

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100030; File No. SR-NYSE-2024-24)

April 25, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE Pillar Depth Data Feed

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on April 24, 2024, 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 and II 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 establish the NYSE Pillar Depth (“Pillar Depth”) data feed. 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 establish the Pillar Depth data feed. The Pillar Depth data feed is a frequency-based depth of book market data feed that would provide a consolidated view of the ten (10) best price levels on both the bid and offer sides across the NYSE Group’s combined limit order books for securities traded on the NYSE Group equities markets, i.e., New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), NYSE Chicago, Inc. (“NYSE Chicago”) and NYSE National, Inc. (“NYSE National”), for which the NYSE Group equities markets report quotes and trades under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.

Background

The Exchange recently established the NYSE Aggregated Lite (“NYSE Agg Lite”) data feed.⁴ The NYSE Agg Lite is a NYSE-only frequency-based depth of book market data feed of the NYSE’s limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE and for which NYSE reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.⁵ The NYSE Agg Lite would be updated no less frequently than once per second. The NYSE Agg Lite would include depth of book order data as

⁴ See Securities Exchange Act Release No. 99689 (March 7, 2024), 89 FR 18466 (March 13, 2024) (SR-NYSE-2024-12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE Aggregated Lite Market Data Feed) (“NYSE Agg Lite Filing”). The NYSE Agg Lite data feed is not yet available. In the NYSE Agg Lite Filing, the NYSE noted that it would publish a Trader Update to announce the date when the NYSE Agg Lite data feed would become available for subscribers and vendors.

⁵ Id.

well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE Agg Lite would also include order imbalance information prior to the opening and closing of trading.⁶

Additionally, NYSE American recently established the NYSE American Aggregated Lite (“NYSE American Agg Lite”) data feed.⁷ The NYSE American Agg Lite is a NYSE American-only frequency-based depth of book market data feed of the NYSE American’s limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE American and for which NYSE American reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.⁸ The NYSE American Agg Lite would be updated no less frequently than once per second. The NYSE American Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE American Agg Lite would also include order imbalance information prior to the opening and closing of trading.⁹

Additionally, NYSE Arca recently established the NYSE Arca Aggregated Lite (“NYSE Arca Agg Lite”) data feed.¹⁰ The NYSE Arca Agg Lite is a NYSE Arca-only frequency-based

⁶ Id.

⁷ See Securities Exchange Act Release No. 99690 (March 7, 2024), 89 FR 18445 (March 13, 2024) (SR-NYSEAMER-2024-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE American Aggregated Lite Market Data Feed) (“NYSE American Agg Lite Filing”). The NYSE American Agg Lite data feed is not yet available. In the NYSE American Agg Lite Filing, NYSE American noted that it would publish a Trader Update to announce the date when the NYSE American Agg Lite data feed would become available for subscribers and vendors.

⁸ Id.

⁹ Id.

¹⁰ See Securities Exchange Act Release No. 99713 (March 12, 2024), 89 FR 19381 (March 18, 2024) (SR-NYSEArca-2024-22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE Arca Aggregated Lite Market Data Feed) (“NYSE Arca Agg Lite Filing”). The NYSE Arca

depth of book market data feed of the NYSE Arca’s limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE Arca and for which NYSE Arca reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.¹¹ The NYSE Arca Agg Lite would be updated no less frequently than once per second. The NYSE Arca Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE Arca Agg Lite would also include order imbalance information prior to the opening and closing of trading.¹²

Further, NYSE Chicago recently established the NYSE Chicago Aggregated Lite (“NYSE Chicago Agg Lite”) data feed.¹³ The NYSE Chicago Agg Lite is a NYSE Chicago-only frequency-based depth of book market data feed of the NYSE Chicago’s limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE Chicago and for which NYSE Chicago reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.¹⁴ The NYSE Chicago Agg Lite would be updated no less frequently than once per second. The NYSE Chicago Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in

Agg Lite data feed is not yet available. In the NYSE Arca Agg Lite Filing, NYSE Arca noted that it would publish a Trader Update to announce the date when the NYSE Arca Agg Lite data feed would become available for subscribers and vendors.

¹¹ Id.

¹² Id.

¹³ See Securities Exchange Act Release No. 99691 (March 7, 2024), 89 FR 18468 (March 13, 2024) (SR-NYSECHX-2024-08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE Chicago Aggregated Lite Market Data Feed) (“NYSE Chicago Agg Lite Filing”). The NYSE Chicago Agg Lite data feed is not yet available. In the NYSE Chicago Agg Lite Filing, NYSE Chicago noted that it would publish a Trader Update to announce the date when the NYSE Chicago Agg Lite data feed would become available for subscribers and vendors.

