



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73553; File No. SR-NYSE-2014-40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, to Establish the NYSE Best Quote & Trades Data Feed

November 6, 2014

I. Introduction

On July 21, 2014, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with 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 proposed rule change to establish the NYSE Best Quote & Trades (“NYSE BQT”) data feed. The NYSE BQT data feed would provide a unified view of best bid and offer (“BBO”) and last sale information for the Exchange and its affiliates, NYSE Arca Equities, Inc. (“NYSE Arca”) and NYSE MKT LLC (“NYSE MKT”). The proposed rule change was published for comment in the Federal Register on August 8, 2014.³ Two comment letters on the proposal have been received: one letter opposing the proposal,⁴ and a letter from the Exchange responding to the opposing comment letter.⁵ On September 18, 2014, the Commission extended the time to act on the proposal until November 6, 2014.⁶ On October 31, 2014, the Exchange filed Amendment No. 1

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72750 (August 4, 2014), 79 FR 46494.

⁴ See Letter from Ira D. Hammerman, General Counsel, SIFMA, to Kevin M. O’Neill, Deputy Secretary, Commission, dated August 28, 2014 (“SIFMA Letter”).

⁵ See Letter from Martha Redding, Chief Counsel, NYSE, dated October 31, 2014 (“NYSE Letter”).

to the proposed rule change.⁷ The Commission is publishing this Notice and Order to solicit comment on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to establish the NYSE BQT data feed, a data feed consisting of certain data elements from six existing market data feeds: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO.⁸ The NYSE BQT data feed would have three channels: one channel for the last sale data (the “last sale channel”); another channel for the BBO data (the “best quotes channel”); and a third channel for consolidated volume data (the “consolidated volume channel”).

The last sale channel would provide an aggregation of the same data that is available through NYSE Trades, NYSE Arca Trades, and NYSE MKT Trades.

⁶ See Securities Exchange Act Release No. 73137, 79 FR 57160 (Nov. 24, 2014).

⁷ In Amendment No. 1, the Exchange modified the proposal to (i) remove language proposing specific fee amounts for NYSE BQT, (ii) clarify that it intended to propose fees that would be no lower than the cost to a vendor of creating a comparable product, including the costs of the underlying feeds, and (ii) represent that it would not offer NYSE BQT until after the proposal has been approved by the Commission, the Exchange has filed fees for NYSE BQT with the Commission, and such fees have become effective. The Commission notes that the Exchange submitted a comment letter attaching Amendment No. 1 on October 31, 2013, and, consequently, Amendment No. 1 is available in the public comment file for SR-NYSE-2014-40 on the Commission’s website.

The Exchange has represented that it does not currently offer the NYSE BQT data feed.

⁸ NYSE BBO, NYSE Arca BBO, and NYSE MKT BBO are existing data feeds that distribute on a real-time basis the same BBO information that NYSE, NYSE Arca, and NYSE MKT, respectively, report under the Consolidated Quotation (“CQ”) Plan for inclusion in the CQ Plan’s consolidated quotation information data stream. NYSE Trades, NYSE Arca Trades, and NYSE MKT Trades are existing data feeds that distribute on a real-time basis the same last sale information that NYSE, NYSE Arca, and NYSE MKT, respectively, report under the Consolidated Tape Association (“CTA”) Plan for inclusion in the CTA Plan’s consolidated data streams.

The best quotes channel would provide the “NYSE BQT BBO”, which would be the best quote from among the NYSE BBO, NYSE Arca BBO, and NYSE MKT BBO based on the following criteria, in order:

- Price – the exchange with the highest bid or the lowest offer would have overall priority;
- Size – the largest size would take precedence when multiple exchanges submit the same bid or offer price; and
- Time – the earliest time would take precedence when multiple exchanges submit the same bid or offer price with the same sizes.

