

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61914; File No. SR-NYSE-2010-30)

April 15, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Establish the NYSE BBO Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2010, the New York Stock Exchange LLC (“NYSE” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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

NYSE proposes to establish the NYSE BBO Service, a service that will make available the Exchange’s best bids and offers and to establish fees for that service. The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, on the Commission’s Web site at www.sec.gov, at NYSE, 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 places specified in Item IV below. The Exchange has prepared summaries, set forth in sections

¹ 15 U.S.C. 78s(b)(1).

A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Subscribers and Data Feed Recipients.

The NYSE BBO Service is a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that NYSE reports under the CQ Plan for inclusion in the CQ Plan’s consolidated quotation information data stream (“NYSE BBO Information”). NYSE BBO Information would include the best bids and offers for all securities that are traded on the Exchange and for which NYSE reports quotes under the CQ Plan. NYSE will make the NYSE BBO service available over a single datafeed, regardless of the markets on which the securities are listed.

The NYSE BBO Service would allow vendors, broker-dealers, private network providers and other entities (“NYSE-Only Vendors”) to make available NYSE BBO Information on a real-time basis. NYSE-Only Vendors may distribute the NYSE BBO Service to both professional and nonprofessional subscribers.

The Exchange would make NYSE BBO Information available through its new NYSE BBO Service no earlier than it makes that information available to the processor under the CQ Plan.

b. Fees

i. Access Fee.

For the receipt of access to the NYSE BBO datafeed, the Exchange proposes to charge \$1500 per month. One \$1500 monthly access fee entitles an NYSE-Only Vendor to receive both

² 17 CFR 240.19b-4.

the NYSE BBO datafeed as well as the Exchange's NYSE Trades datafeed.³ The fee applies to receipt of NYSE market data within the Vendor's organization or outside of it.

ii. Professional Subscriber Fees.

For the receipt and use of NYSE BBO Information, the Exchange proposes to charge \$15 per month per professional subscriber device.

In addition, the Exchange proposes to offer an alternative methodology to the traditional device fee. Instead of charging \$15 per month per device, it proposes to offer Vendors the option of paying \$15 per month per "Subscriber Entitlement".

The fee entitles the end-user to receive and use NYSE BBO Information relating to all securities traded on NYSE, regardless of the market on which a security is listed.

For the purpose of calculating Subscriber Entitlements, the Exchange proposes to adopt the unit-of-count methodology that the Commission approved earlier this year for the proposed rule change that the New York Stock Exchange, LLC ("NYSE") submitted in respect of its NYSE OpenBook[®] service (the "Unit-of-Count Filing").⁴

Under that unit-of-count methodology, the Exchange does not define the Vendor-subscriber relationship based on the manner in which a datafeed recipient or subscriber receives data (i.e., through controlled displays or through data feeds). Instead, the Exchange uses more subjective billing criteria. Those criteria define "Vendors," "Subscribers," "Subscriber Entitlements" and "Subscriber Entitlement Controls" as the basis for setting professional

³ On March 19, 2009, the Commission approved the Exchange's NYSE Trades service, a NYSE-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports to the Consolidated Tape Association ("CTA") for inclusion in CTA's consolidated data stream and certain other related data elements. See Release No. 34-59606; 74 Federal Register 13293 (March 26, 2009); File No. SR-NYSE-2009-04.

subscriber fees. The Exchange believes that these changes more closely align with current data consumption and will reduce costs for the Exchange's customers.

iii. Nonprofessional Subscriber Fee.

The Exchange proposes to charge each NYSE-Only Vendor \$5.00 per month for each nonprofessional subscriber to whom it provides NYSE BBO Information. The Exchange proposes to impose the charge on the NYSE-Only Vendor, rather than on the nonprofessional Subscriber.

In addition, the Exchange proposes to establish as an alternative to the fixed \$5.00 monthly fee a fee of \$.005 for each response that a NYSE-Only Vendor disseminates to a nonprofessional Subscriber's inquiry for a best bid or offer under the NYSE BBO service. The Exchange proposes to limit a NYSE-Only Vendor's exposure under this alternative fee. It proposes to set at \$5.00 per month, the same amount as the proposed fixed monthly nonprofessional Subscriber flat fee, as the maximum fee that a NYSE Only Vendor would have to pay in respect of each nonprofessional Subscriber for the receipt of the NYSE BBO service in any calendar month.

In order to take advantage of the per-query fee, a NYSE-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries from each nonprofessional Subscriber and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange will impose the per-query fee only on the dissemination of best bids and offers to nonprofessional Subscribers. The per-query charge is imposed on NYSE-Only Vendors, not end-users, and is payable on a monthly basis. NYSE-Only Vendors may elect to

⁴ See Release No. 34-59544; 74 Federal Register 11162 (March 16, 2009); File No. SR-NYSE-2008-131.

disseminate the NYSE BBO service pursuant to the per-query fee rather than the fixed monthly fee.

