commenter argues that compliance with the NYSE's requirement to include a "Bunched Order Route Indicator" may be impossible because a firm typically does not know at the time an order is received whether the order will ultimately be part of a bunched order. The commenter contends that this provision could only be complied with by retroactively attaching an indicator where necessary after personnel search for and locate the appropriate part of the order to which they must attach the indicator. The commenter believes that the amount of time that this process would take makes the rule unworkable.

The NYSE addressed these concerns in letters to the Commission dated August 15, 2002 and April 4, 2003.²¹ The Exchange noted that the proposed rule was undertaken pursuant to the SEC Order that requires the Exchange to design and implement a comprehensive audit trail for all orders. The order audit trail must, among other matters, encompass "an accurate, time-sequenced record of orders, quotations and transactions, beginning with the receipt of an order by any NYSE member firm, and documenting the life of the order through the process of

execution or cancellation of that order. * * *²² Thus, the Exchange addressed the SIA comment letter by indicating that the components of a complete audit trail require all of the components specified in their OTS rule. The Exchange acknowledged that "interpretative questions may surface during the practical implementation of the OTS system, and [it] is committed to working with the SIA to provide appropriate guidance to its members and member organizations as particular issues are identified."²³

Further, the Exchange specifically addressed issues raised regarding the OCS Control Number and the Bunched Order Route Indicator.²⁴ With respect to the OCS Control Number, the Exchange represented that it did not believe, contrary to the assertion of the commenter, that inclusion of this identifier would be unduly burdensome, particularly in light of its value. The Exchange stressed the importance of the OCS Control Number as "a critical component in establishing a complete order audit trail from order entry through execution." The Exchange explained that the OCS Control Number would allow the Exchange to link the entry of an order, the execution report, and any modification to such report, thus providing a complete trail for each order.

The Exchange also addressed the commenter's concerns regarding the Bunched Order Route Indicator. The Exchange noted that this indicator would likely be used infrequently as in many instances, a firm receiving additional trading interest from a customer would choose to modify an existing order rather than create an additional order which might then have to be bunched with a prior order. The Exchange also explained that in the event a Bunched Order Route Indicator was needed, the OCS Control Number could be utilized to locate and link together any parts of an order to which a Bunched Order Route Indicator might need to be appended.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

²⁰ See note 9, *supra*, SIA Letter.

²¹ See Letters from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated August 15, 2002; and Darla Stuckey, Corporate Secretary, NYSE, Commission, dated April 3, 2003.

²² See Letter from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated August 15, 2002, quoting Securities Exchange Act Release No. 41574 (June 29, 1999).

²³ *Id.*

²⁴ See Letter from Darla Stuckey, Corporate Secretary, NYSE, Commission, dated April 3, 2003.