

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73816; File No. SR-NYSE-2014-64)

December 11, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposes to Establish an Access Fee for the NYSE Best Quote & Trades Data Feed, Operative on December 1, 2014

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 November 26, 2014, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“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 establish an access fee for the NYSE Best Quote & Trades (“NYSE BQT”) data feed, operative on December 1, 2014. 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 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish an access fee for the NYSE BQT data feed, effective December 1, 2014. The proposed fee for NYSE BQT would be \$1,000 a month, provided that the market data recipient separately subscribes to and pays for the six existing market data products underlying the NYSE BQT data feed, consistent with the existing fee structures for those market data products.

The NYSE BQT data feed provides best bid and offer (“BBO”) and last sale information for the Exchange and its affiliates, NYSE Arca Equities, Inc. (“NYSE Arca”) and NYSE MKT LLC (“NYSE MKT”).³ Specifically, the NYSE BQT data feed consists of certain data elements from six market data feeds – NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO.⁴ The NYSE BQT data feed has three channels:

³ See Securities Exchange Act Release No. 34-73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR-NYSE-2014-40) (“NYSE BQT Approval Order”).

⁴ These data feeds are offered pursuant to preexisting and effective rules and fees filed with the Securities and Exchange Commission (“Commission”). This filing does not affect those rules or the fees associated with these underlying data feeds or the ability for the Exchange, NYSE Arca, or NYSE MKT to amend the data feeds or fees associated with those data feeds pursuant to a separate rule filing. For NYSE Trades, see Securities Exchange Act Release Nos. 59290 (Jan. 23, 2009), 74 FR 5707 (Jan. 30, 2009) (SR-NYSE-2009-05) and 59606 (Mar. 19, 2009), 74 FR 13293 (Mar. 26, 2009) (SR-NYSE-2009-04). For NYSE BBO, see Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR-NYSE-2010-30). For NYSE Arca Trades, see Securities Exchange Act Release Nos. 59289 (Jan. 23, 2009), 74 FR 5711 (Jan. 30, 2009) (SR-NYSEArca-2009-06) and 59598 (Mar. 18, 2009), 74 FR 12919 (Mar. 25, 2009) (SR-NYSEArca-2009-05). For NYSE Arca BBO, see Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR-NYSEArca-2010-23). For

one channel for the last sale data (the “last sale channel”), another channel for the BBO data (the “best quotes channel”), and a third channel for consolidated volume data (the “consolidated volume channel”).

The Exchange, NYSE Arca, and NYSE MKT are the exclusive distributors of the six BBO and Trades feeds from which certain data elements are taken to create the NYSE BQT. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprises the NYSE BQT data feed. Any entity that receives, or elects to receive, the six underlying data feeds would be able, if it so chooses, to create a data feed with the same information included in NYSE BQT and sell and distribute it to its clients so that it could be received by those clients as quickly as the NYSE BQT data feed would be received by those same clients.⁵

As proposed, the Exchange would charge a \$1,000/month access fee for NYSE BQT, which reflects the value of the aggregation and consolidation function that the Exchange performs in creating NYSE BQT. To obtain NYSE BQT, the market data recipient would need to subscribe to and pay for the six data feeds underlying NYSE BQT consistent with the existing fee schedules for those market data products as previously filed with the Commission and which may be amended from time to time, including any applicable Access, Redistribution, Professional User, Non-Professional User, or Enterprise fees.⁶ When subscribing to NYSE BQT, the underlying data feeds would be delivered in the NYSE BQT consolidated format, as described above, but charged for as if the recipient were receiving the underlying feeds directly.

NYSE MKT Trades and NYSE MKT BBO, see Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35).

⁵ See NYSE BQT Approval Order, supra note 4.

⁶ See supra note 5.

The Exchange notes that if a User chooses to receive the six underlying feeds both separately and in the NYSE BQT format, such User may be subject to additional Professional User or Non-Professional User fees to reflect the distribution of both NYSE BQT (which incorporates the six underlying data feeds) and any separate dissemination of the underlying data feeds. The Exchange believes that the proposed fees for NYSE BQT would not be lower than the cost to a vendor of creating a comparable product, including the cost of receiving the underlying data feeds.

The Exchange notes that another market participant seeking to distribute a competing product to NYSE BQT 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 cost 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 vendor could create and offer a product similar to NYSE BQT on a cost-competitive basis.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations or others would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides an equitable allocation of reasonable fees among its members, issuers, and other

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4), (5).

persons using its facilities and is not designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act⁹ in that it is consistent with (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁰ 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 Exchange believes that the proposed \$1,000/month access fee for NYSE BQT is reasonable because it represents the value for the data aggregation and consolidation function that the Exchange performs. The Exchange further believes that the proposed \$1,000/month access fee is not designed to permit unfair discrimination because all market data recipients that would subscribe to NYSE BQT would be charged the same access fee.

The Exchange further believes that requiring market data recipients to separately subscribe to and pay for the six underlying data feeds to NYSE BQT is reasonable because by design, NYSE BQT represents an aggregated and consolidated version of those existing six data feeds. The Exchange notes that it is not seeking with this filing to establish fees relating to the underlying six BBO and Trades data feeds, as those fees have already been established consistent with Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder, and which may be

⁹ 15 U.S.C. 78k-1.

