

found a proposed Consolidated Tape Association retransmission fee consistent with the Exchange Act.¹⁸

In addition, the appropriate scope of fees was addressed in a denial of access petition filed by Instinet against the National Association of Securities Dealers, Inc. ("NASD").¹⁹ The NASD attempted to impose certain vendor and subscriber fees on the quotation information (referred to as the National Quotation Data Service) sought by Instinet. In its review of the denial of access petition, the Commission noted that in a situation where a monopolistic supplier of market information is in direct competition with vendors in providing such information, there is the potential for the supplier to erect barriers to entry by charging higher fees to vendors of competing information services.²⁰ The Commission determined, therefore, that because Instinet sought to distribute certain quotation information in competition with the NASD, an exclusive processor of that information, the NASD's proposed fees were required to be cost-based to ensure neutrality and reasonableness of the vendor and subscriber fees.²¹

OPRA's proposal will encourage the use of real-time data by reducing the OPRA fees charged to vendors of real-time data. The Commission believes that investment decisions should be based on the most accurate, up-to-date information available. Thus, this proposal marks a step toward making real-time data more accessible to a greater number of market information users. Recent technological innovations have further enhanced the feasibility of providing easy access to real-time market data to a larger segment of the investor community. The Commission encourages OPRA to utilize these new

technologies to encourage additional steps to promote the use of real-time information on a fair, reasonable and non-discriminatory basis.

The Commission recognizes that not all subscribers can afford regular real-time service and, as noted by some commenters, not all subscribers believe their use of market data justifies the cost of such service (even assuming that real-time vendors pass on their savings to their subscribers). As to these subscribers, there is a continued need for access to affordable delayed data. One adverse consequence of the fee restructuring will be to increase the costs to vendors of delayed data which, in turn, may result in a modest increase in the cost of delayed data to subscribers. The Commission has long been committed to protecting the public's right of access to market information and believes that any modest increase in costs to subscribers of delayed data under OPRA's proposed fee restructuring will not act as a barrier to fair and reasonable access to information for those subscribers. Competition among technology and information providers continues to thrive. Over the past few years, individual inventors have enjoyed unprecedented access to market data through varied media, including CNN, CNBC, satellite services, on-line computer services, the World Wide Web, and the Internet. The Commission believes that those innovations will continue to facilitate the fair and reasonable distribution of delayed data even though redistributors of delayed options data will be required to pay a redistribution fee.

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act,²² that the amendment (S7-8-90) to the OPRA Plan be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²³

Jonathan G. Katz,

Secretary.

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Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Japanese Yen Quote Spread Parameters

November 30, 1995.

I. Introduction

On August 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to widen the quote spread parameters applicable to Japanese yen options. The proposed rule change was published for comment in the Federal Register on September 21, 1995.³ No comments were received on the proposed rule change. This order approves the proposal.

II. Description of the Proposal

The Phlx seeks to widen the quotation spread parameters (bid/ask differentials) applicable to Japanese yen options in light of the increased volatility and value of the underlying currency, the Japanese yen.⁴ The Exchange proposes to change the parameters in Rule 1014(c)(ii) and Floor Procedure Advice ("Advice") F-6, Option Quote Parameters, from \$.000004, \$.000006, and \$.000008 to \$.000006, \$.000009, and \$.000012. Under the proposal, the new quote spread parameters will be reflected in Rule 1014 as follows: no more than \$.000006 between the bid and the offer for each option contract for which the bid is \$.000040 or less; no more than \$.000009 where the bid is more than \$.000040 but does not exceed \$.000160; and no more than \$.000012 where the bid is more than \$.000160.

In its proposal, the Phlx notes that as the yen spot value has risen, the spreads between the bid and the offer in the spot price also have risen. For example, a spot market of 101.50 (bid)–.60 (ask) yen in January 1995 represented \$.009852–.009842 in American terms, which is ten "ticks" wide. Comparatively, a spot market of 85.10–.20 yen in May 1995 represented \$.011751–.011737, which is 14 ticks wide. Similarly, the Exchange states that the spreads in Japanese yen

¹⁸ *Id.* See also 17 CFR 240.11Aa3-1(d) (relating to retransmission of transaction reports or last sale data); 17 CFR 240.11Aa3-1(e) (permitting the imposition of reasonable, uniform charges for the distribution of transaction reports or last sale data).

¹⁹ Securities Exchange Act release No. 20874 (April 17, 1984) ("Instinet case").

²⁰ *Id.* at 40–41.

²¹ *Id.* Although the fee restructuring proposal is not cost-based in the sense described in the Instinet case, the purpose of the restructured fee schedule is fundamentally different. OPRA's proposal is designed to reallocate costs fairly and equitably among all persons that derive a commercial benefit from the information obtained from exchange markets. Because OPRA is not in direct competition with the vendors that will be subject to the redistribution fee, the analysis applied in the Instinet case is not strictly applicable. Although OPRA's posture with respect to the vendors that will be affected by the redistribution fee is different than the relationship between the NASD and Instinet, the Commission continues to have the duty to ensure that OPRA's fees satisfy applicable standards.

²² 15 U.S.C. 78k-1(a)(3)(B).

²³ 17 CFR 240.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 36239 (September 15, 1995), 60 FR 49032.

⁴ Option quote parameters govern the width of market quotations, establishing the maximum widths between the bid and the offer for an option contract.