



August 20, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. SR-NYSE-2015-31; File No. SR-NYSEMKT-2015-56

Dear Mr. Fields:

IEX Services LLC (“IEX”) is pleased to write in response to the Commission’s request for comment on the above-referenced proposed rule changes (the “Proposals”)¹ by New York Stock Exchange LLC and NYSE MKT LLC (collectively, “NYSE”)².

IEX presently operates an alternative trading system (“ATS”) for U.S. equities. IEX offers a simplified and transparent model designed to eliminate many of the conflicts that are currently present in the financial markets. IEX accepts both non-protected “lit” quotes in addition to “hidden” orders of the type traditionally accepted by ATSs. Also, with investor-centric order types and advanced technology and architecture, IEX has sought to neutralize on its trading platform certain negative effects of structural inefficiencies in the national market system. IEX expects to formally file an application for registration as a national securities exchange in the near term.

The Proposals, as discussed further below, would change the offering of certain proprietary data feeds by NYSE to transmit to subscribers of such proprietary data feeds last sale information on each transaction executed on NYSE between a single buyer and a single seller, in contrast to NYSE’s current practice of “bunching” certain transactions in reporting consolidated last sale information to the Consolidated Tape Association (“CTA”).

¹ See Exchange Act Release No. 34-75556 (July 30, 2015), 80 Fed. Reg. 46628 (August 5, 2015); Exchange Act Release No. 34-75559 (July 30, 2015).

² The Proposals represent companion and virtually identical proposals by the two markets with respect to their respective proprietary market data feeds and both markets according to their rule filings report last sale information to the consolidated tape in the same manner. For convenience, we refer to NYSE in addressing both filings.

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Position

IEX believes that the current practice is not in accord with the general public interest standards as enunciated in Section 6(b)(5) of the Securities Exchange Act of 1934 (the “Act”) and is not “fair and reasonable” under Rule 603(a)(1) promulgated under the Act. Further, we believe that a practice of reporting transaction sizes in one way to the CTA and another through NYSE’s proprietary data feed would be “unreasonably discriminatory” under Rule 603(a)(2).

Background

The Commission has repeatedly emphasized that the collection and display of consolidated data forms “the heart of the national market system.”³ Consolidated data is meant to give to the public “ready access to a comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day.”⁴ Consolidated data also aids in price discovery by allowing markets to determine differences in prices among trading centers and the likelihood of obtaining an execution.⁵

Last sale data allows investors and market participants to track, not just the price, but also the size at which executions have occurred. An accurate understanding of trade size is important, for example, in allowing an investor who is seeking to execute a transaction in greater size to compare markets on that basis. Further, many participants distinguish between executions that involve the matching of a single incoming order against multiple “resting” orders, and those that involve matching of two orders in size between a single seller and a single buyer. This fact is evidenced, for example, by the fact that various market venues, including IEX, allow participants who send an order with a “minimum quantity” condition to further specify whether they wish to condition execution of the order on the ability to execute against one order with a single counterparty, or instead with multiple orders resting on the book.

Rule 603(a) requires “exclusive processors”, like NYSE and other exchanges that send quote and trade information to a securities information processor (“SIP”), to do so on terms that are “fair and reasonable.” The rule further requires exchanges, national

³ See, e.g., Regulation NMS Adopting Release, Exchange Act Release No. 34-51808 (June 9, 20005), at 30, citing H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 93 (1975); In the Matter of New York Stock Exchange LLC and NYSE Euronext, Exchange Act Release No. 34-67857 (September 14, 2012) (“NYSE Proceeding”).

⁴ Concept Release on Equity Market Structure, 75 Fed. Reg. 3594, 3600 (January 21, 2010).

⁵ NYSE Proceeding, at 2.

securities associations, and broker-dealers that send data to a SIP or other persons to do so on terms that are “not unreasonably discriminatory.” The Commission has found that disparities in the means by which an exchange sends “core data” to a SIP compared to the distribution of data through its proprietary data feeds can violate both the “fair and reasonable” and “not unreasonably discriminatory standards” by allowing data distributed independently to be made available on a more timely basis than core data is disseminated to the SIP.⁶

The importance of consolidated data in informing investor decisions is further reflected in the requirement of Rule 603(c) that broker-dealers may not provide a display of market data for an NMS stock in a context in which trading and order-routing decisions can be made without also providing consolidated data for the same stock. Commission staff have recently declined to take a “no-action” position with regard to a request that broker-dealers be permitted to provide data from an exchange’s own proprietary data feed to investors considering an investment decision without at the same time providing consolidated data, even if a subsequent order is processed by a system that relies on consolidated data when making execution and routing decisions.⁷ Finally, the Commission has taken recent steps to allow participants to better evaluate the way that core data is transmitted by prompting the exchanges to include time stamps on the trade and quote information that they report to the SIPs.⁸

As acknowledged by the NYSE in its rule filings, its existing practice in reporting transactions to the SIP is to “bunch” trades in situations where a single incoming order matches against more than one resting order – for example, a single incoming order for 1,000 shares matching with ten resting orders of 100 shares each is reported as a single trade of 1,000 shares. The NYSE stated that it intends to continue to report trades to the tape in this way, characterizing each such report to CTA as reflecting a “completed trade” and referencing the CTA Plan, which requires reporting of “last sale prices reflecting completed transactions” in NMS stocks. In contrast, NYSE is proposing to change the method for distributing last sale information through its NYSE Trades and NYSE MKT Trades data feeds so as to reflect, in the example given above, ten executions of 100 shares each.

