

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76600; File No. SR-NYSEMKT-2015-101)

December 9, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE MKT Trades Market Data Product Offering

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 24, 2015, NYSE MKT LLC (“NYSE MKT” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 NYSE MKT Trades market data product offering. The text of 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 Exchange 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend the NYSE MKT Trades market data feed product offering.

NYSE MKT Trades is an NYSE MKT-only last-sale market data feed. NYSE MKT Trades currently allows vendors, broker-dealers and others to make available on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (“CTA”) Plan for inclusion in the CTA Plan’s consolidated data streams. Specifically, the NYSE MKT Trades feed includes, for each security traded on the Exchange, the real-time last sale price, time and size information and bid/ask quotations at the time of each sale and a stock summary message. The stock summary message updates every minute and includes NYSE MKT’s opening price, high price, low price, closing price, and cumulative volume for the security.³

The Exchange proposes to remove the bid/ask information from the NYSE MKT Trades feed, thereby focusing the NYSE MKT Trades feed on NYSE MKT last sale information. This change would streamline the NYSE MKT Trades content, as well as align NYSE MKT Trades content with that of last sale data feeds offered by other exchanges.⁴ The NYSE MKT BBO data feed includes, and would continue to include, the best bids and offers for all securities that are

³ See Securities Exchange Act Release Nos. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35), 70065 (July 30, 2013), 78 FR 47450 (Aug. 5, 2013) (SR-NYSEMKT-2013-64) and 69273 (April 2, 2013), 78 FR 20969 (April 8, 2013) (SR-NYSEMKT- 2013-30).

⁴ See NASDAQ Rule 7039 (Nasdaq Last Sale) and BATS Rule 11.22(g) (BATS Last Sale).

traded on the Exchange for which NYSE MKT reports quotes under the Consolidated Quotation (“CQ”) Plan for inclusion in the CQ Plan’s consolidated quotation information data stream.⁵ The Exchange would continue to make NYSE MKT last sale information available through NYSE MKT Trades immediately after it provides last sale information to the processor under the CTA Plan.

The Exchange expects to offer both the current NYSE MKT Trades data product and the proposed NYSE MKT Trades data product for a limited transition period. After the transition period, the Exchange would stop offering the current NYSE MKT Trades data product and offer only the NYSE MKT Trades data product proposed in this filing. The Exchange would announce the transition dates in advance. There would be no change to the fees for NYSE MKT Trades in connection with the proposed changes.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁶ of the Act, in general, and furthers the objectives of Section 6(b)(5)⁷ 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.

⁵ See Securities Exchange Act Release No. 72326 (June 5, 2014), 79 FR 33605 (June 11, 2014) (SR-NYSEMKT-2014-49).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

The Exchange believes that modifying the NYSE MKT Trades product to remove the bid/ask information it currently includes and to provide only NYSE MKT last sale information would streamline the product and clarify the purpose and use for each of the NYSE MKT proprietary market data products. NYSE MKT Trades' content, as proposed, would be consistent with that of last sale data feeds offered by other exchanges, which similarly offer last sale market data products that do not include bid and offer information.⁸

In addition, the proposal would not permit unfair discrimination because the product would be available to all of the Exchange's market data vendors and customers on an equivalent basis.

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 Exchange believes that the data product modification proposed herein, focusing the NYSE MKT Trades feed on last sale data by removing the bid/ask data, is precisely the sort of market data product enhancement that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS – by lessening regulation of the market in proprietary data – would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency 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

⁸ See supra note 4.

based on their own internal analysis of the need for such data.⁹

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange’s products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives. In addition, the proposal would not permit unfair discrimination because the modified product would be available to all of the Exchange’s vendors and customers on an equivalent basis.

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

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 market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single

⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04).

market.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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 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.

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)¹² of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 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 satisfied this requirement.

¹² 15 U.S.C. 78s(b)(2)(B).

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-NYSEMKT-2015-101 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2015-101. 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 such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2015-101, 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.¹³

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).