

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 67857 / September 14, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15023**

**In the Matter of**

**New York Stock Exchange LLC, and  
NYSE Euronext,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 19(h)(1) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, MAKING FINDINGS AND IMPOSING  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against the New York Stock Exchange LLC (“NYSE”) and NYSE Euronext (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

#### Introduction

When Congress mandated a national market system ("NMS") for trading securities in 1975, it emphasized that consolidated data "would form the heart of the national market system."<sup>1</sup> The Commission since has emphasized the importance of the consolidated data feeds on many occasions, including in its January 2010 Market Structure Concept Release: "As a result, the public has ready access to a comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day. This information serves an essential linkage function by helping assure that the public is aware of the best displayed prices for a stock, no matter where they may arise in the national market system."<sup>2</sup> In addition to providing the view of the market for many investors, consolidated data feeds also play an important role in price discovery and compliance functions. For example, a number of exchanges and other trading centers use the consolidated feeds to check prices at other trading centers to determine whether they may execute an order or whether another trading center has a better price.<sup>3</sup>

Accordingly, exchanges are required to send their best-priced quotations (or "quotes") and trade reports to be included in the consolidated feeds.<sup>4</sup> Exchanges also are permitted to distribute customized market data products directly to customers. However, to preserve the integrity of the consolidated feeds, a Commission rule—Rule 603(a) of Regulation NMS—requires that exchanges distribute market data on terms that are "fair and reasonable" and "not unreasonably discriminatory." This rule prohibits an exchange from releasing data relating to quotes and trades to its customers through proprietary feeds before it sends its quotes and trade reports for inclusion in the consolidated feeds.<sup>5</sup>

The disparities in data transmissions that Rule 603(a) prohibits can have important consequences that risk undermining investor confidence and interfering with the efficiency of the markets. For example, a delay in the release of data to the consolidated feeds in contrast to the proprietary feeds can cause an investor relying on the consolidated feeds to make a trading decision based on a potentially stale picture of current market conditions. An exchange's delay

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<sup>1</sup> H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 93 (1975).

<sup>2</sup> Concept Release on Equity Market Structure, 75 Fed. Reg. 3594, 3600 (January 21, 2010).

<sup>3</sup> Trading centers are required to have and enforce policies and procedures reasonably designed to prevent executions at prices that are inferior to prices that are displayed and available at another market center. See Rule 611(a) of Regulation NMS, 17 CFR § 242.611(a).

<sup>4</sup> See Rules 601 and 602 of Regulation NMS, 17 CFR §§ 242.601 and 602.

<sup>5</sup> See Regulation NMS, 70 Fed. Reg. 37,496, 37,567 (June 29, 2005) (adopting release); see also Concept Release, 75 Fed. Reg. at 3601 (January 21, 2010).

in sending its quotes to the consolidated feeds also can cause inefficient execution decisions at other market centers and, under some circumstances, create the appearance of a “crossed” national best bid and offer (“NBBO”), which occurs when the best bid exceeds the best offer. The appearance of a crossed NBBO can cause both uncertainty and the risk of a trade being executed at worse than the best available price.<sup>6</sup>

Over an extended period, NYSE violated Rule 603(a) in connection with the release of certain data through two proprietary feeds. Beginning in June 2008, one NYSE proprietary feed sent real-time depth-of-book market data, which included information about its current best-priced quotations and execution prices, to its subscribers before NYSE sent data to a Securities Information Processor (the “Network Processor”) that made quotes and trades available for sale to the public on a consolidated basis. Another NYSE proprietary feed, during multiple intervals of high-volume trading during the first half of 2010, sent quote data to customers before NYSE sent it to the Network Processor. The disparities ranged from single-digit milliseconds to, on occasion, multiple seconds.

There were several reasons for the disparities. First, NYSE’s internal architecture gave its real-time depth-of-book proprietary feed a path to customers that was faster than the path used to send quotes to the Network Processor. Since the inception of this feed in June 2008, NYSE often made its data available to customers sooner than NYSE sent data to the Network Processor. Second, NYSE structured the other proprietary feed to operate independently of the system that sent data to the Network Processor. As a result, this other proprietary feed was not affected when delays were experienced by the NYSE system that sent data to the Network Processor. Third, NYSE’s internal system that sent data to the Network Processor had a software issue that caused delays during multiple periods of high trading volume from early to mid-2010. During these periods, NYSE often sent data to the Network Processor after NYSE sent data to customers through the two proprietary feeds at issue.

