

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 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; 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-NASDAQ-2015-138* and should be submitted on or before December 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76402; File No. SR-NYSEARCA-2015-103]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Certain Representations Relating to the NYSE Best Quote & Trades Data Feed

November 10, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 29, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 make certain representations relating to the NYSE Best Quote & Trades (NYSE BQT) data feed. The text of the proposed rule change is available on the Exchange's Web site 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 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 NYSE Best Quotes and Trades ("NYSE BQT") data feed, a market data product offered by the New York Stock Exchange LLC ("NYSE"), provides best bid and offer ("BBO") and last sale information for the Exchange and its affiliates, NYSE and NYSE MKT LLC ("NYSE MKT").<sup>4</sup> 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.<sup>5</sup>

<sup>4</sup> 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").

<sup>5</sup> 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 NYSE Arca, the NYSE or NYSE MKT to amend the data feeds or fees associated with those data feeds pursuant to separate rule filings. 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 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

While NYSE Arca, NYSE and NYSE MKT are the exclusive distributors of their BBO and Trades feeds from which the data elements are taken to create the NYSE BQT data feed, the NYSE represented that it would not have any unfair advantage over competing vendors with respect to obtaining data from NYSE, NYSE Arca and NYSE MKT.<sup>6</sup> The NYSE represented that it would not be the exclusive distributor of the aggregated and consolidated information that comprises the NYSE BQT data feed and that it designed the NYSE BQT data feed so that it would not have a competitive advantage over a competing vendor with respect to the speed of access to those six underlying data feeds. In recognition that NYSE Arca is the source of its own market data, NYSE Arca represents that it will continue to make available the individual underlying feeds, NYSE Arca Trades and NYSE Arca BBO, and that the source for these feeds for use by NYSE to create the NYSE BQT data feed is the same as the source available to other vendors.<sup>7</sup>

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 Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>9</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 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. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination

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 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).

<sup>6</sup> See *supra* note 4 at 67492.

<sup>7</sup> NYSE MKT is filing a similar proposal regarding the NYSE BQT data feed (SR-NYSEMKT-2015-92).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<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.

of the NYSE BQT data feed to those interested in receiving it.

NYSE Arca is the source of its own market data, including the NYSE Arca market data that the NYSE includes in the NYSE BQT data feed. NYSE Arca represents that it will continue to make available the individual underlying NYSE Arca market data products, NYSE Arca Trades and NYSE Arca BBO, that are included in NYSE BQT, and that the source of the NYSE Arca market data the NYSE uses to create the NYSE BQT data feed is the same as the source available to other vendors. Thus, a vendor creating a product to compete with NYSE BQT could also obtain the six underlying data feeds in NYSE BQT and perform a similar aggregation and consolidation function to create the same data product with the same latency.

The NYSE BQT data feed helps to protect a free and open market by providing vendors and subscribers with additional choices in receiving this type of market data, thus promoting competition and innovation.

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

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> 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 NYSE Arca, the NYSE 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 data feed, the NYSE 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 data feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the NYSE's product.<sup>11</sup>

#### *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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</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 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>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to 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 upon filing. The Exchange notes that the NYSE BQT data feed has been the subject of prior rule filings and believes that waiver of the 30-day operative delay will provide more transparency and consistency with respect to the description of the NYSE BQT data feed. Based on the foregoing, the Commission believes that the waiver of the operative delay is appropriate and is consistent with the protection of investors and the public interest.<sup>15</sup> The Commission hereby grants the waiver and designates the proposal operative upon filing.

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>16</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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-103 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-NYSEARCA-2015-103. This file number should be included on the subject line if email 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 Section, 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSEARCA-2015-103 and should be

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>10</sup> 78 U.S.C. 78f(b)(8).

<sup>11</sup> See NYSE BQT Approval Order, *supra* note 4.

submitted on or before December 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76411; File No. SR-BATS-2015-98]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for BZX Options

November 10, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 2, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange’s Web site at [www.batstrading.com](http://www.batstrading.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 these 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 modify its fee schedule applicable to the Exchange’s options platform effective immediately, in order to: (i) Make certain changes, including the adoption of routing fees, in connection with the launch of the options exchange operated by the Exchange’s affiliate EDGX Exchange, Inc. (“EDGX Options”); and (ii) to adopt and modify certain pricing tiers offered by the Exchange.

###### BZX Options References

At the outset, the Exchange proposes to re-brand its options platform as BZX Options, rather than BATS Options, as it intends to use BATS Options to describe EDGX Options and BZX Options collectively. In connection with this change the Exchange proposes to: (i) Re-title the fee schedule; (ii) modify the description of fee code OO, which refers to the Exchange’s opening process; (iii) modify references in footnote 5, which applies to the Quoting Incentive Program (“QIP”); (iv) modify references in the Unicast Access section under BATS Connect fees; and (v) modify references in the Options Regulatory Fee section. In each instance the Exchange proposes to refer to BZX Options. With respect to the Unicast Access section, the Exchange also proposes to add reference to EDGX Options in the list of Exchange affiliates to which such fees do not apply.

###### Routing to EDGX Options

As noted previously, the Exchange’s current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for

routing (*i.e.*, clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, “Routing Costs”). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange’s fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. The Exchange proposes to adopt routing fees for orders that are routed by the Exchange to EDGX Options consistent with this approach.

The Exchange proposes to adopt fee codes RC and RD, which will apply to Customer<sup>6</sup> orders routed to EDGX Options in Penny Pilot Securities<sup>7</sup> and non-Penny Pilot Securities, respectively. Both fee code RC and fee code RD will yield no charge, as EDGX Options has not proposed to charge a fee for Customer orders.<sup>8</sup> The Exchange also proposes to adopt fee codes RF and RG, which will apply to Non-Customer orders<sup>9</sup> routed to EDGX Options in Penny Pilot Securities and non-Penny Pilot Securities, respectively. The Exchange proposes to charge \$0.56 for orders yielding fee code RF and \$0.96 per contract for orders yielding fee code RG, which in each case represents the base fee for a Non-Customer order (other than market maker order) executed on EDGX Options plus an additional fee to cover Routing Costs.<sup>10</sup> Although the Exchange does not propose to charge a fee for Customer orders routed to EDGX Options, the Exchange will incur Routing Costs in connection with such routing. The Exchange notes, however, that Customer orders executed on EDGX Options will receive rebates in certain circumstances that the Exchange does not propose to pass back to Members. Accordingly, the Exchange anticipates that the proposed fee structure will approximate the cost of routing Customer orders to EDGX Options. The Exchange also notes that the proposed fees for fee codes RF and RG are higher than the fees charged by EDGX Options for market maker orders sent directly to

<sup>6</sup> “Customer” applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a “Professional” as defined in Exchange Rule 16.1.

<sup>7</sup> “Penny Pilot Securities” are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

<sup>8</sup> See SR-EDGX-2015-54 filed October 30, 2015, available at: [http://cdn.batstrading.com/resources/regulation/rule\\_filings/approved/2015/SR-EDGX-2015-54.pdf](http://cdn.batstrading.com/resources/regulation/rule_filings/approved/2015/SR-EDGX-2015-54.pdf).

<sup>9</sup> The Exchange also proposes to adopt a definition of Non-Customer order, which would apply to any transaction that is not a Customer order, as described below.

<sup>10</sup> See *supra* note 8.

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

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).