

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86492; File No. SR-NYSE-2019-42)

July 26, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Discontinue the NYSE Alerts Market Data Product Offering

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 July 22, 2019, 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 discontinue the NYSE Alerts market data product offering. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to discontinue the NYSE Alerts market data product offering. In 2004, pursuant to Securities and Exchange Commission approval, the Exchange adopted the NYSE Alerts market data product.⁴

The NYSE Alerts market data product provides, on a real-time basis, the following categories of information for NYSE-listed securities only: MOC Market Imbalances, Delayed Openings/Trading Halts, ITS Pre-Opening Indications/Trading Range Indications, Trading Collar Messages and Circuit Breaker Messages.⁵ Each of these categories of information is currently available on one or more of the Exchange's other proprietary market data products, as follows:

- MOC Market Imbalances information is available in the NYSE Order Imbalances feed and the NYSE Integrated Feed;
- Delayed Openings/Trading Halts information is available in the NYSE BBO feed, NYSE Trades feed, NYSE Order Imbalances feed, and the NYSE Integrated Feed;

⁴ See Securities Exchange Act Release No. 50844 (Dec. 13, 2004), 69 FR 76806 (Dec. 22, 2004) (SR-NYSE-2004-53) (Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Relating to a Fee for the NYSE Alerts Datafeed); see also Securities Exchange Act Release No. 50639 (November 5, 2004), 69 FR 65488 (November 12, 2004) (Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by New York Stock Exchange, Inc. Relating to a Fee for the NYSE Alerts Datafeed).

⁵ Id.

- ITS Preopening Indications/Trading Range Indications is available in the NYSE BBO feed, NYSE Trades feed, NYSE Order Imbalances feed, and the NYSE Integrated Feed;
- Trading Collar Messages information is available in the NYSE BBO feed, NYSE Trades feed, NYSE Order Imbalances feed, and the NYSE Integrated Feed; and
- Circuit Breaker Messages information is available in the NYSE BBO feed, NYSE Trades feed, NYSE Order Imbalances feed, and the NYSE Integrated Feed.

The Exchange is undergoing a multi-phase transition to the Pillar trading platform that began in April 2018, when the Exchange introduced trading of UTP Securities on the Pillar trading platform.⁶ Because the NYSE Alerts product relates to information for Exchange-listed securities, information about UTP Securities was not added to the NYSE Alerts market data product. The Exchange next plans to transition Exchange-listed securities to the Pillar trading platform.⁷ In connection with this transition, in December 2018, the Exchange announced that it would permanently discontinue the NYSE Alerts market data product once the Exchange's transition to Pillar begins,⁸ which is anticipated to occur on August 5, 2019.⁹ The Exchange

⁶ The Exchange began trading UTP Securities on the Pillar trading platform on April 9, 2018. See also Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR-NYSE-2017-36) (Order approving trading rules to support trading of UTP Securities on the Pillar trading platform).

⁷ The Exchange has announced that, subject to rule approvals, it will begin transitioning Exchange-listed securities to Pillar on August 5, 2019, available here: https://www.nyse.com/publicdocs/nyse/markets/nyse/Revised_Pillar_Migration_Timeline.pdf. See also Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR-NYSE-2019-05) (Order approving rules to support the transition of Exchange-listed securities to Pillar).

⁸ See <https://www.nyse.com/trader-update/history#110000115870>.

⁹ See https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Pillar_Tape_A_Migration_Schedule_June_2019.pdf.

provided additional notices to alert subscribers of the planned discontinuation of NYSE Alerts.¹⁰ The Exchange now plans to continue offering the NYSE Alerts market data product for any symbols that have not yet transitioned to Pillar. Accordingly, NYSE Alerts will continue to be available for those Exchange-listed securities that have not transitioned to Pillar. The Exchange anticipates that the migration of Exchange-listed securities will be complete by August 22, 2019,¹¹ at which time the Exchange will fully discontinue the NYSE Alerts product.

There are currently 34 subscribers of NYSE Alerts, all of whom currently subscribe to at least one or more of the Exchange's other market data products. As noted above, each of those other products includes the information that is found in NYSE Alerts. More specifically, of the 34 subscribers, 11 currently subscribe to NYSE Order Imbalances feed; 2 currently subscribe to NYSE Integrated Feed; 3 currently subscribe to NYSE Order Imbalances feed and NYSE Integrated Feed; 6 currently subscribe to NYSE BBO feed and NYSE Order Imbalances feed; 1 currently subscribes to NYSE BBO feed and NYSE Integrated feed; and 11 currently subscribe to NYSE Order Imbalances feed, NYSE Integrated Feed and NYSE BBO feed. No subscriber currently subscribes to NYSE Alerts only. As a result, the discontinuation of NYSE Alerts will not have any impact to current subscribers because each currently subscribes to one or more of the Exchange's other market data products that includes the content that is available on NYSE Alerts.

¹⁰ See <https://www.nyse.com/trader-update/history#110000132804>. See also <https://www.nyse.com/trader-update/history#110000140572>.

¹¹ See *supra* note 9.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹³ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that discontinuing NYSE Alerts at the end of the migration of NYSE-listed securities to the Pillar trading platform would remove impediments to and perfect a free and open market by streamlining the Exchange's market data product offerings to include those for which there has been more demand and would provide vendors and subscribers with a simpler and more standardized suite of market data products. The proposal to discontinue NYSE Alerts would be applicable to all member organizations and does not unfairly discriminate between customers, issuers, brokers or dealers.

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 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 brokerdealers 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)

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4), (5).

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.¹⁴

The Exchange believes that the discontinuation of a market data product for which there is little or no demand and that is redundant of other market data products available, as is the case with NYSE Alerts, is a direct example of efficiency because it acknowledges that investors and the public have indicated that they have little or no use for certain information and allows the Exchange to dedicate resources to developing products (including through innovations of existing products and entirely new products) that provide information for which there is more of an expressed need. More specifically, NYSE Alerts was initially introduced to complement NYSE OpenBook, which was introduced in 2001. Over time, as the Exchange introduced additional products and has added the content currently available in NYSE Alerts to additional market data products, the information in NYSE Alerts has become obsolete or redundant. This is demonstrated by the fact that all current subscribers to NYSE Alerts already subscribe to an alternate NYSE market data product that has the same or similar content. In addition, the Exchange provided significant advance notice to market data subscribers of this discontinuation.

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 Exchange notes that it operates in a highly competitive market in which other exchanges are free to offer similar products. Additionally, because all current subscribers already subscribe to an

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04).

alternate NYSE market data product, there has been little or no demand for NYSE Alerts and therefore, the Exchange's proposed discontinuance will not harm competition.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ 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 has stated that it plans to begin the transition of Exchange-listed securities to the Pillar trading platform on August 5, 2019, and to stop providing NYSE Alerts for securities as they transition to Pillar. The

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ Id.

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

Exchange would, however, continue to offer the NYSE Alerts market data product for any securities that have not yet transitioned to Pillar, and the Exchange does not propose to fully discontinue the NYSE Alerts product until the migration of Exchange-listed securities to Pillar is complete. Further, the Exchange represents that all the current subscribers of NYSE Alerts also subscribe to an alternate NYSE market data product that includes the same content provided by NYSE Alerts.¹⁹ The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.²⁰

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)²¹ 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:

¹⁹ See supra note 5 and accompanying text.

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2)(B).

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-2019-42 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-2019-42. 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 the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSE-2019-42 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.²²

Jill M. Peterson
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).