¹⁴ Id.

the status of a specific security, such as trading halts, short sale restriction, etc. The NYSE Chicago Agg Lite would not include order imbalance information.¹⁵

Finally, NYSE National recently established the NYSE National Aggregated Lite (“NYSE National Agg Lite”) data feed.¹⁶ The NYSE National Agg Lite is a NYSE National-only frequency-based depth of book market data feed of the NYSE National’s limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE National and for which NYSE National reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.¹⁷ The NYSE National Agg Lite would be updated no less frequently than once per second. The NYSE National Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. The NYSE National Agg Lite would not include order imbalance information.¹⁸

Proposed Pillar Depth Data Feed

In response to customer requests, the Exchange proposes to establish the Pillar Depth data feed, a data feed consisting of certain data elements from five market data feeds – NYSE Agg Lite, NYSE American Agg Lite, NYSE Arca Agg Lite, NYSE Chicago Agg Lite and NYSE National Agg Lite. The Exchange does not currently offer this product. As noted above, the Pillar Depth data feed would be a frequency-based depth of book market data feed that would

¹⁵ Id.

¹⁶ See Securities Exchange Act Release No. 99715 (March 12, 2024), 89 FR 19383 (March 18, 2024) (SR-NYSE-NAT-2024-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE National Aggregated Lite Market Data Feed) (“NYSE National Agg Lite Filing”). The NYSE National Agg Lite data feed is not yet available. In the NYSE National Agg Lite Filing, NYSE National noted that it would publish a Trader Update to announce the date when the NYSE National Agg Lite data feed would become available for subscribers and vendors.

¹⁷ Id.

¹⁸ Id.

provide a consolidated view of the ten (10) best price levels on both the bid and offer sides across the NYSE Group's combined limit order books for securities traded on the NYSE Group equities markets for which the NYSE Group equities markets report quotes and trades under the CTA Plan or the Nasdaq/UTP Plan. In other words, Pillar Depth would be a compilation of limit order data that the Exchange would provide to vendors and subscribers. As proposed, the Pillar Depth data feed would be updated no less frequently than once per second. In addition to depth of book order data, Pillar Depth would also include security status messages. The security status message would inform vendors and subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, Pillar Depth would publish imbalance messages no less frequently than once per second during auctions to update price and volume information, prior to the opening and closing of trading on NYSE, NYSE American and NYSE Arca.

For each security, Pillar Depth would only include the top ten (10) bids and top ten (10) offers from among the five NYSE Group equities markets. The resting interest at each price level would be aggregated across the five NYSE Group equities markets, and a market center ID will attribute the exchanges included in this interest. For example, if XYZ stock were traded on both NYSE and NYSE Arca, and one of the top 10 price levels on NYSE was 1,000 shares on offer at \$10.00, and one of the top 10 price levels on NYSE Arca was 500 shares on offer at \$10.00. If there were no shares of XYZ on offer on any of the remaining NYSE Group equities markets, then Pillar Depth would represent 1,500 shares on offer at \$10.00. This type of aggregation would be repeated for each of the 10 best price levels on both the bid and offer sides across the five NYSE Group equities markets.

The Exchange proposes to offer Pillar Depth after receiving requests from vendors and subscribers that would like to receive the data described above in a consolidated fashion at a pre-defined publication interval, in this case updates no less than once per second. A consolidated data feed may provide greater efficiencies and reduce errors for vendors and subscribers that currently choose to consolidate the above data into a single offering after receiving it from the Exchange through existing products and adjust the publication frequency based on a subscriber's needs. The Exchange believes that providing vendors and subscribers with the option to subscribe to a market data product that consolidates a subset of data from existing products and where such consolidated data is published at a pre-defined interval, thus lowering bandwidth, infrastructure and operational requirements, would allow vendors and subscribers to choose the best solution for their specific business needs. The Exchange notes that publishing only the top ten price levels on both the bid and offer sides across the NYSE Group equities markets' order book where such data is communicated to subscribers at a pre-defined interval would reduce the overall volume of messages required to be consumed by subscribers when compared to a full order-by-order data feed or a full depth of book data feed. Providing data in this format and publication frequency would make Pillar Depth more easily consumable by vendors and subscribers, especially for display purposes.