In establishing a nonprofessional Subscriber fee for the NYSE BBO Service, the Exchange proposes to apply the same criteria for qualification as a “nonprofessional subscriber” as the CTA and CQ Plan Participants use. As is true under the CTA and CQ Plans, classification as a nonprofessional subscriber is subject to Exchange review and requires the subscriber to attest to his or her nonprofessional subscriber status. A “nonprofessional subscriber” is a natural person who uses the data solely for his personal, non-business use and who is neither:

- A. registered or qualified with the Securities and Exchange Commission, (“SEC”), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association,
- B. engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that act), nor
- C. employed by a bank or other organization exemption from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such function for an organization not so exempt.

c. Justification of Fees.

The proposed monthly access fee, professional subscriber fee and nonprofessional subscriber fee for the NYSE BBO Service enable NYSE-Only Vendors and their subscribers to contribute to the Exchange's operating costs in a manner that is appropriate for the distribution of NYSE BBO Information in the form taken by the proposed services.

In setting the level of the proposed fees, the Exchange took into consideration several factors, including:

- (i) NYSE's expectation that the NYSE BBO Service is likely to be a premium service, taken by investors most concerned with receiving NYSE BBO Information on a low latency basis;
- (ii) the fees that the CQ Plan Participants, Nasdaq, NYSE Amex and NYSE Arca are charging for similar services (or that NYSE anticipates they will soon propose to charge);
- (iii) consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed service;
- (iv) the contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;
- (v) the contribution that revenues accruing from the proposed fee will make to meet the overall costs of the Exchange's operations;
- (vi) the savings in administrative and reporting costs that the NYSE BBO Service will provide to NYSE-Only Vendors (relative to counterpart services under the CQ Plan); and

- (vii) the fact that the proposed fees provide alternatives to existing fees under the CQ Plan, alternatives that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fees are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees for NYSE Arca.⁵ In the ArcaBook Approval Order, the Commission stated that “when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.”⁶ It noted that if significant competitive forces apply to a proposal, the Commission would approve it unless a substantial countervailing basis exists.

NYSE BBO Information constitutes “non-core data.” The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of the NYSE BBO Service, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as the NYSE BBO Service. The Exchange hopes that the proposed NYSE BBO

⁵ See Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) (the “ArcaBook Approval Order”).

⁶ Id. at 74771.

Service will enable vendors to distribute NYSE BBO Information widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to the NYSE BBO Service significantly constrain the prices at which the Exchange can market those services. All national securities exchanges, the several Trade Reporting Facilities of FINRA, ECNs that produce proprietary data, as well as the core data feed under the CQ Plan, are all sources of competition for the NYSE BBO Service. Currently:

- (i) the Nasdaq Stock Market offers its best-bid-and-offer information under services that would provide an alternative to the proposed NYSE service; and
- (ii) the Exchange anticipates that NYSE Amex and NYSE Arca will soon propose to provide best-bid-and-offer services that are substantially similar to the NYSE BBO Service.

As a further alternative, investors can receive NYSE BBO Information from NYSE OpenBook. The information available in the NYSE BBO Service is also included in the calculation of the consolidated best-bid-and-offer calculations under the CQ Plan, which comprises a core datafeed. Investors may select the NYSE BBO Service as less expensive alternatives to the CQ Plan's consolidated data streams for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the consolidated, core datafeeds available to customers when trading and order-routing decisions can be implemented.)

d. Administrative Requirements.

The Exchange will require each Vendor to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the

“Consolidated Vendor Form”). That agreement will authorize the Vendor to provide NYSE BBO Information to its customers or to distribute the data internally.

In addition, the Exchange will require each professional end-user that receives NYSE BBO Information from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network A data to enter. It will also require Vendors to subject nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network A nonprofessional subscribers. The Network A Participants submitted the Consolidated Vendor Form and the professional subscriber form to the Commission for comment and notice.⁷

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the “Act”) for the proposed rule change are the requirement under Section 6(b)(4)⁸ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)⁹ that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to real-time best-bid-and-offer information contained in the NYSE BBO Service and by providing a modern methodology alternative for counting fee-liable units. In addition, the Exchange believes that the proposed fee would allow entities that are most likely to take advantage of the proposed

⁷ See Securities Exchange Act Release Nos. 34-22851 (January 31, 1986), 34-28407 (September 10, 1990), 34-49185 (February 4, 2004), and 34-22851 (January 31, 1986).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

service to make an appropriate contribution towards meeting the overall costs of the Exchange's operations.

The Exchange notes that Nasdaq already imposes charges for a service that is similar to the NYSE BBO service. The Exchange anticipates that NYSE Amex and NYSE Arca will soon propose to establish fees for best-bid-and-offer services that are substantially similar to the NYSE BBO Service. Thus, the Exchange's proposed fees offer any vendor that wishes to provide its customers with a single market's best-bid-and-offer information (as opposed to a more expensive consolidated quotation information service) an alternative to Nasdaq, NYSE Amex and NYSE Arca.

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

The NYSE BBO Service proposes to provide an alternative to existing services that the Participants make available under the CQ Plan. The proposed fees do not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq, NYSE Amex and NYSE Arca make available or will soon make available. For those reasons, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has discussed this proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE BBO Service by becoming NYSE-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and this proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSE-2010-30 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2010-30. 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 Web site (<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 Web site 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 office 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-NYSE-2010-30 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).