

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75937; File Nos. SR-NYSE-2015-31; SR-NYSEMKT-2015-56)

September 17, 2015

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Instituting Proceedings to Determine Whether to Disapprove the Proposed Rule Changes Amending the NYSE Trades Market Data and NYSE MKT Trades Market Data Product Offerings

I. Introduction

On July 16, 2015, New York Stock Exchange LLC (“NYSE”) and NYSE MKT LLC (“NYSE MKT”) (collectively, the “Exchanges”) separately 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 proposed rule changes to amend, respectively, the NYSE Trades market data product offering and the NYSE MKT Trades market data product offering. The proposed rule changes were published for comment in the Federal Register on August 5, 2015.³ The Commission has received two comments on the proposals.⁴ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to disapprove the proposed rule changes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 75556 (July 30, 2015), 80 FR 46628 (SR-NYSE-2015-31) and 75559 (July 30, 2015), 80 FR 46642 (SR-NYSEMKT-2015-56) (“Notices”).

⁴ See Letter from Eric S. Hunsader, Nanex, LLC, dated August 14, 2015 (“Nanex Letter”); Letter from John Ramsay, Chief Market Policy Officer, IEX Group, Inc., to Brent J. Fields, Secretary, Commission, dated August 20, 2015 (“IEX Letter”).

⁵ 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposals

NYSE and NYSE MKT propose to modify the data content of their respective proprietary market data feeds: NYSE Trades and NYSE MKT Trades (collectively, the “Trades Feeds”).⁶

The Trades Feeds currently provides subscribers and users on a real-time basis with the same last-sale information that each Exchange reports to the Consolidated Tape Association (“CTA”) for inclusion in the CTA Plan’s consolidated data streams. Specifically, each Exchange’s Trades Feeds includes, for each security traded on that Exchange, the real-time last-sale price, time and size information, bid/ask quotations, and a stock summary message. The stock summary message updates every minute and includes the offering Exchange’s opening price, high price, low price, closing price, and cumulative volume for the security.⁷

Each Exchange currently reports to the CTA and distributes on a real-time basis via the Trades Feeds its market’s last-sale information based on the completed execution of an arriving order. For example, currently, if an arriving order of 1,000 shares trades with five resting orders of 200 shares on NYSE, NYSE would bundle the executions and report a single completed trade of 1,000 shares both to the CTA and through NYSE Trades. NYSE MKT Trades operates in the same way.

Each Exchange now proposes to distribute its last-sale information on its respective Trades Feed in a different manner than it distributes last-sale information to the CTA. Each Exchange would continue to distribute last-sale information to the CTA as described above, but

⁶ NYSE Trades is an NYSE-only last-sale market data feed and NYSE MKT Trades is a NYSE MKT-only last-sale market data feed.

⁷ See Securities Exchange Act Release Nos. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35), 70065 (July 30, 2013), 78 FR 47450 (Aug. 5, 2013) (SR-NYSEMKT-2013-64) and 69273 (April 2, 2013), 78 FR 20969 (April 8, 2013) (SR-NYSEMKT- 2013-30).

last-sale information distributed via the Exchange's Trades Feed would be based on the individual resting orders that are executed in the total completed trade and would not be bundled for reporting purposes. In the example above, NYSE would distribute via NYSE Trades the real-time NYSE last-sale information of five executions of 200 shares each,⁸ but would report to CTA a single completed trade of 1,000 shares.

The Exchanges have represented that they would continue to make their last-sale information available through their Trades Feeds immediately after providing the last-sale information to the processor under the CTA Plan. The Exchanges have argued that reporting last-sale information in an unbundled format, based on execution of the individual resting orders, rather than in a bundled format based on the completed execution of an incoming order would remove impediments to and perfect the mechanism of a free and open market by providing more granular trade information to vendors and subscribers who desire it, thus promoting competition and innovation.

Each Exchanges has also proposed to remove the bid/ask data from its Trades Feed. Each Exchange currently has a data feed – the NYSE BBO data feed and the NYSE MKT BBO data feed – that includes the same bid/ask data currently included in the Exchange's Trades Feed, and each Exchange has represented that its respective BBO feed would continue to include the best bids and offers for all securities that are traded on its facilities and for which it reports quotes to the Consolidated Quotation Association (“CQA”) under the Consolidated Quotation (“CQ”) Plan for inclusion in the CQ Plan's consolidated quotation information data stream.⁹

⁸ Each Exchange has proposed that the five transactions in such an example would have the same time stamp.

⁹ See, e.g., Securities Exchange Act Release No. 72326 (June 5, 2014), 79 FR 33605 (June 11, 2014) (SR-NYSEMKT-2014-49).

Each Exchange has stated that removing the bid/ask data from its Trades Feeds would streamline its products and would align them with last-sale data feeds offered by other exchanges that offer last-sale data products, which do not include bid and offer information.¹⁰

Each Exchange has stated that it expects to offer both the current Trades Feed and the proposed Trades Feed for a limited transition period, after which it would stop offering the current Trades Feed and offer only the Trades Feed proposed in its filing. Each Exchange has stated that it would announce the transition dates in advance. Each Exchange has also stated that there would be no change to the fees for the Trades Feed in connection with the proposed changes.

III. Comment Letters

The Commission has received two comment letters on the proposals.¹¹ Both commenters are opposed to the proposals. The commenters note that the NYSE and its affiliated exchanges are the only national securities exchanges that report their last-sale information to the securities information processor (“SIP”) in a bundled format and that all the other national securities exchanges report the last-sale information for each individual trade to the SIP.

