

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76413; File No. SR-NYSEMKT-2015-92]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Certain Representations Relating to the NYSE Best Quote & Trades Data Feed

November 10, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 29, 2015, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain representations relating to the NYSE Best Quote & Trades (NYSE BQT) data feed. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The NYSE Best Quotes and Trades (“NYSE BQT”) data feed, a market data product offered by the New York Stock Exchange LLC (“NYSE”), provides best bid and offer (“BBO”) and last sale information for the Exchange and its affiliates, NYSE and NYSE Arca, Inc. (“NYSE Arca”).<sup>4</sup> Specifically, the NYSE BQT data feed consists of certain data elements from six market data feeds—NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO.<sup>5</sup>

While NYSE MKT, NYSE and NYSE Arca are the exclusive distributors of their BBO and Trades feeds from which the data elements are taken to create the NYSE BQT data feed, the NYSE represented that it would not have any unfair advantage over competing vendors with respect to obtaining data from NYSE, NYSE Arca and NYSE MKT.<sup>6</sup> The NYSE represented that it would not be the exclusive distributor of the aggregated and consolidated information that comprises the NYSE BQT data feed and that it 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. In recognition that NYSE MKT is the source of its own market data, NYSE MKT represents that it will continue to make available the individual underlying feeds, NYSE MKT Trades and NYSE MKT BBO, and

<sup>4</sup> See Securities Exchange Act Release No. 34-73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR-NYSE-2014-40) (“NYSE BQT Approval Order”).

<sup>5</sup> These data feeds are offered pursuant to preexisting and effective rules and fees filed with the Securities and Exchange Commission (“Commission”). This filing does not affect those rules or the fees associated with these underlying data feeds or the ability for the NYSE MKT, the NYSE or NYSE Arca to amend the data feeds or fees associated with those data feeds pursuant to separate rule filings. For NYSE MKT Trades and NYSE MKT BBO, see Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35). For NYSE Trades, see Securities Exchange Act Release Nos. 59290 (Jan. 23, 2009), 74 FR 5707 (Jan. 30, 2009) (SR-NYSE-2009-05) and 59606 (Mar. 19, 2009), 74 FR 13293 (Mar. 26, 2009) (SR-NYSE-2009-04). For NYSE BBO, see Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR-NYSE-2010-30). For NYSE Arca Trades, see Securities Exchange Act Release Nos. 59289 (Jan. 23, 2009), 74 FR 5711 (Jan. 30, 2009) (SR-NYSEArca-2009-06) and 59598 (Mar. 18, 2009), 74 FR 12919 (Mar. 25, 2009) (SR-NYSEArca-2009-05). For NYSE Arca BBO, see Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR-NYSEArca-2010-23).

<sup>6</sup> See *supra* note 4 at 67492.

that the source for these feeds for use by NYSE to create the NYSE BQT data feed is the same as the source available to other vendors.<sup>7</sup>

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations or others would have in complying with the proposed rule change.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the NYSE BQT data feed to those interested in receiving it.

NYSE MKT is the source of its own market data, including the NYSE MKT market data that the NYSE includes in the NYSE BQT data feed. NYSE MKT represents that it will continue to make available the individual underlying NYSE MKT market data products, NYSE MKT Trades and NYSE MKT BBO, that are included in NYSE BQT, and that the source of the NYSE MKT market data the NYSE uses to create the NYSE BQT data feed is the same as the source available to other vendors. Thus, a vendor creating a product to compete with NYSE BQT could also obtain the six underlying data feeds in NYSE BQT and perform a similar aggregation and consolidation function to create the same data product with the same latency.

The NYSE BQT data feed helps to protect a free and open market by providing vendors and subscribers with additional choices in receiving this type of market data, thus promoting competition and innovation.

<sup>7</sup> NYSE Arca is filing a similar proposal regarding the NYSE BQT data feed (SR-NYSEArca-2015-103).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the NYSE BQT data feed represents aggregated and consolidated information of six existing market data feeds. Although NYSE MKT, the NYSE and NYSE Arca are the exclusive distributors of the six BBO and Trades feeds from which certain data elements are taken to create the NYSE BQT data feed, the NYSE may not be the exclusive distributor of the aggregated and consolidated information that comprises the NYSE BQT data feed. Any other market data recipient of the six BBO and Trades feeds would be able, if they chose, to create a data feed with the same information as the NYSE BQT data feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the NYSE's product.<sup>11</sup>

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule

19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange notes that the NYSE BQT data feed has been the subject of prior rule filings and believes that waiver of the 30-day operative delay will provide more transparency and consistency with respect to the description of the NYSE BQT data feed. Based on the foregoing, the Commission believes that the waiver of the operative delay is appropriate and is consistent with the protection of investors and the public interest.<sup>15</sup> The Commission hereby grants the waiver and designates the proposal operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2015-92 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEMKT-2015-92. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Section, 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSEMKT-2015-92 and should be submitted on or before December 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-76422; File No. SR-NYSE-2015-45]**

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Constituting a Stated Interpretation With Respect to the Meaning, Administration, and Enforcement of Rule 28**

November 10, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that October 28,

<sup>10</sup> 78 U.S.C. 78f(b)(8).

<sup>11</sup> See NYSE BQT Approval Order, *supra* note 4.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.