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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85186; File No. SR-NYSE-2019-06]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Enhance the Content of the NYSE Trades Market Data Product Offering**

February 25, 2019

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 13, 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 enhance the content of the NYSE Trades market data product offering. The Exchange does not propose [sic] to amend the fees related to NYSE Trades. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 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 enhance the content of the NYSE Trades market data feed product offering. The Exchange does not propose to amend the fees for the NYSE Trades feed.

NYSE Trades is an NYSE-only last-sale market data feed. NYSE 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 and the UTP Plan for inclusion in the their respective consolidated data streams. Specifically, the NYSE Trades feed includes, for each security traded on the Exchange, the real-time last sale price, time and size information and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.<sup>4</sup>

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<sup>4</sup> See Securities Exchange Act Release Nos. 59309 (January 28, 2009), 74 FR 6073 (February 4, 2009) (SR-NYSE-2009-04), 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR-NYSE-2013-23), 70066 (July 30, 2013), 78 FR 47474 (August 5, 2013) (SR-

The Exchange proposes to enhance the content of the NYSE Trades feed by including information for trades reported to the FINRA/NYSE Trade Reporting Facility (“TRF”). The FINRA/NYSE TRF data disseminated via the NYSE Trades feed would include the same real-time last sale price, time and size information for each trade reported to the FINRA/NYSE TRF that the FINRA/NYSE TRF reports under the CTA Plan and UTP Plan for inclusion in their respective consolidated data streams.<sup>5</sup> The FINRA/NYSE TRF data would also identify whether the trade was reported to the TRF on a T+1 basis. Unlike for securities traded on the Exchange, the FINRA/NYSE TRF data would not include a stock summary message, which relates to exchange-specific activity only. FINRA/NYSE TRF trades would clearly be denoted as such in the NYSE Trades feed to ensure that they are not mistaken for trades executed on the Exchange.

With this proposed rule change, FINRA/NYSE TRF data disseminated via the NYSE Trades feed would also be included as part of the NYSE BQT data feed.<sup>6</sup> The NYSE BQT data feed provides a unified view of best bid and offer (“BBO”) and last sale information for the Exchange and its affiliates, NYSE Arca, Inc. (“NYSE Arca”), NYSE National, Inc. (“NYSE National”), and NYSE American LLC (“NYSE American”) and consists of data elements from eight existing market data feeds: NYSE Trades, NYSE BBO,<sup>7</sup> NYSE Arca Trades,<sup>8</sup> NYSE Arca

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NYSE-2013-53), and 76599 (December 9, 2015), 80 FR 77676 (December 15, 2015) (SR-NYSE-2015-65).

<sup>5</sup> The Exchange would make FINRA/NYSE TRF data available through its NYSE Trades Feed no earlier than it makes that information available to the responsible securities information processor.

<sup>6</sup> See Securities Exchange Act Release Nos. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Establish the NYSE Best Quote and Trades Data Feed); and 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (SR-NYSE-2018-22).

<sup>7</sup> See Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR-NYSE-2010-30).

BBO,<sup>9</sup> NYSE National BBO,<sup>10</sup> NYSE National Trades,<sup>11</sup> NYSE American Trades<sup>12</sup> and NYSE American BBO.<sup>13</sup> The NYSE BQT data feed would, therefore, include the FINRA/NYSE TRF data as part of the data it receives via the NYSE Trades market data feed. The Exchange does not propose to amend the fees for the NYSE BQT data feed.

The Exchange proposes to implement the proposed rule change on April 29, 2019.<sup>14</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>15</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>16</sup> 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

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<sup>8</sup> 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).

<sup>9</sup> See Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR-NYSEArca-2010-23).

<sup>10</sup> See Securities Exchange Act Release No. 83350 (May 31, 2018), 83 FR 26335 (June 6, 2018) (SR-NYSENat-2018-09).

<sup>11</sup> Id.

<sup>12</sup> See Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35).

<sup>13</sup> See Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35).

<sup>14</sup> The implementation of this proposed rule change is contingent on FINRA filing a proposed rule change with the Commission to amend its rules to account for the dissemination of FINRA/NYSE TRF data via the NYSE Trades and BQT data feeds.

<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

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.

The Exchange believes the proposal would facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system by providing market participants an additional means to access information about transactions reported to the FINRA/NYSE TRF. The proposal would improve the content included in the NYSE Trades feed and provide investors with an additional option for accessing information that may help to inform their trading decisions. The inclusion of FINRA/NYSE TRF data in the NYSE Trades feed is also consistent with the content of at least two data feeds offered by the NASDAQ Stock Market LLC (“NASDAQ”), both of which similarly include last sale information for trades reported to the FINRA/NASDAQ TRF.<sup>17</sup>

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, the inclusion of trades reported to the FINRA/NYSE TRF, 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:

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<sup>17</sup> See NASDAQ Rule 7047(a)(1) (stating that NASDAQ Basic “shall contain NASDAQ’s best bid and offer and last sale for NASDAQ-listed stocks from NASDAQ and the FINRA/NASDAQ TRF”). See also NASDAQ Rule 7039(a) (stating that “NASDAQ Last Sale comprises two proprietary data feeds containing real-time last sale Information for trades executed on NASDAQ or reported to the FINRA/NASDAQ Trade Reporting Facility”).

[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 based on their own internal analysis of the need for such data.<sup>18</sup>

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, such as from NASDAQ,<sup>19</sup> ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives.

Lastly, the proposal would not permit unfair discrimination because the enhanced product would be available to all of the Exchange’s vendors and customers on an equivalent basis with no change in price.

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.

Rather, the proposal would enhance competition by enabling the Exchange to better compete

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<sup>18</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04).

<sup>19</sup> See supra note 17.

with NASDAQ, which offers similar products that include data for trades reported to the FINRA/NASDAQ TRF.<sup>20</sup>

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 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 Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup> 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

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<sup>20</sup> Id.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

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)<sup>23</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>24</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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)<sup>25</sup> 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 (<http://www.sec.gov/rules/sro.shtml>);
- or

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<sup>23</sup> 17 CFR 240.19b-4(f)(6).

<sup>24</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2019-06 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-2019-06. 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-2019-06 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.<sup>26</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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<sup>26</sup> 17 CFR 200.30-3(a)(12).

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