For each security, the best quotes channel would only include one best bid and one best offer from among the three exchanges. The NYSE BQT BBO would be marked with a market center ID identifying the exchange from which the BBO originated. For example, if XYZ stock were traded on both NYSE and NYSE Arca, and the highest bid and lowest offer according to the NYSE BBO were 1,000 shares at \$10.00 and 1,000 shares at \$10.03, respectively, and the highest bid and lowest offer for XYZ stock according to the NYSE Arca BBO were 1,200 shares at \$9.99 and 900 shares at \$10.02, respectively, then the NYSE BQT data feed would generate the best bid for XYZ stock as 1,000 shares at \$10.00 on NYSE and the best offer as 900 shares at \$10.02 on NYSE Arca.

The consolidated volume channel would carry consolidated volume for all listed equities, which the Exchange would obtain from the securities information processors and then distribute

in a manner consistent with the requirements for redistributing such data as set forth in the securities information processor plans.⁹

The NYSE BQT data feed would also provide related data elements, such as trade and security status updates (e.g., trade corrections and trading halts), that are contained in the NYSE Trades, NYSE Arca Trades, and NYSE MKT Trades feeds.

The Exchange proposes to offer the NYSE BQT data feed through the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network and market data vendors, as the Exchange does with its other proprietary market data products.

The Exchange has stated that it believes that the NYSE BQT data feed would provide high-quality, comprehensive last sale and BBO data for the Exchange, NYSE Arca, and NYSE MKT in a unified view and would respond to subscriber demand for such a product. The Exchange anticipates that an end user might use the NYSE BQT data feed to identify indicative prices for Tape A, B, and C securities through leveraging the depth and breadth of NYSE, NYSE Arca, and NYSE MKT without having to purchase consolidated data, and thus the Exchange believes that the NYSE BQT data feed would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use the NYSE BQT data feed for purposes of making order-routing or trading decisions. Rather, the Exchange has noted that, under Rule 603 of Regulation NMS, the NYSE BQT data feed could not be substituted for consolidated data in all instances in which consolidated data is used and that certain subscribers would still be required to purchase consolidated data for trading and order-routing purposes.¹⁰

⁹ The "securities information processor plans" refer to the CTA Plan and Nasdaq UTP Plan. See Telephone conversations between Leah Mesfin, Special Counsel, Division of Trading and Markets, Commission, and Marija Willen, Chief Counsel of NYSE Group Inc., NYSE (July 30, 2014 and Nov. 6, 2014).

¹⁰ 17 CFR 242.603(c).

While NYSE, NYSE Arca, and NYSE MKT are the exclusive distributors of the six BBO and Trades feeds from which certain data elements would be taken to create the NYSE BQT data feed, the Exchange has stated that NYSE would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed NYSE BQT data feed. The Exchange has represented that it would not have any unfair advantage over competing vendors with respect to obtaining data from NYSE, NYSE Arca, and NYSE MKT. In recognition that the Exchange is the source of its own market data and is affiliated with NYSE Arca and NYSE MKT, the Exchange has represented that it will continue to make available all of the individual underlying feeds¹¹ and that the source of the market data it would use to create the proposed NYSE BQT data feed is the same as the source available to other vendors. The Exchange has also represented that other vendors would be able to create a data feed with the same information as proposed for inclusion in the NYSE BQT data feed and to distribute it to clients with no greater latency than the Exchange would be able to distribute the NYSE BQT data feed. In addition, the Exchange has represented that the prices the Exchange would charge clients for the NYSE BQT data feed would not be lower than the cost to a vendor of creating a comparable product, including the cost of receiving the underlying data feeds. Thus, the Exchange has stated, the proposed NYSE BQT data feed would be a data product that a competing vendor could create and sell without being in a disadvantaged position relative to the Exchange.

With respect to latency, the Exchange, NYSE Arca, and NYSE MKT are located in the same data center in Mahwah, New Jersey. The system creating and supporting the proposed NYSE BQT data feed would need to obtain the six underlying data feeds from these three exchanges before it could aggregate and consolidate information to create the NYSE BQT data

¹¹ See NYSE Letter at 2.

feed and then distribute it to end users. After creating the NYSE BQT data feed, the Exchange would distribute this data feed through SFTI and market data vendors. The Exchange also offers third parties access to its data center through co-location. Accordingly, a competing market data vendor wishing to offer a product similar to the NYSE BQT data feed would be able to co-locate at the Exchange's Mahwah, New Jersey facility and obtain the six underlying data feeds.