The Exchange proposes to offer Pillar Depth through the Exchange's Liquidity Center Network ("LCN"), a local area network in the Exchange's Mahwah, New Jersey data center that is available to users of the Exchange's co-location services. The Exchange would also offer Pillar Depth through the ICE Global Network ("IGN"), through which all other users and members access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange believes that Pillar Depth would provide high-quality, comprehensive depth of book order data for the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National in a unified view and respond to subscriber demand for such a product. The Exchange notes that an anticipated end user might use Pillar Depth for purposes of identifying an indicative price of Tape A, B, and C securities through leveraging the depth and breadth of NYSE, NYSE Arca, NYSE American, NYSE Chicago and NYSE National without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use the Pillar Depth data for purposes of making order-routing or trading decisions. Rather, the Exchange notes that under Rule 603 of Regulation NMS, Pillar Depth could not be substituted for consolidated data in all instances in which consolidated data is used and certain subscribers would still be required to purchase consolidated data for trading and order-routing purposes.¹⁹

Exchange Not an Exclusive Distributor of Pillar Depth

The Exchange proposes to offer the Pillar Depth data feed in a capacity similar to that of a vendor. The Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National are the exclusive distributors of the five Agg Lite data feeds²⁰ from which certain data elements would be taken to create Pillar Depth. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Pillar Depth data feed. Other vendors would be able, if they chose, to create a data feed with the same information as proposed for inclusion in Pillar Depth, and to distribute it to clients with no greater latency than the Exchange would be able to distribute Pillar Depth. In addition, as

¹⁹ 17 CFR §242.603(c).

²⁰ 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.

discussed further below, the pricing the Exchange would charge clients for Pillar Depth would not be lower than the cost to a vendor of creating a comparable product, including the cost of receiving the underlying data feeds.

After creating Pillar Depth, the Exchange would distribute this data feed through IGN and market data vendors. The path for distribution by the Exchange of this data would not be faster than a vendor that independently created a Pillar Depth-like product could distribute its own product. As such, the proposed Pillar Depth data feed is a data product that a competing vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with NYSE Arca, NYSE American, NYSE Chicago and NYSE National, the Exchange represents that the source of the market data it uses to create the proposed Pillar Depth is the same as the source available to other vendors.

With respect to latency, the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National are located in the same data center in Mahwah, New Jersey. The system creating and supporting the proposed Pillar Depth data feed would need to obtain the five underlying data feeds from these five exchanges before it could aggregate and consolidate information to create Pillar Depth and then distribute it to end users. The Exchange also offers third parties access to its data center through co-location. Accordingly, a competing market data vendor co-located in the Exchange's Mahwah, New Jersey facility offering a similar competing product would similarly need to obtain the five underlying data feeds.

The Exchange has designed the Pillar Depth data feed so that it would not have a competitive advantage over a competing vendor with respect to the speed of access to those five underlying data feeds. Likewise, the Pillar Depth data feed would not have a speed advantage

vis-à-vis competing vendors co-located in the data center with respect to access to end user customers, whether those end users are also co-located or not. As such, a market data vendor could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level playing field with respect to the speed that the Exchange could create and redistribute the Pillar Depth data feed.

With respect to cost, the Exchange will file a separate rule filing to establish the fees for Pillar Depth. To ensure that vendors could compete with the Exchange by creating the same product as Pillar Depth and sell it to their clients, the Exchange would charge its clients for the Pillar Depth data feed an amount that represents the cost to a market data vendor to obtain the five underlying Agg Lite data feeds, plus an additional amount to be determined that would reflect the value of the aggregation and consolidation function. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location costs to a particular vendor might be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a competing vendor could create and offer a product similar to the proposed Pillar Depth data feed at a similar cost. For these reasons, the Exchange believes that vendors could readily offer a product similar to Pillar Depth on a competitive basis.

The Exchange will announce the implementation date of this proposed rule change by Trader Update, which, subject to the effectiveness of this proposed rule change, is anticipated to be on May 13, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)²¹ of the Act (“Act”), in general, and furthers the objectives of Section 6(b)(5)²² 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 Pillar Depth to those interested in receiving it.

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 market data as requested by market data vendors and subscribers. The proposed rule change would benefit investors by facilitating their prompt access to the frequency-based and consolidated depth of book information contained in the Pillar Depth market data feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act²³ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to

²¹ 15 U.S.C. §78f(b).

²² 15 U.S.C. §78f(b)(5).