NYSE did not take adequate steps to comply with Rule 603. Although the business units that designed NYSE’s market data systems attempted to ensure that the systems complied with Rule 603, NYSE’s compliance department played no role in the design, implementation, or operation of the systems. NYSE also did not systematically monitor its data feeds to ensure they complied with Rule 603, and had no written policies and procedures concerning the rule.

In addition to the data delays, NYSE failed to retain computer files that contained information about NYSE’s transmission of market data, including the times that NYSE transmitted individual trade reports and quotes to the Network Processor. As a consequence, basic calculations relevant to NYSE’s compliance with Rule 603(a) were burdensome and inexact.

As a result of the foregoing, NYSE violated Rule 603(a) of Regulation NMS and the record retention provisions of Section 17(a)(1) of the Exchange Act and Rule 17a-1 thereunder. NYSE Euronext, which supplied the personnel responsible for these systems and compliance issues, caused the violations.

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<sup>6</sup> A crossed NBBO triggers an exception to the trade-through rule of Regulation NMS. See Rule 611(b)(4) of Regulation NMS, 17 CFR § 242.611(b)(4).

## **Respondents**

New York Stock Exchange LLC (“NYSE”) is a national securities exchange registered with the Commission under Section 6 of the Exchange Act. NYSE first registered as a national securities exchange with the Commission in 1934. NYSE currently is a Delaware limited liability company and a subsidiary of NYSE Euronext.

The Commission previously brought two actions against NYSE. In June 1999, the Commission found that NYSE had failed to detect and halt unlawful proprietary trading by independent floor brokers. In the Matter of New York Stock Exchange, Inc., Admin. Proc. File 3-9925, Exchange Act Release No. 41574 (June 29, 1999). In 2005, the Commission found that NYSE had failed to detect, investigate, and discipline widespread unlawful proprietary trading by specialists on the floor of the exchange. In the Matter of New York Stock Exchange, Inc., Admin. Proc. File 3-11892, Exchange Act Release No. 51524 (April 12, 2005).

NYSE Euronext is a global operator of financial markets and provider of trading technologies. NYSE Euronext is a Delaware corporation with its principal executive offices at 11 Wall Street in New York City. The common stock of NYSE Euronext is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and is listed for trading on NYSE and Euronext Paris. NYSE Euronext has three subsidiaries that are national securities exchanges registered under Section 6 of the Exchange Act: NYSE; NYSE Arca, Inc., a Delaware corporation; and NYSE MKT LLC (formerly NYSE Amex LLC), a Delaware limited liability company. Most of the employees who operate the business of NYSE as an exchange are employees of NYSE Euronext subsidiaries and ultimately report to the senior officers of NYSE Euronext.

## **Facts**

### **A. Market Data Overview**

NYSE receives hundreds of millions of orders to buy or sell securities each trading day. These orders and related message traffic go to NYSE’s matching engine, known as the Display Book, or “DBK,” for processing. DBK matches orders and generates executions, redirects orders for routing to other exchanges, and maintains limit orders in NYSE’s “order book” for possible future execution. DBK also generates market data as a result of this activity, including trade reports (prices and sizes of executed trades), quotes (best price available and the number of shares bid or offered at that price), and depth-of-book messages (order-by-order changes in the order book at all price points).

Rule 603(b) of Regulation NMS requires exchanges to act jointly to disseminate consolidated market information through a common processor. To satisfy this requirement, NYSE sends quotes and trade reports in NYSE-listed securities to a Network Processor, where they are combined with quotes and trade reports from other market centers into consolidated feeds that are offered for sale to the public.

The Consolidated Tape Association (“CTA”) governs the Network Processor that distributes trade and quote data about securities listed on exchanges other than Nasdaq, including

NYSE-listed securities.<sup>7</sup> CTA is comprised of representatives from the various market centers trading these securities, and operates pursuant to documents known as the “CTA Plan” and the “CQ Plan.” The Securities Industry Automation Corporation (“SIAC”) is an NYSE Euronext subsidiary that performs much of the market data processing work required under the CTA Plan and the CQ Plan. Pursuant to the CTA Plan and CQ Plan, quote data is distributed through the Consolidated Quote System (“CQS”) and trade data is distributed through the Consolidated Trade System (“CTS”). CQS distributes the best bids and offers (“BBOs”) for each exchange in each of these securities, and uses those BBOs to calculate market-wide NBBOs for each security. The revenue from the sale of this consolidated data is shared among the CTA’s members.