The Exchange has represented that it has designed the NYSE BQT data feed so that it would not have a competitive advantage over a competing vendor with respect to the speed of access to those six underlying data feeds. Likewise, the Exchange has represented that the NYSE BQT data feed would not have a speed advantage vis-à-vis competing vendors co-located in the data center with respect to access to end-user customers, whether those end users are also co-located or not. The Exchange also has represented that the path for distribution by the Exchange of the NYSE BQT data feed would not be faster than that for distribution by a vendor that independently created a product like the NYSE BQT data feed. The Exchange therefore believes that a market data vendor could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level playing field with respect to the speed that the Exchange could create and redistribute the NYSE BQT data feed.

With respect to cost, the Exchange has stated that it will file a separate rule filing to establish the fees for the NYSE BQT data feed. To ensure that vendors could compete with the Exchange by creating a product with the same content as the NYSE BQT data feed and selling it to their clients, the Exchange has represented that it would charge its clients for the NYSE BQT data feed an amount at least equal to the cost to a market data vendor to subscribe to the six underlying data feeds, plus an additional amount (to be determined) that would reflect the value

of the aggregation and consolidation function performed by the Exchange. The Exchange therefore believes that a competing vendor could create and offer a product similar to the proposed NYSE BQT data feed at no material cost disadvantage relative to the Exchange. For these reasons, the Exchange believes that vendors could readily offer a product similar to the NYSE BQT data feed on a competitive basis.

The Exchange has stated that it will announce the effective date of the proposed rule change in a notice to be published as soon as practicable following the approval of the proposed rule change by the Commission. The Exchange anticipates making available the NYSE BQT data feed as soon as practicable after approval of the proposed rule change by the Commission and the effectiveness of a rule filing to establish the fees for the NYSE BQT data feed.

III. Summary of Comments

As noted above, the Commission received one comment letter on the proposed rule change, and a letter from the Exchange responding to this commenter.¹² The commenter, SIFMA, generally raised three broad concerns regarding the proposal and urged the Commission to disapprove the filing.

First, SIFMA notes that the Exchange has argued that, because it intends to offer the NYSE BQT data feed in the capacity of a vendor, it does not believe that its proposed data feed is subject to review under the Act. This commenter cites the statement in the proposal that “the Exchange reserves the right to argue, with respect to the NYSE BQT data feed or any other product, that there is no requirement for a filing under Section 19 of the Act to enable the Exchange to offer such products.” The commenter disagrees with this view and has argued that selling a combination of data feeds for its various platforms does not make the Exchange a

¹² See SIFMA Letter and NYSE Letter, supra notes 4 and 5.

“vendor” in a way that negates its statutory obligations as an SRO. The commenter argues that the Exchange, by relying on a false vendor capacity argument, is attempting to trump its obligations as an SRO and make all of its market data distribution unreviewable. The commenter expresses the concern that this would rob the public of the opportunity to comment afforded under the Act and urges the Commission to ensure that such rule changes are in fact filed with the Commission and subject to public comment and Commission review.

In its response, NYSE states that although it has reserved the right to argue at another time that there is no requirement for a filing to offer this market data product, it has in fact filed the proposal with the Commission and has sought the Commission’s approval to offer the NYSE BQT data feed.

Second, SIFMA argues that the Exchange has failed to file fees for the proposed NYSE BQT data feed that meet the requirements of the Act, including the requirement that such fees be “fair and reasonable” under Section 11A(c)(1)(C) of the Act. The commenter also states that the Exchange has circumvented the requirement to file these fees by marketing the NYSE BQT data feed product for the past 16 months with promotional materials that contain pricing information. SIFMA also argues that the Exchange’s proposed markup for the consolidated feed would apply to any vendor that wanted to create a competing product.