²³ 15 U.S.C. 78k-1.

brokers, dealers, and investors. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,²⁴ 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. The Pillar Depth market data feed would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data vendors are required by any rule or regulation to make this data available. Accordingly, vendors and subscribers can discontinue their use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) 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 Exchange believes that Pillar Depth is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS would itself further the Act’s goals of facilitating efficiency and competition:

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.²⁵

In addition, Pillar Depth removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market

²⁴ See 17 CFR 242.603.

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS Adopting Release).

data and would compete with similar market data products currently offered by the four U.S. equities exchanges operated by Cboe Exchange, Inc. - Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe EDGA Exchange, Inc. (“EDGA”), and Cboe EDGX Exchange, Inc. (“EDGX”), each of which offers a market data product called Cboe One Feed.²⁶ Similar to Cboe One Premium Feed, Pillar Depth can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, Pillar Depth, similar to Cboe One Premium Feed, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by the NYSE Group markets, except unlike Cboe One Premium Feed, which provides aggregated depth per security for up to five (5) price levels, Pillar Depth would provide a consolidated view of the ten (10) best price levels on both the bid and offer sides across the NYSE Group’s combined limit order books for securities traded on the NYSE Group equities markets.

The Exchange notes that the existence of alternatives to the Exchange’s proposed product, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as well as the continued availability of the Exchange’s separate data feeds, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives as their individual business cases warrant.

As noted above, the Exchange would be acting in the capacity of a vendor with respect to the proposed Pillar Depth data feed. The proposed Pillar Depth data feed is a product that relies

²⁶ See BZX Rule 11.22(j); BYX Rule 11.22(i); EDGA Rule 13.8(b); and EDGX Rule 13.8(b). The Cboe One Feed offered by BZX, BYX, EDGA and EDGX is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Cboe exchanges. The Cboe One Feed also contains the individual last sale information, consolidated volume, the primary listing market’s official opening and closing price, and the current day consolidated high and low price for all listed equity securities. Cboe One Feed recipients may also elect to receive aggregated two-sided quotations from the Cboe exchanges for five (5) price levels (“Cboe One Premium Feed”).

on the Exchange's receipt of underlying data, which is available to all market participants, before it can aggregate and consolidate information to create Pillar Depth; this is a process that a competing vendor could also perform. Accordingly, although the Exchange might be the only distributor of the Pillar Depth data feed initially, it is not in an exclusive position to provide a product like the Pillar Depth data feed. Therefore, the Exchange believes that the proposed rule change is consistent with Section 6(b)²⁷ of the Act, in general, and furthers the objectives of Section 6(b)(5)²⁸ of the Act, in particular, in that it is designed 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.

Specifically, the Exchange has taken into consideration its affiliated relationship with NYSE Arca, NYSE American, NYSE Chicago and NYSE National in its design of the Pillar Depth data feed to assure that similarly situated competing vendors would be able to offer a similar product on the same terms as the Exchange, both from the perspective of latency and cost. As discussed in detail above, the Exchange proposes to begin offering the Pillar Depth data feed voluntarily in response to demand from vendors and subscribers that are interested in receiving consolidated depth of order book information from the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National in a unified view. Specifically, portfolio managers, wealth managers, back-office employees, and others are looking for a cost-effective, easy-to-administer, high-quality market data product with the characteristics of the Pillar Depth data feed. The Pillar Depth data feed will help to protect a free and open market by providing

²⁷ 15 U.S.C. §78f(b).

²⁸ 15 U.S.C. §78f(b)(5).

vendors and subscribers with additional choices in receiving this type of market data, thus promoting competition and innovation.

As noted above, the Exchange believes that Pillar Depth will offer an alternative to the use of consolidated data products and proprietary data products such as the Cboe One Premium Feed offered by BZX, BYX, EDGX and EDGA. The Exchange believes that Pillar Depth will offer a competitive alternative to the market data products currently offered by the Cboe family of exchanges.

In addition, the proposal would not permit unfair discrimination because the data feed would be available to all vendors and subscribers through both the LCN and IGN on an equivalent basis. In addition, any customer that wishes to continue to be able to purchase one or more of the individual underlying data feeds would be able to do so.

