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VIA E-MAIL

Kevin M. O'Neill
Deputy Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C., 20549-1090

Re: Response to Comment Letter, Securities Exchange Act Release No. 72750 (August 4, 2014), 79 FR 46494 (August 8, 2014) (SR-NYSE-2014-40) ("Proposal")

Dear Mr. O'Neill:

The New York Stock Exchange LLC ("NYSE" or "Exchange") appreciates the opportunity to respond to the comment letter submitted in connection with the Proposal.¹ For the reasons set forth in the Proposal and in this response, the Exchange believes that its proposed rule change to establish the NYSE Best Quotes and Trades Data Feed ("NYSE BQT") is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act").² The Exchange therefore respectfully requests that the Securities and Exchange Commission ("Commission") approve the Proposal.

Background

As described fully in its filing, the Exchange proposes to establish the NYSE BQT data feed, which 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 NYSE BQT data feed would be created by first receiving 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. As described in the Proposal, the NYSE BQT data feed would then normalize the BBO and last sale data and distribute the normalized data via 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").

Importantly, the NYSE BQT data feed would receive the existing market data feeds in the same manner that similarly situated market participants would receive it, i.e., in the capacity of a vendor. In other words, NYSE BQT would receive the NYSE, NYSE MKT, and NYSE Arca data feeds after the feeds have been disseminated by those exchanges and in the same form that unaffiliated entities could receive the feeds. Only after receipt of those data feeds in that manner would NYSE

¹ See Letter from Ira D. Hammerman, Executive Vice President & General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated August 28, 2014 ("Comment Letter").

² 15 U.S.C. 78f(b)(5).

BQT normalize such data to then distribute to customers the above-described feed consisting of three channels.

The Comment Letter and Response

The Commission received one comment letter regarding the Proposal. The Comment Letter requests that the Commission disapprove the Proposal (a) based on the objections set forth in the Comment Letter and (b) "because the Exchange's actions are inconsistent with the decisions of the United States Court of Appeals for the District of Columbia Circuit in *Netcoalition v. SEC*."³

First, the Comment Letter objects to the Exchange's characterization that the Exchange is offering the NYSE BQT data feeds in a capacity similar to that of a vendor, and indicates that by doing so the Exchange is attempting to "evade" the statutory rule change process. The Exchange notes 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, believes that the Proposal is consistent with the Act for the reasons set forth in the Proposal, and has sought the Commission's approval to offer the NYSE BQT data feed. The Exchange believes that the Proposal is consistent with the Act because it will provide vendors and subscribers with an alternative to consolidated data products and proprietary data products offered by other exchanges. The Exchange would continue to make available all of the individual underlying feeds; NYSE BQT merely provides another choice in market data products, presenting BBO and last sale information from the Exchange, NYSE Arca, and NYSE MKT in a unified manner. In addition, the Exchange's proposal is consistent with the Act because NYSE BQT would be available to all customers. As noted in the Proposal, the NYSE BQT data feed is a new market data product that does not represent Exchange core data, but rather is an aggregation and consolidation of existing, previously filed market data products of the Exchange, NYSE Arca and NYSE MKT that a competing vendor could similarly create.

Second, the Comment Letter claims that the Exchange has failed to file the necessary proposed rule change for the fees for the NYSE BQT data feed, and to support such fees in the Proposal. However, the Proposal only seeks approval of the NYSE BQT data feed offering and does not seek to establish the fees associated with the NYSE BQT data feed. The Exchange included the description of the fees contemplated by the Exchange in the Proposal to illustrate how a competing vendor would be able to create a similar, competitive product based not only on the relevant data components and speed of access, but also based on the proposed cost structure. However, to avoid any implication that the Exchange is seeking approval of its fees associated with the NYSE BQT data feed in the Proposal, the Exchange is filing a partial amendment to its proposal to clarify that the Proposal is seeking approval only for the NYSE BQT data feed and that the associated fees will be final only upon filing of the appropriate rule proposal by removing the references to specific fees. The Exchange plans to file a separate proposal to establish the fees for NYSE BQT pursuant to Section 19(b)(3)(A)⁴ of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder,⁵ which apply to filings that establish "a due, fee, or other charge" imposed by the Exchange. In that

³ *NetCoalition v. SEC*, 715 F.3d 342 (D.C. Cir. 2013) ; 615 F.3d 525 (D.C. Cir. 2010).

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(2).

separate rule filing, the Exchange will include the analysis required by the Act for a filing that establishes a fee, due or other charge.

The Exchange also notes that the Comment Letter mischaracterizes the cost to a competing vendor to create such a competing feed. As noted in the Proposal, if a competing vendor chose to create a product similar to NYSE BQT, it would need to obtain (and pay for) the existing six underlying data feeds from the Exchange, NYSE MKT, and NYSE Arca. Upon receipt of those feeds, a vendor could create a competing product by unifying the data from those feeds as does the NYSE BQT data feed, and creating similar channels of data. In order to create such a competing unified feed, the vendor would not need to pay for the NYSE BQT feed; it would only need to pay for the six underlying data feeds. If such a vendor offered a product similar to the NYSE BQT feed at a price lower than the price charged for the NYSE BQT feed, nothing in the Proposal or any other requirement would preclude that vendor from doing so. In particular, contrary to the assertion in the Comment Letter that the Exchange, NYSE MKT and NYSE Arca does not contractually restrict vendors from using the underlying data feeds. Vendors currently consolidate data products offered by these exchanges, which is permitted under the vendor agreements related to receipt of market data.

Third, in response to the Comment Letter's contention that the NYSE BQT feed has been "marketed and offered" in advance of the required regulatory approval, the Exchange notes that no data recipients are currently receiving the NYSE BQT feed and the Exchange has no plans to offer and charge for the NYSE BQT feed until the appropriate regulatory process has been completed, consistent with the Exchange's obligations under the Act.

Finally, in response to the Comment Letter's claim that the Exchange's actions with respect to the Proposal are inconsistent with the decisions of the United States Court of Appeals for the District of Columbia Circuit in *Netcoalition v. SEC*, the Comment Letter does not explain why SIFMA believes the Proposal is inconsistent with the *Netcoalition* decisions. As noted above, the Proposal only seeks approval of the NYSE BQT data feed offering and does not relate to fees associated with the NYSE BQT data feed. The Exchange does not believe the *Netcoalition* decisions are relevant to the Commission's consideration of the Proposal because those decisions concern fees that exchanges charge for proprietary data products, not whether an exchange should be permitted to offer a product at all. As discussed in detail in the Proposal, the proposed NYSE BQT feed is not a product that can only be offered by the Exchange. Rather, the NYSE BQT feed is a data product that a competing vendor could create and provide to the vendor's clients on comparable or superior latency and cost bases as the Exchange. Further, the Proposal does not seek to establish the fees for this product and, therefore the analysis required by the Act for a filing that establishes a fee, due or other charge is not required.

As discussed in the Proposal, the Exchange believes that the proposed NYSE BQT feed is consistent with the Act. The Comment Letter does not submit any arguments to support a finding otherwise. The Proposal removes impediments to and perfects the mechanism of a free and open market and a national market system because it provides market data vendors and subscribers with additional choices in receiving market data, it will be available to all of the Exchange's customers and market data vendors on an equivalent basis, and because it will be offered on terms that a competing vendor could match or beat by offering a competing product. Critically, the Comment Letter ignores the fact that other exchanges and vendors are already able to offer such a competing product. Accordingly, disapproval of the Exchange's Proposal would unfairly preclude

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the Exchange from competing in this area, thus artificially constraining competition in the market for proprietary market data. For this reason, the Exchange believes that it would be a significant burden on competition if the Proposal were not approved because it would preclude the Exchange from offering a market data product that others could choose to offer today.

For the foregoing reasons, the Exchange respectfully requests the Commission approve the Proposal.

Sincerely,

A handwritten signature in black ink, appearing to be 'K. O'Neill', written in a cursive style.