In its response letter, NYSE notes that no data recipients are currently receiving the NYSE BQT data feed and that the Exchange has no plans to offer and charge for the NYSE BQT data feed until the appropriate regulatory process has been completed consistent with the Exchange’s obligations under the Act. Furthermore, in Amendment No. 1, NYSE has represented that it would not offer the NYSE BQT data feed until after it has filed fees with the Commission for the NYSE BQT data feed and such fees have become effective. NYSE also

states that a competing vendor seeking to create a similar unified feed would not need to pay for the NYSE BQT data feed, but would only need to pay for the six underlying feeds. The Exchange has also represented that it would continue to make available all of the individual underlying feeds.

Finally, SIFMA disputes the Exchange's assertion that it is not the exclusive distributor of the NYSE BQT data feed. The commenter argues that the Exchange's vendor contract appears to restrict competition by providing the Exchange with "sole discretion" over the data, particularly with respect to the indirect access service permission that would apply to a competing vendor. The commenter further notes that the contract explicitly prohibits any re-dissemination or other use of its market data. NYSE responds by asserting that the Exchange, NYSE MKT, and NYSE Arca do not contractually restrict vendors from using the underlying data feeds and notes that vendors currently consolidate data products offered by these exchanges, which is permitted under the vendor agreements related to the receipt of market data.

IV. Discussion and Commission Findings

After carefully considering the proposal and the comments submitted, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 11A(c)(1)(C) of the Act¹⁴ and with Rule 603(a)(2) of

¹³ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ Section 11A(c)(1)(C) of the Act requires, among other things, that no self-regulatory organization, member thereof, securities information processor, broker or dealer make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish or prepare for distribution or publication any information with

Regulation NMS thereunder,¹⁵ which requires that any national securities exchange, national securities association, broker, or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹⁶

The Commission notes that, to create the NYSE BQT data feed, the Exchange would use underlying data feeds that belong to the Exchange (NYSE BBO and NYSE Trades) and underlying data feeds that belong to its affiliated exchanges, NYSE Arca and NYSE MKT (NYSE Arca BBO, NYSE Arca Trades, NYSE MKT BBO, and NYSE MKT Trades). Accordingly, the Commission's review of the Exchange's proposal has focused, in particular, on whether the proposal would result in affiliated exchanges—which are separate self-regulatory organizations under the Act—making their data products or services available to one another at

respect to quotations for or transactions in any security other than an exempted security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act to assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by an exclusive processor of such information acting in such capacity. 15 U.S.C. 78k-1(c)(1)(C).

¹⁵ 17 CFR 242.603(a)(2).

¹⁶ 15 U.S.C. 78f(b)(5) and (b)(8).

terms (e.g., content, pricing, or latency) that are more favorable than those available to unaffiliated market participants.

The Exchange has represented that the NYSE BQT data feed would be created using underlying data feeds that are available for subscription by market participants. In addition, the Exchange has represented that, as the creator and distributor of the NYSE BQT data feed, it would receive the underlying data feeds from its own systems and from NYSE Arca and NYSE MKT with no latency advantage compared to a competing vendor that wishes to acquire the component feeds in order to offer a competing consolidated data feed. The Exchange, NYSE Arca, and NYSE MKT are located in the same data center in Mahwah, New Jersey, which would be the point at which the Exchange would receive the six underlying data feeds before then aggregating the data to create the NYSE BQT data feed. The Exchange has represented that it offers third parties access to this data center through co-location and that co-located vendors could obtain the same underlying feeds there.¹⁷ The Exchange has also represented that it has designed the NYSE BQT data feed so that it would have no advantages over co-located vendors with respect to the speed of access to the underlying feeds.¹⁸

¹⁷ In recognition that the Exchange is the source of its own market data and is affiliated with NYSE Arca and NYSE MKT, the Exchange also has represented that it will continue to make available all of the individual underlying feeds and that the source of the market data it uses to create the proposed NYSE BQT is the same as the source available to other vendors.