**B. NYSE’s Distribution of Market Data**

**1. MDD—the NYSE System that Sends Market Data to the Network Processor**

During the relevant time, DBK sent quotes and trade reports to an internal NYSE distribution mechanism known as the “Info Bus.” The Info Bus then sent the data to other internal NYSE systems. During the period June 2008 to July 2011, the Info Bus sent quotes and trade reports to the Market Data Distribution system (“MDD”) or its predecessor. MDD is the NYSE system that processes quotes and trade reports into the formats required by the CTA and then releases them to the Network Processor that makes them available for sale to the public on a consolidated basis.

**2. NYSE’s Proprietary Feeds**

NYSE also earns revenue from selling market data through proprietary data feeds. Two of NYSE’s proprietary data products are the subject of this order: Open Book Ultra and PDP Quotes.

**a. Open Book Ultra**

NYSE began offering a proprietary depth-of-book feed, known as Open Book, in 2001. That product provided snapshots every ten seconds of the NYSE order book, excluding orders from NYSE floor participants. Subsequent versions of Open Book shortened the update interval to five seconds and then to one second. In June 2008, NYSE also began to offer Open Book Ultra (“OBU”). Initially, OBU included most but not all of the data reflecting the NYSE order book. By no later than early 2009 and in its current configuration, OBU transmits in real time full depth-of-book data on an order-by-order basis. OBU sends this data in delta, or update, messages, which describe order book changes resulting from the submission, cancellation, modification, or execution of individual displayed orders. OBU thus transmits information about displayed orders at all prices, including those at the current best prices, and the prices of executed trades. When combined with similar depth-of-book feeds offered by some other

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<sup>7</sup> There are two Network Processors: One transmits data for securities listed on Network A (NYSE) and Network B (NYSE Arca, NYSE MKT, other non-Nasdaq exchanges), and is governed by the CTA Plan and CQ Plan. The other transmits data for securities listed on Network C (Nasdaq) and is governed by the Nasdaq UTP Plan. NYSE only conducts trading for NYSE-listed securities (Network A) and sends data pursuant to the CTA Plan and CQ Plan.

exchanges, this data allows a trader to identify most of the displayed exchange-traded liquidity across the entire market. Many traders input this data into computer algorithms that make a high volume of rapid trading and order routing decisions. Approximately 80% of NYSE's trading volume is attributable to subscribers to a package of NYSE proprietary market data products that includes OBU.

From June 2008 through July 2011, the internal path for OBU involved fewer steps than the internal NYSE path that sent data to the Network Processor. By 2010, OBU was releasing its data to proprietary customers in less than one millisecond, on average. While OBU received data directly from DBK, MDD received data from DBK through the Info Bus. As a consequence of this design, NYSE consistently released OBU data to its subscribers sooner than it released quotes and trade reports to the Network Processor.

**b. PDP Quotes**

PDP Quotes (also known as "NYSE BestQuotes") contains NYSE's best bid and offer for each security, which is the same information NYSE releases from MDD to the Network Processor for inclusion in CQS. Until 2009, PDP Quotes obtained data *after* it had been partially processed through the predecessor system to MDD. As a result, most delays that affected delivery of data to the Network Processor also would delay PDP Quotes. In January 2008, PDP Quotes customers complained that they sometimes received data from PDP Quotes after the data already had appeared in CQS. NYSE decided to address the complaints by reconfiguring the path for PDP Quotes so that PDP Quotes could receive quotes from the Info Bus independently of MDD. In an effort to comply with Rule 603, NYSE delayed making this change until January 2009, after it launched MDD, which was faster than its predecessor system. Nonetheless, after the path was reconfigured, delays in processing quotes in MDD could, and at times did, result in PDP Quotes releasing quotes to its subscribers before MDD released quotes to the Network Processor.

**C. Disparities Caused by MDD Software Issue**

From early through mid-2010, the software that the MDD system used to process quotes and trades was susceptible to delays during times of high trading volume. The development team that designed the software was aware, as early as 2009, that this could be a potential issue but initially focused on ensuring that the system was operational and stable, and decided not to address the potential delay issue unless and until delays actually occurred. In late February 2010, the team became aware of delays and started the development of a software release to fix the problem. The rollout of this release began in late April 2010 and was finished by May 14, 2010.