⁶ NYSE Proceeding at 9-10.

⁷ Letter from Stephen Luparello, Director, Division of Trading and Markets, to Eric Swanson, BATS Global Markets, Inc. (July 22, 2015), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2015/bats-one-072215-vendor-display.pdf>.

⁸ See Exchange Act Release No. 34-75504 (July 22, 2015).

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Discussion

NYSE's current method of "bunching" trade size information in reporting to the CTA does not accord with commonsense understanding of key terms or with market practice elsewhere.

First, as NYSE acknowledges, the CTA Plan requires the reporting of data on "completed transactions." The plan does not itself define that term but in the absence of a different definition, the commonsense approach would be to consider each execution between a single seller and a single buyer as a separate transaction. In the above example, each counterparty filled for 100 shares clearly is party to one transaction with the party sending the incoming order. The exchange has chosen to aggregate the individual trades together for trade reporting purposes but that does not change the legal character of what has occurred.

Second, we are not aware of other markets that report last trade data in this way. However one interprets the last sale reporting requirement in the CTA plan, it cannot be the case that each participant is free to adopt its own interpretation. Even if one held the view that the method used by the NYSE provides a better understanding of trading activity (for the reasons described above, we think it clearly does not), there is no logical or policy reason why the method used should be different among different exchanges. The use of discordant methods for aggregating and reporting trade data in fact runs counter to the NMS concept of a coherent and consistently derived consolidated data stream that is available to *all* market participants. And the utility of unbunched trade data is obvious from the very fact that NYSE has determined to alter its proprietary data to adopt that method.

Consistently reporting trades on an "unbunched" basis would provide market participants with 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. The converse is certainly not true when NYSE "bunches" many small individual orders into a trade that is represented as being between one buyer and one seller. Nor can the exchange claim that more accurate reporting will be unduly complicated or costly; each component trade that is bunched certainly needs to be separated for clearance and settlement and other operational purposes, and NYSE clearly is prepared to do so in configuring its proprietary data products.

We do not presume to know why the NYSE follows this practice – perhaps it is simply an historical anomaly that has not been reexamined in recent years -- but the practical result is to distort the presentation of last sale data in a way that affects the "average trade size"

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that is used by many market participants, including many institutional investors and issuers, to evaluate and compare the character of liquidity available and quality of various market venues. The result, we submit, creates a partial and inaccurate view of trading activity on the NYSE disseminated through the consolidated tape.

For these reasons, we believe that the current practice of bunching trades in reporting last sale data to the CTA is not “fair and reasonable” under Rule 603(a) and does not accord with the standards of Section 6(b)(5) of the Act.

Further, if the Proposals are approved and the existing method of reporting trade size to the tape continues, IEX believes that the result would be to unreasonably discriminate in the dissemination of market data in violation of Rule 603(a)(2). Exchanges are permitted to disseminate proprietary data feeds that offer “enhanced” market data, but **we believe 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.**

NYSE describes the Proposals as a means to disseminate through the proprietary feeds “the same volume and prices, but with more granularity regarding individual components of each completed trade.”⁹ But in this case the “granularity” consists of deconstructed elements are of additional value on NYSE’s proprietary data feed only because of NYSE’s peculiar practice of aggregating them on CTA. In essence, then, the NYSE is offering a proprietary product that has additional commercial viability because of its practice in aggregating trades in reporting to the public data feed.

NYSE portrays the Proposals as not unreasonably discriminatory by pointing to the existence of alternatives to its proprietary data from other sources, *including consolidated data*, and states that “vendors and subscribers can elect these alternatives” and that the modified data feed would be available to all vendors and customers on an equivalent basis.¹⁰ But in this case NYSE is the **exclusive source** of the data in question – the trade size of each execution between a single seller and a single buyer. In this respect, it is interesting to note that the NYSE describes another aspect of the Proposals, to eliminate from the proprietary feeds limited bid/ask information at the time of each reported trade,¹¹ as a way to “align [proprietary data] content with that of last sale data feeds offered by other exchanges.” In contrast, the dissemination of trade data on an

⁹ 80 Fed. Reg. at 46629.

¹⁰ *Id.* (emphasis supplied).

¹¹ IEX does not object to this aspect of the Proposals.

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unbunched basis would align with the practice of other markets in reporting to the SIP but would not compete with any other proprietary data products because no one else *can* compete in the delivery of that specific information. In terms of advancing national market system goals, the result is no more “fair and reasonable”, and no less “unreasonably discriminatory”, than practices providing timeliness advantages to proprietary over consolidated data that the Commission has found to violate regulatory standards.

In sum, we believe that a result that prevents 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. Accordingly, NYSE should be required to end the practice of bunching trades, and at a minimum it should be prohibited from providing one view of trades conducted on its market to the public through the SIP and another, more accurate, view to those who are able to pay for it.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ramsay". The signature is fluid and cursive, with the first name "John" written in a larger, more prominent script than the last name "Ramsay".

John Ramsay
Chief Market Policy Officer

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets