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VIA E-MAIL

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C., 20549-1090

Re: Proposed Rule Changes Amending the NYSE Trades Market Data and NYSE MKT Trades Market Data Product Offerings (SR-NYSE-2015-31 and SR-NYSEMKT-2015-56)

Dear Mr. Fields:

The New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT", together with NYSE, the "Exchanges") appreciate the opportunity to provide written comments in connection with the Exchanges' rule proposals to amend the NYSE Trades Market Data and NYSE MKT Trades Market Data (collectively, the "Trades Feeds") Product Offerings (the "Proposals").[1] After further review, the Exchanges have decided not to modify the manner in which last sale information is disseminated in the Trades Feeds and will be withdrawing the Proposals. Nonetheless, the Exchanges believe it is important to respond to the comment letters submitted in connection with the Proposals.[2]

1 Both the NYSE and its affiliated exchange, NYSE MKT LLC ("NYSE MKT"), which operates on the same trading platform as the NYSE, submitted virtually identical rule proposals to amend their respective Trades Feeds. 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"). The Securities and Exchange Commission instituted proceedings to determine whether to disapprove the Proposals. See Securities Exchange Act Release No. 75937 (Sept. 17, 2015), 80 FR 57408 (Sept. 23, 2015) (SR-NYSE-2015-31; SR-NYSEMKT-2015-56) ("Order Instituting Proceedings").

2 See Letter from Eric Scott Hunsader, CEO, Nanex, LLC to U.S. Securities and Exchange Commission, dated August 14, 2015 ("Nanex Letter"); Letter from John Ramsay, Chief Market Policy Officer, IEX Group, Inc., to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated August 20, 2015 ("IEX Letter"); Letter from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA to U.S. Securities and Exchange Commission, dated October 14, 2015 ("SIFMA Letter"); Letter from Elliot Grossman, Managing Director, Dinosaur Securities LLC to U.S. Securities and Exchange Commission, dated October 13, 2015 ("Dinosaur Letter").

I. Background

As described in greater detail in the Proposals, the Exchanges propose to modify the data content of their Trades Feeds (i) to remove bid/ask data and (ii) to provide the individual orders that make up each reported trade. With respect to the second proposed modification, the Exchanges currently report to the Consolidated Tape Association ("CTA") and distribute on a real-time basis via the Trades Feeds the Exchanges last sale price information based on the completed trade at each price point of an arriving order ("bundled trade reporting"). The Exchanges propose to distribute their last sale information in the Trades Feeds in a format that would be based on the completed trades of the individual resting orders that are executed against an arriving order ("unbundled trade reporting"). The Exchanges are not proposing to change the way in which they report last sale information to the securities information processors ("SIPs") for consolidation and dissemination.

The comment letters oppose the Exchanges' proposal to modify in their Trade Feeds the way in which last sale information is disseminated from bundled trade reporting to unbundled trade reporting. The commenters argue that the Proposals would be contrary to Regulation NMS because the manner in which the Exchanges currently report last sale information to the SIP, which is not proposed to change, is inconsistent with Regulation NMS. In addition, the IEX and Dinosaur Letters characterize the Exchanges' current bundled trade reporting to the SIP as "inferior" to the unbundled trade reporting to the SIP by other exchanges and assert that the Exchanges should not be permitted to provide an "inferior" view of core market data to the "general public" compared to an "enhanced view" for subscribers "willing to pay a premium for it." The Exchanges respond to these comments below and to the Commission's view that permitting exchanges to provide different information about executions through their proprietary data feeds than they report to the SIP presents a novel issue that implicates the Regulation NMS requirements regarding "core data" and warrants further consideration.[3]

II. Discussion

A. Bundled Trade Reporting is Consistent with SIP Plans and Regulation NMS

Regulation NMS defines the consolidated last sale information (or "core" data) that exchanges must report to the SIPs as "the price, volume, and market identification of the most recent transaction report for a security that is disseminated pursuant to an effective national market system plan."[4] Regulation NMS requires that "consolidated last sale information" be reported in a "fair and reasonable" manner. In reporting trades to the SIPs under the CTA Plan and the Nasdaq UTP Plan, SROs may choose from two methods to report: (1) they may report trades to the SIP on an order-by-order basis or (2) they may report trades to the SIP comprised of multiple orders, *i.e.,* bundled trade reporting.

To support its argument that the Exchange's current method of reporting trades to the SIPs is inconsistent with Regulation NMS, the IEX Letter argues that the "commonsense" approach to

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[3] See Order Instituting Proceedings, supra note 1.

[4] 17 CFR 242.600(b)(14).

the definition of a "completed transaction" would be to consider each execution between a single seller and a single buyer as a separate transaction and the Exchange is not "free to adopt its own interpretation." IEX's view of "commonsense," however, is novel. Trade reports for opening and closing auctions, for example, are reported to the SIP as single trade reports by NYSE Arca, Nasdaq, BATS, and the Exchanges, even though there are multiple buyers and multiple sellers that execute trades in such an auctions. Moreover, the Exchanges do not believe that it is "commonsense" to report a trade from the perspective of a resting order executed by an incoming order, as IEX suggests. An incoming order may trade with multiple counterparties, but from the perspective of the incoming order it is one trade. Nevertheless, IEX and other price-time venues report as separate trades each resting order against which an incoming order trades. This unbundled method of trade reporting is permitted by the SIP Operating Committees and the Exchanges do not take issue with it. The Exchanges, however, do not believe that it is an inherently more "commonsense" trade reporting method than a bundled trade reporting method that would reflect the trade as experienced by the incoming order. Rather, the Exchanges believe there is value, particularly for retail investors, of having the price and size of a completed transaction reported based on the execution of the arriving order (i.e., bundled trade reporting). By reporting a trade based on the execution of an arriving order, the trade report better informs a retail investor of the execution they should expect if sending a similarly sized order. This method of trade reporting also makes it more transparent to institutional investors the venues on which block-sized trades are being executed.

The IEX and SIFMA Letters also question why NYSE would report bundled trades to the SIPs when other markets report unbundled trades. The answer is simple. The Exchanges have different priority allocation rules than those markets that report trade data in an unbundled format to the SIPs. Specifically, the Exchanges' parity model for allocating trades, which provides that each participant in the allocation process is entitled to participate in a trade with an incoming order, supports use of bundled trade reporting to provide complete information to the SIPs regarding the size at which executions have occurred on the Exchanges.[5]

The following example illustrates how an incoming order would trade with interest resting on the Exchanges' books compared to the same interest on a price-time priority exchange. Assume that there are three resting sell orders at a price, each for 300 shares, from three different participants. An incoming market order to buy 300 shares would trade as follows:

On the Exchanges, an incoming market order to buy 300 shares would trade with all three resting orders for 100 shares each.	On a price-time priority exchange, an incoming market order to buy 300 shares would trade with the single resting order with time priority for 300 shares.

The Exchanges would report the price of this transaction to the SIP with a volume of 300 shares. If the Exchanges were to, instead, move to unbundled trade reporting, as the commenters recommend, this trade would be reported as three separate 100 share prints at the same price. Accordingly, contrary to IEX's claim, if the Exchanges were to send unbundled

5 See Exchange Rule 72(c) for a discussion of the Exchange's parity allocation model.

trade reports to the SIP, it would not create an apples-to-apples comparison of order sizes or trade sizes. Contrary to IEX's assertions, to be a true apples-to-apples comparison, all exchanges would need to send bundled trade reports.

Absent a requirement that all exchanges send bundled trade reports, which the Exchanges are not advocating, the Exchanges believe their parity model for allocating trades supports reporting the trade in the above example to the SIP as a 300-share trade, rather than three trades for 100 shares. The Exchanges believe that the bundled trade report is a better representation to retail and institutional investors of the execution they could receive, and therefore more complete information about both the price and volume of an execution.

The IEX Letter does note that an investor interested in bundled trade information could use SIP time stamp information to rebuild that the three 100-share prints to reflect a single execution of an incoming order. The Exchanges do not believe that those market participants that rely on the SIP for trade reports, including retail investors, should need the capability or knowledge about market structure to reassemble trade reports or should be required to do so. Further, in an actively traded security, reassembling unbundled trade reports into a single execution may be difficult to do even for professional market participants.

The Exchanges believe that bundled trade reporting to the SIPs is not only consistent with Regulation NMS, but also consistent with the protection of investors. As IEX correctly points out, "[l]ast sale data allows investors and market participants to track, not just the price, but also the size at which executions have occurred" and "[a]n 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." This comparison is particularly relevant for retail investors, who are generally more likely to use market orders. Because market orders execute upon arrival on an exchange, information regarding the size of a trade based on the execution of an arriving order, as provided by the Exchanges to the SIP, may be more valuable to retail investors than unbundled trade reports that a retail investor would then have to try to reassemble based on price, size, and time stamp data to determine whether a single order executed with many resting orders.

While certain professional market participants may find value in knowing the components of a trade based on individual resting orders, the Exchange does not believe that this information should replace a trade report that shows the size at which an incoming order executed at each price point. Retail investors have no need for detailed "unbundled" trade information and are unlikely to comprehend the meaning (or relationship) of multiple small prints, or have the capability to determine that multiple small prints aggregate to be a single larger order executing at a price. Instead, and as specifically contemplated by Regulation NMS, disseminating additional information via a proprietary data feed for use by those who desire it is more appropriate.

B. Regulation NMS Expressly Contemplates Disseminating Different Quote and Trade Information Through Proprietary Data Feeds than Through the SIPs

Rule 603(a)(1) of Regulation NMS requires that any exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to a SIP do so on terms that are "fair and reasonable."[6] Rule 603(a)(2) of Regulation NMS further provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock to a SIP do so on terms that are "not unreasonably discriminatory."[7]

Importantly, Regulation NMS does not limit exchanges to disseminating via proprietary data feeds only the same data that is reported to and disseminated as consolidated quote and trade information through the SIPs. Rather, Regulation NMS specifically contemplates that only certain core information is reported to the SIPs and disseminated as a consolidated data feed. Beyond that, market forces, rather than regulatory requirements, should determine what, if any, additional market data may be displayed by an exchange. As approved by the Commission, most exchanges currently disseminate top-of-book BBO information, depth-of-book quote information, and odd-lot quote information in their proprietary data feeds. None of this information is reported to the SIPs. More explicitly, the top-of-book BBO information provided by most exchanges to the SIP is aggregate, or bundled, interest at a single price level, while their proprietary feeds contain order level, or unbundled details, about that same price level. Similarly, the Proposals would provide for the Exchanges to disseminate different information about their trades in their proprietary data feeds than they report to the SIPs.

The Commission made clear in the Regulation NMS Adopting Release that the rules relating to the distribution and display of data in Regulation NMS "would allow investors and vendors greater freedom to make their own decisions regarding the data they need"[8] by requiring the display of only consolidated information to the SIPs. The Commission emphasized that market forces would dictate whether market centers could display additional information:

> Beyond disclosure of this basic information, market forces, rather than regulatory requirements, will be allowed to determine what, if any, additional data from other market centers is displayed. In particular, investors and other information users ultimately will be able to decide whether they need additional information in their displays.[9]

In considering the benefits of requiring that markets provide only basic consolidated information to the SIPs, the Commission found that "[v]endors, broker-dealers, and investors will benefit from this reduced consolidated display requirement through a more efficient use of system capacity and because the costs of obtaining the necessary data may be lowered. The Commission believes that giving investors the ability to choose (and pay for) only the data they need and use will be beneficial."[10]

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[6] 17 CFR 242.603(a)(1).

[7] 17 CFR 242.603(a)(2).

[8] See Regulation NMS Adopting Release, Securities Exchange Act Release No. 51808, 70 FR 37496, 37566 (June 29, 2005) (File No. S7-10-04) ("Reg NMS Adopting Release").

[9] See Reg NMS Adopting Release, 70 FR at 37569.

[10] Reg NMS Adopting Release, 70 FR at 37593.

The Commission also found that limiting the data that is required to be displayed to the SIPs to only consolidated information would promote competition:

> [A]dopted Rule 603(a) would allow investors and vendors greater freedom to make their own decisions regarding the data they need and that the proposal should lead to lower costs to investors. The Commission agrees with these commenters and notes that efficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data. Adopted Rule 603(b) also likely will promote efficiency in the dissemination of consolidated market information by requiring that all SROs act jointly through the Plans to disseminate such information to the public.[11]

More specifically, in discussing trade information, the Commission emphasized that the relevant trade information to be provided to market participants via the SIPs is the price and volume of trades:

- "[I]nformation users, particularly retail investors, will be able to obtain the data from a single source that reflects the best quotations and most recent *trade price* for a security."[12] (emphasis added)
- "As a result, investors of all types – large and small – have access to a comprehensive, accurate, and reliable source of information for the *prices* of any NMS stock at any time during the trading day."[13] (emphasis added)
- "The great strength of the current model is that it benefits investors, particularly retail investors, by enabling them to assess *prices and evaluate best execution of their orders* by obtaining data from a single source that is highly reliable and comprehensive."[14] (emphasis added)

As discussed above, the trade information the Exchanges currently report to the SIPs is consistent with the Commission's requirements under Regulation NMS. Further, Regulation NMS specifically contemplates that exchanges, as the Exchanges are proposing, would provide different and additional information through their proprietary data feeds than is reported to the SIPs. Just as the Commission found that the value for investors is a consolidated NBBO rather than more granular information regarding each market's quotes, the value of the "core" trades data is the price and volume of trades. While Regulation NMS does not specify what it means to be "consolidated" price and volume data per se, given the emphasis by the Commission on a "reduced consolidated display requirement," it is consistent with Regulation NMS that the consolidated price and volume information includes how the Exchanges currently report such

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11 Reg NMS Adopting Release, 70 FR at 37597.

12 Reg NMS Adopting Release, 70 FR at 37569.

13 Reg NMS Adopting Release, 70 FR at 37557.

14 Reg NMS Adopting Release, 70 FR at 37558.

information, *i.e.,* the volume based on the size of an incoming order that is executed at a price. Indeed, the Exchanges have been reporting their trade data to the SIP in this manner since the approval of Regulation NMS and this is the first time anyone has suggested that the Exchanges' manner of reporting pricing information to the SIPs may not be consistent with Regulation NMS.

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As noted above, the Exchanges will be withdrawing the Proposals. However, for the reasons set forth above, the Exchanges believe that reporting bundled trade information to the SIPs is fully consistent with both the respective SIP Plans and Regulation NMS. Moreover, contrary to the positions set forth in the comment letters, Regulation NMS expressly contemplates that an exchange may disseminate different market data via its proprietary data feeds than what is reported to the SIPs. To find otherwise would be contrary to Commission's position when adopting Regulation NMS.

Respectfully submitted,

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