A review of data for a limited number<sup>8</sup> of high volume time periods in early 2010 revealed multiple 15-second intervals, often near the close of trading, during which MDD experienced average delays exceeding 25, 50, or 100 milliseconds. Several 15-second periods had more than 10% of quotes delayed by more than 1 second and, on one day in February 2010, MDD had a substantial percentage of quotes delayed by more than 5 seconds during a half-minute period before the close of trading. During these periods, OBU and PDP Quotes did not experience similar delays because both operated independently of the MDD system.

The magnitude of the disparities became pronounced after the beginning of the May 6, 2010, market event that became known as the “Flash Crash.” By that day, NYSE had fixed the software issue in the path to the Network Processor in approximately half of the relevant computer servers but, under the stress of sustained record-breaking order and trade volumes, servers still running the old software experienced substantial delays transmitting trade reports and quotes in the approximately 1,665 securities they processed. During the two five-minute periods between 2:40 p.m. to 2:50 p.m., these servers processed over 4.8 million quotes. The average delays for those quotes during those two periods were approximately 3.7 and 5.3 seconds, respectively. In contrast, the average processing times for the two proprietary feeds were under 2 milliseconds and under 16 milliseconds, respectively.

The most significant quote delays occurred from 2:43:15 p.m. through 2:46:59 p.m. During each 15-second interval in this time period, the average delays on the affected MDD servers exceeded 4.6 seconds and, in seven of those intervals, exceeded ten seconds. During this period, these MDD servers processed approximately 2 million quotes, of which approximately 1.65 million (81%) had delays exceeding one second. In four of these 15-second periods, every quote was delayed by more than one second.

Although the data delays came to light during the inquiry regarding the Flash Crash, the delays occurred after the start of the Flash Crash and did not cause the extreme volatility that day.<sup>9</sup>

#### **D. Inadequate Compliance Efforts**

NYSE failed to take adequate steps to comply with Rule 603. The business units responsible for NYSE market data distribution made some efforts to ensure that their systems complied with the rule, but they had no formal compliance program for Rule 603 and did not

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<sup>8</sup> As discussed below, NYSE did not retain the timestamps that showed the times MDD released data to the Network Processor. As a result of this failure, and the resulting burden associated with a comprehensive review of NYSE’s release of data to the Network Processor, a limited number of time periods were reviewed for quote delays.

<sup>9</sup> The findings in this Order are consistent with the conclusion of the September 30, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, titled Findings Regarding the Market Events of May 6, 2010 (available at <http://www.sec.gov/news/studies/2010/marketevents-report.pdf>), that “the evidence does not support the hypothesis that delays in [the consolidated trade and quote] feeds triggered or otherwise caused the extreme volatility in security prices observed that day.”

have written policies or procedures that addressed any aspect of the rule. The Compliance Department played no role in the decision-making process that led to the design and implementation of OBU in 2008 and the resulting release of OBU data before NYSE released its data to the Network Processor. Similarly, NYSE's reconfiguration of PDP Quotes changed a system in which compliance with Rule 603 was highly likely to one in which compliance depended upon the relative processing speed of MDD, which sometimes lagged PDP Quotes. Despite this compliance risk, the Compliance Department was not involved in the decision. Similarly, neither the relevant business units nor the Compliance Department systematically monitored the comparative speed of MDD and NYSE's proprietary feeds.

The operations and system development staff held weekly meetings during which they discussed problems with MDD but the Compliance Department did not attend these meetings. One result was that the Compliance Department was unaware that the MDD software issue had manifested itself in February 2010. By not involving the Compliance Department at critical junctures, NYSE missed important opportunities to avoid compliance failures.

#### **E. Failure to Retain Business Records**

Beginning in late 2009 or early 2010, MDD generated timestamps reflecting the time that each quote and trade message exited MDD. NYSE stored MDD timestamps for each message in "recovery files" located within the MDD system. These files were available in the event that an MDD server crashed and the processing of quotes and trade reports had to be restarted. Beginning in early 2010, NYSE also stored summary information about MDD processing speed in "statistics files." NYSE typically retained these recovery and statistics files for three days, at which point they were deleted to make space available on the storage disk for more recent files.

