

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93000; File No. SR-NYSE-2021-51)

September 15, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Content of the NYSE Best Quote & Trades

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on September 3, 2021, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 amend the content of the NYSE Best Quote & Trades (“NYSE BQT”) data feed to identify the current day consolidated high and low prices. The proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the content of NYSE BQT to identify the current day consolidated high and low price for all listed equity securities.

The NYSE BQT⁴ data feed provides a unified view of best bid and offer (“BBO”) and last sale information for the Exchange and its affiliates, NYSE Arca, Inc. (“NYSE Arca”), NYSE American LLC (“NYSE American”), NYSE National, Inc. (“NYSE National”) and NYSE Chicago, Inc. (“NYSE Chicago”) and consists of data elements from ten existing market data feeds: NYSE Trades,⁵ NYSE BBO,⁶ NYSE Arca Trades,⁷ NYSE Arca BBO,⁸ NYSE American

⁴ See Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (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 and Trades Data Feed).

⁵ See Securities Exchange Act Release Nos. 59290 (January 23, 2009), 74 FR 5707 (January 30, 2009) (SR-NYSE-2009-05); and 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (SR-NYSE-2009-04).

⁶ See Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR-NYSE-2010-30).

⁷ See Securities Exchange Act Release Nos. 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR-NYSEArca-2009-06); and 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR-NYSEArca-2009-05).

⁸ See Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR-NYSEArca-2010-23).

Trades,⁹ NYSE American BBO,¹⁰ NYSE National Trades,¹¹ NYSE National BBO,¹² NYSE Chicago Trades,¹³ and NYSE Chicago BBO.¹⁴

NYSE BBO, NYSE Arca BBO, NYSE American BBO, NYSE National BBO and NYSE Chicago BBO are existing data feeds that distribute on a real-time basis the same BBO information that NYSE, NYSE Arca, NYSE American, NYSE National and NYSE Chicago, 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, NYSE American Trades, NYSE National Trades and NYSE Chicago Trades are existing data feeds that distribute on a real-time basis the same last sale information that NYSE, NYSE Arca, NYSE American, NYSE National and NYSE Chicago, respectively, report under the Consolidated Tape Association (“CTA”) Plan for inclusion in the CTA Plan’s consolidated data streams. Among other things, NYSE BQT also includes consolidated volume for all listed equity securities regardless of where the transaction was executed.

Now, in addition to the information currently provided in NYSE BQT, the Exchange proposes to include the current day consolidated high and low price for all listed equity securities

⁹ See Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35).

¹⁰ See Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35).

¹¹ See Securities Exchange Act Release No. 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR-NYSENAT-2018-09).

¹² See Securities Exchange Act Release No. 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR-NYSENAT-2018-09).

¹³ See Securities Exchange Act Release No. 87389 (October 23, 2019), 84 FR 57904 (October 29, 2019) (SR-NYSECHX-2019-15).

¹⁴ See Securities Exchange Act Release No. 87389 (October 23, 2019), 84 FR 57904 (October 29, 2019) (SR-NYSECHX-2019-15).

as obtained directly from the securities information processors (“SIPs”). The consolidated high and low price for all equity securities would be disseminated via NYSE BQT after the Consolidated Tape Association (“CTA”) and Unlisted Trading Privileges (“UTP”) Plan SIP delay period, which is currently 15 minutes. Such information would provide NYSE BQT users with a static benchmark against which to compare price movements shown on NYSE BQT using high and low prices in the consolidated market. The Exchange’s proposal is in response to requests by subscribers using NYSE BQT, and also to recent changes by a competitor exchange to its end of day messages.¹⁵

The NYSE BQT data feed is offered in a capacity similar to that of a vendor.^[16] The Exchange, NYSE Arca, NYSE American, NYSE National and NYSE Chicago are the exclusive distributors of the 10 BBO and Trades feeds¹⁷ from which certain data elements is taken to create the NYSE BQT. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that composes the NYSE BQT data feed. Other vendors would be able, if they chose, to create a data feed with the same information included in NYSE BQT, and to distribute it to clients with no greater latency than the Exchange would be able to distribute NYSE BQT.