¹⁸ The Commission also notes that SIFMA has argued that NYSE is the exclusive processor for NYSE BQT because Exchange's vendor contract appears to restrict competition by asserting that it has "sole discretion" over the use of its data and by prohibiting re-dissemination or other use of its market data. The Commission notes, however, that NYSE has represented that the Exchange, NYSE MKT, and NYSE Arca do not contractually restrict vendors from using the underlying data feeds and that vendors currently consolidate data products offered by these exchanges, which is permitted under the vendor agreements related to the receipt of market data. Based on these representations by the Exchange, the Commission does not believe that NYSE is the exclusive processor of the data that composes the NYSE BQT feed.

With respect to pricing, although specific fees to be charged for the NYSE BQT data feed are not part of the Exchange’s proposal, the Exchange has represented that it will assess a fee that is at least equal to the aggregate cost of the underlying feeds (i.e., at least as much as the cost to a vendor of subscribing to each of the underlying data feeds), plus an additional amount (to be determined) that would reflect the value of the aggregation and consolidation function performed to create the NYSE BQT data feed.¹⁹

Based on the Exchange’s representations with respect to the content, latency, and pricing of the NYSE BQT data feed—which are central to the Commission’s analysis of the proposal—the Commission finds that the Exchange’s proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that these representations are designed to ensure that NYSE, NYSE Arca, and NYSE MKT, which are separate self-regulatory organizations, do not, because of their relationship as affiliates, offer one another products or services on a more favorable basis than that available to other competing market participants.

Finally, the Commission notes that SIFMA has objected to the Exchange’s characterization of the NYSE BQT data feed as being part of the Exchange’s vendor function and outside of the scope of the rule filing process of Section 19(b) of the Act. The Commission believes that a data feed offered by an exchange that contains that exchange’s own market data (including a feed that also contains data from other exchanges) is a “material aspect of the

¹⁹ SIFMA has objected to the fact that the Exchange has not included fees in this filing. The Commission notes, however, that the Exchange has stated that it will not offer NYSE BQT until it has submitted the requisite fee filing under Section 19(b) of the Act. The Commission will review any such filing when it has been submitted.

SIFMA has also argued that the Exchange has been actively marketing NYSE BQT for months. The Commission notes, however, that the Exchange has represented that it has not been offering NYSE BQT and that it will not offer this product until fees for it have been filed with the Commission and have become effective.

operation of the facilities of the self-regulatory organization,” and that therefore, such a data product and any related fees are subject to the rule filing process of Section 19(b) of the Act.²⁰

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with Section 11A(c)(1)(C) of the Act and Rule 603(a)(2) of Regulation NMS thereunder,²¹ and Sections 6(b)(5) and (b)(8) of the Act.²²

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

Amendment No. 1 revised the proposal to (i) remove language proposing specific fee amounts for the NYSE BQT data feed, (ii) clarify that the Exchange intends to propose fees that would be no lower than the cost to a vendor of creating a comparable product, including the costs of the underlying feeds, and (ii) represent that the Exchange will not offer the NYSE BQT data feed until after the proposal has been approved by the Commission, the Exchange has filed fees for the NYSE BQT data feed with the Commission, and such fees have become effective.

Accordingly, the Commission does not believe that Amendment No. 1 raises any novel regulatory issues and therefore finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

²⁰ Rule 19b-4 provides that “any material aspect of the operation of the facilities of the self-regulatory organization” is a “stated policy, practice, or interpretation,” 17 CFR 240.19b-4(a)(6), and that a stated policy, practice or interpretation of a self-regulatory organization is deemed to be a “proposed rule change” unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. 17 CFR 240.19b-4(c).

²¹ 15 U.S.C. 78k-1(c)(1)(C) and 17 CFR 242.603(a)(2).

²² 15 U.S.C. 78f(b)(5) and (b)(8).

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2014-40 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2014-40. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2014-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change, as modified by Amendment No. 1, (SR-NYSE-2014-40) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill,
Deputy Secretary.

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²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).