NYSE's deletion of these files, which included MDD exit timestamps, substantially complicated its ability to (1) determine when it experienced delays releasing quotes and trade reports to the Network Processor and (2) calculate the length of the delays.

### **Legal Discussion**

#### **A. NYSE's Obligations as an Exchange**

National securities exchanges, such as NYSE, are critical elements of the national market system. Because of this central role, an exchange is required to satisfy among the most significant regulatory responsibilities of any market participant.<sup>10</sup> These regulatory responsibilities implicate both an exchange's own operations and its role as a self-regulatory organization that acts as a co-regulator with the Commission and other authorities. Accordingly, Sections 6(b), 19(g), and 19(h) of the Exchange Act require that a registered exchange: (1) comply with the Exchange Act, rules issued pursuant to the Exchange Act, and the

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<sup>10</sup> See In the Matter of EDGX Exchange, Inc. et al., Admin. Proc. File 3-14586, Exchange Act Release No. 65556 (October 13, 2011) ("Given the systemic risk that can result from the failure of an exchange to comply with [its] requirements, the operation of a national securities exchange carries with it among the most significant regulatory compliance obligations that are expected of any market participant.").



exchange's own rules and (2) enforce compliance by members of the exchange and persons associated with the members.

## **B. Rule 603(a)**

Section 11A(c)(1) of the Exchange Act authorizes the Commission to issue regulations concerning the distribution of market data. The Commission set forth standards for the distribution of market data in 2005 when it promulgated Rule 603(a) as part of Regulation NMS. Rule 603(a)(1) requires “exclusive processors” of market data, such as NYSE, to distribute data to securities information processors (which includes, among others, market data vendors in addition to the Network Processor) on terms that are “fair and reasonable.” Rule 603(a)(2) requires national securities exchanges, such as NYSE, to distribute their market data to persons on terms that “are not unreasonably discriminatory.” Section 11A(c) and Rule 603(a) apply to “information with respect to quotations for or transactions in” securities.

In the adopting release for Regulation NMS, the Commission stated that “independently distributed data could not be made available on a more timely basis than core data is made available to a Network processor. Stated another way, adopted Rule 603(a) prohibits an SRO or broker-dealer from transmitting data to a vendor or user any sooner than it transmits the data to a Network processor.”<sup>11</sup> See Regulation NMS, 70 Fed. Reg. 37,496, 37,567 and 37,569 (June 29, 2005) (adopting release); see also Concept Release on Equity Market Structure, 75 Fed. Reg. 3594, 3601 (January 21, 2010). The Commission has recognized that, due to the consolidation process (i.e., the time from the receipt by the Network Processor of the information from exchanges to the time it distributes consolidated information to the public), information from a Network Processor generally reaches market participants later than information from exchanges' proprietary feeds. See Concept Release, 75 Fed. Reg. at 3601 (citing an average consolidation time of approximately 5-10 milliseconds). Nevertheless, exchanges have an obligation under Rule 603(a) to take reasonable steps to ensure—through system architecture, monitoring, or otherwise—that they release data relating to current best-priced quotations and trades through proprietary feeds no sooner than they release data to the Network Processor, including during periods of heavy trading.

Rule 603(a) applies to both of the NYSE proprietary feeds at issue here—OBU and PDP Quotes. PDP Quotes transmits the same quotes in a different format than NYSE sends to the Network Processor. OBU transmits delta messages reflecting order-book changes at all price points, rather than quotes and trade reports, but those delta messages contain information with respect to NYSE's current best-priced quotes and trades.

From the launch of OBU in June 2008, NYSE consistently released OBU data to subscribers before releasing data to the Network Processor. The average gap in NYSE's release of OBU data to its proprietary customers, as compared to the release of quote and trade reports to the Network Processor, ranged from single digit milliseconds to 100 or more milliseconds, with the worst disparities exceeding multiple seconds, including those on May 6, 2010. Further, after NYSE reconfigured PDP Quotes so that it received quotes at the same time as MDD, there were

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<sup>11</sup> Exchanges send “core data” to the Network Processors. Core data consists of last sale reports and current highest bids and lowest offers. NetCoalition v. SEC, 615 F.3d 525, 529 (D.C. Cir. 2010).

multiple instances during high-volume trading intervals in which processing delays in MDD resulted in NYSE releasing quotes to PDP Quotes subscribers before releasing them to the Network Processor. For the reasons given above, these disparities did not meet the standards of “fair and reasonable,” and “not unreasonably discriminatory,” and NYSE violated Rule 603(a). Because the personnel who designed and were responsible for NYSE’s market data delivery system, and the personnel responsible for ensuring compliance with Rule 603(a), ultimately reported to senior officers of NYSE Euronext, NYSE Euronext caused NYSE’s violations.

**C. Section 17(a) of the Exchange Act and Rule 17a-1**

Section 17(a)(1) of the Exchange Act requires every exchange to make and keep for prescribed periods such records as the Commission may require by rule. Rule 17a-1 requires exchanges to:

keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity.

Section 3(a)(37) defines “records” as “accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.”

The MDD statistics and recovery files that contained timestamps reflecting when MDD released messages to the Network Processor were within the scope of Section 17(a)(1) of the Exchange Act and Rule 17a-1 because they were “records” that NYSE made in the course of its business as a national securities exchange. In particular, the time stamps and the MDD statistics files at issue fell within the scope of the Commission’s record-preservation requirements because they related to NYSE’s compliance with Rule 603(a). By failing to retain these records, NYSE violated Section 17(a)(1) of the Exchange Act and Rule 17a-1 thereunder. Because NYSE Euronext supplied the personnel who designed and were responsible for NYSE’s record retention systems, policies, practices, and procedures, and the personnel responsible for complying with applicable statutes and regulations, NYSE Euronext caused NYSE’s violations.

**Undertakings**

Respondents have undertaken to do the following:

A. Respondents shall retain at their expense and within thirty (30) days of the issuance of this Order, one or more qualified independent consultants (the “Consultant”) not unacceptable to the staff of the Division of Enforcement (the “Commission staff”) to:

- (1) conduct a comprehensive review of the market data delivery systems of NYSE, NYSE Arca, and NYSE MKT to ensure that the systems comply with Rule 603(a) of Regulation NMS;

- (2) conduct a comprehensive review of NYSE, NYSE Arca, and NYSE MKT's policies, procedures, and practices regarding compliance with Rule 603(a) of Regulation NMS; and
- (3) prepare a written report (the "Report") that:
  - (a) evaluates the adequacy of NYSE, NYSE Arca, and NYSE MKT's market data delivery systems and related policies, procedures, and practices, to prevent and detect violations of Rule 603(a); and
  - (b) make any recommendations about how NYSE, NYSE Arca, and NYSE MKT should modify or supplement their market data delivery systems, policies, practices, and procedures, to prevent and detect violations of Rule 603(a) of Regulation NMS, and in particular to reasonably ensure that NYSE, NYSE Arca, and NYSE MKT release data relating to current best-priced quotations and trades through their proprietary feeds no sooner than they release data to a Network Processor; and

Respondents shall provide a copy of the engagement letter detailing the Consultant's responsibilities to Commission staff.

B. Respondents shall cooperate fully with the Consultant, including providing the Consultant with access to Respondents' (and Respondents' affiliated entities, including subsidiaries') files, books, records, and personnel as reasonably requested for the above-mentioned review, and obtaining the cooperation of respective employees or other persons under Respondents' control.

C. Respondents shall require the Consultant to report to Commission staff on its activities as the staff may request.

D. Respondents shall permit the Consultant to engage such assistance, clerical, legal or expert, as necessary and at a reasonable cost, to carry out its activities, and the cost, if any, of such assistance shall be borne exclusively by Respondents.

E. Respondents shall require the Consultant, within thirty (30) days of being retained, unless otherwise extended by Commission staff for good cause, to provide Respondents and Commission staff with an estimate of the time needed to complete the review and prepare the Report and provide a proposed deadline for the Report, subject to the approval of Commission staff.

F. Respondents shall require the Consultant to issue the Report by the approved deadline and provide the Report simultaneously to both Commission staff and Respondents.

G. Respondents shall submit to Commission staff and the Consultant, within thirty (30) days of the Consultant's issuance of the Report, the date by which Respondents will adopt and implement the recommendations in the Report, subject to Sections G(1)-(3) below and subject to the approval of Commission staff.