¹⁵ See Securities Exchange Act No. 92301 (June 30, 2021), 86 FR 35845 (July 7, 2021) (SR-CboeBYX-2021-014).

^[16] [The Commission notes that its order approving the exchange’s proposal to offer the NYSE BQT feed states that 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 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.” Securities Exchange Act Release No. 73554 (Nov. 6, 2014), 79 FR 67491, 67494 (Nov. 13, 2014) (SR-NYSE-2014-40).]

¹⁷ These other data feeds are offered pursuant to pre-existing and already effective rules filed with the Commission; those rules will not be altered by this filing.

The Exchange proposes that this change become operative on October 18, 2021. The Exchange is not proposing any change to the fees for NYSE BQT as a result of this modification.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹⁸ of the Act (“Act”), in general, and furthers the objectives of Section 6(b)(5)¹⁹ 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 market data feed to those interested in receiving it. The NYSE BQT data feed is a product that relies on the Exchange’s receipt of underlying data, which is available to all market participants, before it can aggregate and consolidate information to create the NYSE BQT; this is a process that a vendor could also perform. Accordingly, the Exchange is not the only distributor of the NYSE BQT data feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act²⁰ in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and

¹⁸ 15 U.S.C. § 78f(b).

¹⁹ 15 U.S.C. § 78f(b)(5).

²⁰ 15 U.S.C. 78k-1.

(2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Furthermore, the Exchange believes that the proposed rule change is consistent with Rule 603 of Regulation NMS,²¹ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying the consolidated high and low price for all listed equity securities as obtained directly from the SIPs. Such information would provide NYSE BQT users with a static benchmark against which to compare price movements shown on NYSE BQT using high and low prices in the consolidated market. Therefore, the consolidated high and low price for listed equity securities would provide meaningful information to investors.

The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information. As noted above, another exchange currently provides consolidated high and low price information in their

²¹ 17 CFR 242.603.

competing market data products.²² Therefore, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest as it would provide an additional avenue for investors to receive this information from a competing product.

In addition, this proposal would not permit unfair discrimination because NYSE BQT will continue to be available to all of the Exchange's customers through SFTI and market data vendors on an equivalent basis. In addition, any customer that wished to continue to be able to purchase one or more of the individual underlying data feeds would be able to do so.

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

In accordance with Section 6(b)(8) of the Act,²³ 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. The Exchange believes that the proposed rule change will enhance competition because it would enable the Exchange to include the consolidated high and low price as part of NYSE BQT, thereby enabling it to better compete with similar market data products offered by another exchange that includes such information.²⁴ As noted above, the Exchange already offers NYSE BQT and this proposed rule change simply amends the content of the current market data product to include the consolidated high and low price for all listed equity securities. The Exchange is not the exclusive distributor of the consolidated high and low price information that would compose the amended NYSE BQT data feed. Vendors would be able, if they chose, to create a data feed with the same information as NYSE BQT and distribute

²² See, note 15, supra.

²³ 15 U.S.C. 78f(b)(8).

²⁴ See, note 15, supra.

it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's product. Specifically, a competing vendor could receive the consolidated high and low price from the SIPs and include that information as part of their market data products to be disseminated to customers pursuant to the same terms and policies as the Exchange.²⁵

The Exchange believes the proposal will have no impact on intramarket competition as the proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. Therefore, the Exchange believes the inclusion of the consolidated high and low price in NYSE BQT would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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 Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷ 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

²⁵ See CTA Consolidated Volume Display Policy with FAQ at <https://www.ctaplan.com/publicdocs/ctaplan/notifications/traderupdate/CTA%20Consolidated%20Volume%20Policy%20FAQ.pdf>.

²⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁷ 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and Rule 19b-4(f)(6)(iii) thereunder.²⁹

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)³⁰ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2021-51 on the subject line.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

³⁰ 15 U.S.C. 78s(b)(2)(B).

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-2021-51. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-

2021-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier
Assistant Secretary

³¹ 17 CFR 200.30-3(a)(12).