Both commenters argue that the proposals would be contrary to Regulation NMS. One commenter states that the proposals go against a core principle of Regulation NMS, namely, the prohibition of providing core data in a private feed before it sends it to the SIP. The commenter states that, in this case, the delay is not a few microseconds, but rather forever.¹² The commenter also notes that the proposals put investors in the position of having to subscribe to the Exchanges’

¹⁰ As examples, the Exchanges cited to the last-sale data products offered by The Nasdaq Stock Market, LLC and BATS, Inc. See NASDAQ Rule 7039 (Nasdaq Last Sale) and BATS Rule 11.22(g) (BATS Last Sale).

¹¹ See supra note 4.

¹² See Nanex Letter.

feeds to get the very same data that every other non-NYSE- affiliated exchange already sends to the SIP, which the commenter contends is a “preposterous proposition.”¹³

The other commenter believes that the proposals would be unreasonably discriminatory in the dissemination of market data in violation of Rule 603(a)(2).¹⁴ This commenter states that exchanges should not be allowed to provide an inferior view of core market data to the general public, compared to an enhanced view offered to subscribers who are willing to pay a premium for it, where the enhanced view could be provided through CTA or another SIP. The commenter notes that the Exchanges are the exclusive source of the individual trade data and that no one else can compete in the delivery of that specific information. The commenter states that preventing investors and market participants from receiving consolidated trade data that accurately reflects the sequence and size of individual transactions unless they pay a premium necessarily discriminates in the dissemination of data that the Commission has found to be a keystone element of the national market system. The commenter argues that, in terms of advancing national market system goals, the result of the proposals would be no more “fair and reasonable,” and no less “unreasonably discriminatory,” than the practices providing timeliness advantages to proprietary data over consolidated data that the Commission has found to violate regulatory standards.¹⁵ The commenter also contends that, while the Exchanges have stated that the proposals are a means to disseminate the same trade information but with more granularity with regards to the individual trades, such granularity is only of additional value because of the Exchanges’ peculiar practice of aggregating the trade information for the CTA.

¹³ Id.

¹⁴ See IEX Letter at 5.

¹⁵ See IEX Letter at 6.

Both commenters also argue that the Exchanges' current practice of sending bundled transaction information to the SIP has presented some problems and that the Exchanges should report each individual trade to the SIP. One commenter states the bundled transaction information has presented problems in the course of investigating questionable trades.¹⁶ The other commenter states reporting the individual trade information to the SIP would provide market participants the transparency they need to easily identify, based on price, size, and time stamp data, and circumstances where a large incoming order is able to match with multiple resting orders.¹⁷

IV. Proceedings to Determine Whether to Disapprove SR-NYSE-2015-31 and NYSEMKT-2015-56 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁸ to determine whether the proposals should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposals. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposals.

Pursuant to Section 19(b)(2)(B),¹⁹ the Commission is providing notice of the grounds for disapproval under consideration. The Exchanges' proposals, if approved, would allow a national securities exchange to offer different last-sale information through its proprietary market data

¹⁶ See Nanex Letter.

¹⁷ See IEX Letter at 4.

¹⁸ 15 U.S.C. 78s(b)(2)(B).

¹⁹ See id.

products than it reports to the CTA.²⁰ Under Regulation NMS, last-sale transaction information is considered “core data.” All broker-dealers are required to purchase core data from the SIPs,²¹ and all of the national securities exchanges share in the revenues received from the sale of this data. Regulation NMS permits the national securities exchanges to provide the same core data that is reported to the SIP on their own data feeds, subject to the condition that such data be provided on terms that are fair and reasonable and not unreasonably discriminatory. The Commission believes that permitting exchanges to provide different information about trade executions through their own proprietary feeds than they report to the SIP presents a novel issue that implicates the Regulation NMS requirements regarding “core data” and warrants further consideration.

Accordingly, the Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change’s consistency with Section 6(b)(5) of the Act, Section 11A of the Act, and Rule 603(a) of Regulation NMS. Section 6(b)(5) provides that the rules of an exchange must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market system, and in general to protect investors and the public interest. Section 11A prohibits a self-regulatory organization from collecting, processing, distributing, publishing, or preparing for distribution any information with respect to quotations for or transactions in any security other than an exempted security, in contravention of such rules and regulations that the Commission shall prescribe

²⁰ The CTA is the SIP for last-sale transaction information for equities trades from all national securities exchanges, and, under CTA Plan, collects and distributes this last-sale transaction information. The CQA is the SIP for best bid and offer quotation information for equities quoted on all national securities exchanges, and, under CQ Plan, collects and distributes this last-sale transaction information.

²¹ See Exchange Act Rule 603(c)(1).

furtherance of the purposes of this title to, among other things, assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information and 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 any exclusive processor of such information acting in such capacity. Rule 603(a) provides that any exclusive processor that distributes information with respect to quotations or transactions in an NMS stock to a securities information processor do so on terms that are fair and reasonable and any national securities exchange that distributes such information do so on terms that are not unreasonably discriminatory.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above or any others they may have with the proposed rule changes. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule changes are inconsistent with Sections 11A and 6(b)(5) of the Act or any other provision of the Act, and Rule 603 thereunder or any other rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²²

²² Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule changes should be approved or disapproved by [insert 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

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 Numbers SR-NYSE-2015-31 or NYSEMKT-2015-56 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 Numbers SR-NYSE-2015-31, NYSEMKT-2015-56, or both.

These file numbers 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the

for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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. 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 publicly available. All submissions should refer to File Numbers SR-NYSE-2015-31, NYSEMKT-2015-56, or both and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Brent J. Fields
Secretary

²³ 17 CFR 200.30-3(a)(57).