¹⁰ See 17 CFR 242.603.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

amended from time to time. However, the Exchange believes it would be unfair if it did not require NYSE BQT data feed recipients to separately subscribe to and pay for those six feeds because otherwise, NYSE BQT data feed recipients would be receiving a data product that includes such underlying data at a lower cost than separately subscribing to the underlying data feeds. Similarly, the Exchange believes that it would be reasonable to charge separate Professional User or Non-Professional User fees if a market data recipient chooses to receive both NYSE BQT and a separate dissemination of the six underlying data feeds in a non-consolidated form. The Exchange believes that such delivery would constitute two separate uses of the underlying data feeds and thus should be charged accordingly, consistent with the existing fee schedule for those market data products. The Exchange therefore believes that the proposed fee structure for NYSE BQT would not be lower than the cost to another party to create a comparable product, including the cost of receiving the underlying data feeds.

The Exchange notes that its proposed fee structure is similar to the fee structure for NLS Plus. NLS Plus is a data product that is offered by an affiliate of The NASDAQ Stock Market, Inc. (“NASDAQ”) that is not a self-regulatory organization. NLS Plus provides access to all NASDAQ OMX U.S. markets’ last sale data as well as consolidated volume, including all trade data from NASDAQ, the FINRA/NASDAQ Trade Reporting Facility (“TRF”), NASDAQ OMX BX, and NASDAQ OMX PSX. NLS Plus also provides consolidated volume information as part of each trade message. To receive NLS Plus, the recipient must pay the fees for one or more NASDAQ underlying data feeds, plus an annual administrative fees attributable to each affiliated exchange.¹³ In addition, BATS Global Markets (“BATS”) has announced that it intends to offer

¹³ The pricing for NLS Plus is available at <https://www.nasdaqtrader.com/Trader.aspx?id=nlsplus>. The applicable NASDAQ underlying data feeds for which a firm are be liable could be NASDAQ Last Sale (See

a market data product that provides a unified view of the aggregated best bid and offer, last sale, and optional depth information (five levels), including size, for all four equity exchanges operated by BATS.¹⁴ The Exchange believes that NYSE BQT will offer a competitive alternative to the NASDAQ product and the proposed BATS product.

The Exchange further believes that the proposed NYSE BQT fee structure is equitable and not unfairly discriminatory because all vendors and subscribers that elect to purchase NYSE BQT would be charged the same fees. In addition, vendors and subscribers that do not wish to purchase NYSE BQT may separately purchase the six individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating NYSE BQT. To enable such competition, the Exchange is offering NYSE BQT on terms that a subscriber of those six feeds could offer a competing product if it so chooses.

The Exchange also notes that the use of NYSE BQT is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the exchanges' own underlying data products, the NASDAQ and BATS proprietary data products described in this filing, and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition.

NASDAQ Rule 7039) or NASDAQ Basic (see NASDAQ Rule 7047) market data products.

¹⁴ See http://cdn.batstrading.com/resources/press_releases/BATS-One-Announcement-FINAL.pdf. BATS has also submitted rule filings to the Commission on behalf of its four exchanges to establish its proposed unified feed as a proprietary market data product. See also Securities Exchange Act Release Nos. 73594 (Nov. 14, 2014), 79 FR 69142 (Nov. 20, 2014) (SR-BATS-2014-055); 73595 (Nov. 14, 2014), 79 FR 69160 (Nov. 20, 2014) (SR-BYX-2014-030); 73596 (Nov. 14, 2014), 79 FR 69148 (Nov. 20, 2014) (SR-EDGA-2014-25); and 73597 (Nov. 14, 2014), 79 FR 69180 (Nov. 20, 2014) (SR-EDGX-2014-25).

As explained below in the Exchange’s Statement on Burden on Competition, the existence of alternatives to these data products further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar “best quote and trade” market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute NYSE BQT, prospective users likely would not subscribe to, or would cease subscribing to, NYSE BQT. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the NYSE BQT feed into the vendor’s own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective users would avail themselves of that lower cost and elect not to take NYSE BQT.

The Exchange notes that the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.¹⁵

¹⁵ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress’s direction that the Commission use its authority to foster the development

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

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

In accordance with Section 6(b)(8) of the Act,¹⁶ 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 NYSE BQT data feed represents aggregated and consolidated information of six existing market data feeds. Although the Exchange, NYSE Arca, and NYSE MKT are the exclusive distributors of the six BBO and Trades feeds from which certain data elements are taken to create the NYSE BQT, the Exchange may not be the exclusive distributor of the aggregated and consolidated information that comprises the NYSE BQT data feed. Any other market data recipient of the six BBO and Trades feeds would be able, if they chose, to create a data feed with the same information as the NYSE BQT and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's product.¹⁷

The Exchange further believes that the proposed monthly access fee the Exchange proposes to charge clients for NYSE BQT would be pro-competitive because another market data recipient could perform a similar aggregating and consolidating function and similarly charge for such service. 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

of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>.

¹⁶ 78 U.S.C. 78f(b)(8).

¹⁷ See NYSE BQT Approval Order, supra note 4.

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 NYSE BQT data feed at a similar cost. For these reasons, the Exchange believes that vendors could readily offer a product similar to NYSE BQT on a competitive basis.

Finally, the Exchange notes that there is already actual competition for products similar to NYSE BQT. NASDAQ already offers NASDAQ Basic, a filed market data product, and through its affiliate, offers NLS Plus, which provides a unified view of last trade information similar to NYSE BQT. In addition, BATS has recently filed to adopt a similar market data product.¹⁸ The existence of these competing data products demonstrates that there is ample, existing competition for products such as NYSE BQT and the fees associated with such products are constrained by that competition.

As such, in establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to NYSE BQT, including the six underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific

¹⁸ See supra note 15.

proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁹ and paragraph (f)(2) of Rule 19b-4 thereunder.²⁰ At any time within 60 days of the filing of the 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.

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-NYSE-2014-64 on the subject line.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4(f)(2).

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-2014-64. 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 the filing also will be available for inspection and copying at the principal office of NYSE. 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-2014-64 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).