The Exchange does not believe that the proposal would permit unfair discrimination among customers, brokers, or dealers and thus is consistent with the Act because the Exchange will be offering the product on terms that a competing vendor could offer a competing product. Specifically, the proposed data feed does not represent Exchange core data, but rather a new product that represents an aggregation and consolidation of existing, previously filed market data products of the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National. As such, a competing vendor could similarly obtain the five underlying data feeds and perform a similar aggregation and consolidation function to create the same data product with the same latency. More specifically, a competing vendor that is co-located in the Exchange's Mahwah, New Jersey data center could obtain the five underlying data feeds from the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed Pillar Depth

data feed and provide the same type of product to its customers with the same latency they could achieve by purchasing Pillar Depth from the Exchange. As such, the Exchange would not have any unfair advantage over competing vendors with respect to obtaining data from NYSE Arca, NYSE American, NYSE Chicago and NYSE National; in fact, the technology supporting the Pillar Depth data feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a competing vendor co-located at the data center. In addition, the Exchange would be charging for the proposed Pillar Depth data feed competitively with the price that a competing vendor could assess for a competing product.

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

In accordance with Section 6(b)(8) of the Act,²⁹ 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. As noted above, the Exchange proposes to offer the Pillar Depth data feed in a capacity similar to that of a vendor. Although the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National are the exclusive distributors of the five Agg Lite feeds from which certain data elements would be taken to create Pillar Depth, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Pillar Depth data feed. Vendors would be able, if they chose, to create a data feed with the same information as Pillar Depth and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed data feed. In addition, the pricing the Exchange would charge clients for Pillar Depth would not be lower than the cost to a vendor of receiving the underlying data feeds and of maintaining co-

²⁹ 15 U.S.C. 78f(b)(8).

located operations to receive and distribute such data feeds with no greater latency than the Exchange.

The Exchange has designed the Pillar Depth data feed so that it would not have a competitive advantage over a competing vendor with respect to the speed of access to those five underlying data feeds. Likewise, the Pillar Depth data feed would not have a speed advantage vis-à-vis competing vendors co-located in the data center with respect to access to end user customers, whether those end users are also co-located or not. As such, a market data vendor could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level-playing field with respect to the speed that the Exchange could create and redistribute the Pillar Depth data feed.

With respect to cost, the Exchange will file a separate rule filing to establish the fee for Pillar Depth. To ensure that vendors could compete with the Exchange by creating the same product as Pillar Depth and sell it to their clients, the Exchange would charge its clients for the Pillar Depth feed an amount that represents the cost to a market data vendor to obtain the five underlying data feeds, plus an additional amount to be determined that would reflect the value of the aggregation and consolidation function. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location costs to a particular vendor may be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a competing vendor could create and offer a product similar to the proposed Pillar Depth data feed

at a similar cost. For these reasons, the Exchange believes that vendors could readily offer a product similar to Pillar Depth on a competitive basis.

The Exchange further believes that Pillar Depth will promote competition among exchanges by offering an alternative to the CBOE One Premium Feed offered by BZX, BYX, EDGA and EDGX. Because other exchanges already offer similar products, the Exchange's proposed Pillar Depth data feed will enhance competition. The Pillar Depth data feed will foster competition by providing an alternative to similar products offered by other exchanges, including the Cboe One Premium Feed.³⁰ The Pillar Depth data feed would provide investors with a new option for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.³¹ Thus, the Exchange believes the proposed rule change is necessary to permit fair competition among national securities exchanges. For these reasons, the Exchange believes that offering Pillar Depth will promote, rather than unnecessarily or inappropriately burden, competition for market data products that are offered in the capacity as a vendor and are not core exchange market data products.

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 Act³² and Rule 19b-4(f)(6) thereunder.³³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

³⁰ See *supra*, note 26.

³¹ See *supra*, note 25, at 37503.

³² 15 U.S.C. 78s(b)(3)(A)(iii).

³³ 17 CFR 240.19b-4(f)(6).

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 investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁴

A proposed rule change filed under Rule 19b-4(f)(6)³⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposal raises no novel issues and that waiver of the operative delay will permit the Exchange to make the Pillar Depth data feed available to subscribers, with an anticipated launch date of May 13, 2024, as an alternative to similar products offered by BZX, BYX, EDGA and EDGX, as well the Cboe One Premium Feed. For these reasons, the Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.³⁷

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

³⁴ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 satisfied this requirement.

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ 17 CFR 240.19b-4(f)(6)(iii).

³⁷ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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)³⁸ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-24 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 number SR-NYSE-2024-24. This file number should be included on the subject line if email 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 (<https://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

³⁸ 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-24 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Sherry R. Haywood,

Assistant Secretary.

³⁹ 17 CFR 200.30-3(a)(12).