- (1) As to any recommendation that Respondents consider to be, in whole or in part, unduly burdensome or impractical, Respondents may submit in writing to the Consultant and Commission staff a proposed alternative reasonably designed to accomplish the same objectives, within sixty (60) days of receiving the Report. Respondents shall then attempt in good faith to reach an agreement with the Consultant relating to each disputed recommendation and request that the Consultant reasonably evaluate any alternative proposed by Respondents. If, upon evaluating Respondents' proposal, the Consultant determines that the suggested alternative is reasonably designed to accomplish the same objectives as the recommendations in question, then the Consultant shall approve the suggested alternative and amend the recommendations. If the Consultant determines that the suggested alternative is not reasonably designed to accomplish the same objectives, the Consultant shall reject Respondents' proposal. The Consultant shall inform Respondents of the Consultant's final determination concerning any recommendation that Respondents consider to be unduly burdensome or impractical within fourteen (14) days after the conclusion of the discussion and evaluation by Respondents and the Consultant.
- (2) In the event that Respondents and the Consultant jointly determine that they are unable to agree on an alternative proposal, Respondents and the Consultant shall jointly confer with the Commission staff to resolve the disputed recommendation.
- (3) Within thirty (30) days after final agreement is reached on any disputed recommendation, Respondents shall submit to the Consultant and Commission staff the date by which Respondents will adopt and implement the agreed-upon recommendation, subject to the approval of Commission staff.

H. Respondents shall adopt and implement, on the timetable set forth by Respondents in accordance with Item G, the recommendations in the Report. Respondents shall notify the Consultant and Commission staff when the recommendations have been implemented.

I. Respondents shall require the Consultant to certify, in writing, to Respondents and Commission staff, that Respondents have implemented the agreed-upon recommendations for which the Consultant was responsible and that: (1) NYSE, NYSE Arca, and NYSE MKT's market data delivery systems are reasonably designed and maintained to prevent and detect violations of Rule 603(a); and (2) NYSE, NYSE Arca, and NYSE MKT have established policies, procedures, and practices reasonably designed to prevent and detect violations of Rule 603(a). The Consultant's certification shall be received within sixty (60) days after Respondents have notified the Consultant that the recommendations have been implemented.

J. Within one hundred and eighty (180) days from the date of the applicable certification described in subparagraph I above, Respondents shall require the Consultant to have completed a review of the NYSE, NYSE Arca, and NYSE MKT's revised systems, policies, procedures and practices and submit a written final report ("Final Report") to Respondents and Commission staff. The Final Report shall describe the review made of NYSE, NYSE Arca, and NYSE MKT's revised systems, policies, procedures, and practices and describe how Respondents are implementing, enforcing, and auditing the enforcement and implementation of

those systems, policies, practices, and procedures. The Final Report shall include an opinion of the Consultant as to whether the revised systems, policies, procedures, and practices and their implementation and enforcement by Respondents and Respondents' auditing of the implementation and enforcement of those systems, policies, procedures, and practices are reasonably adequate to prevent and detect violations of Rule 603(a).

K. Respondents may apply to Commission staff for an extension of the deadlines described above before their expiration and, upon a showing of good cause by Respondents, Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

L. To ensure the independence of the Consultant, Respondents shall not have the authority to terminate the Consultant without prior written approval of Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

M. Respondents shall require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which he/she/it is affiliated or of which he/she/it is a member, and any person engaged to assist the Consultant in performance of his/her/its duties under this Order shall not, without prior written consent of Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

N. Certification of Compliance by Respondents: Respondents shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Robert A. Cohen, Assistant Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

O. Respondents shall bear the full expense of carrying out these undertakings, including the costs of retaining the Consultant and implementing the Consultant's recommendations.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 19(h)(1) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents cease and desist from committing or causing any violations and any future violations of Rule 603(a) of Regulation NMS, Section 17(a)(1) of the Exchange Act and Rule 17a-1 thereunder.

B. Pursuant to Section 19(h)(1) of the Exchange Act, Respondent NYSE is censured.

C. Pursuant to Section 21B(a)(2) of the Exchange Act, Respondent NYSE shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$5,000,000 (\$5 million) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment must be made in one of the following ways: (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying NYSE as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Daniel M. Hawke, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, The Mellon Independence Center, 701 Market Street, Philadelphia, PA 19106-1532.

D. Respondents shall comply with the undertakings enumerated above.

By the Commission.

Elizabeth M. Murphy  
Secretary