

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 42

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 024

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
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Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend the Exchanges fees to create a monthly Media Enterprise License for the distribution of Nasdaq Basic to the general investing public for Display Usage.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.


First Name * Daniel	Last Name * Cantu
Title * Senior Associate General Counsel	
E-mail * Daniel.cantu@nasdaq.com	
Telephone * (301) 978-8469	Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 03/09/2022	(Title *)
By John Zecca	EVP and Chief Legal Officer
(Name *)	

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.



Date: 2022.03.09
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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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SR-NASDAQ-2022-024 19b4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-NASDAQ-2022-024 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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SR-NASDAQ-2022-024 Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s fees to create a monthly Media Enterprise License for the distribution of Nasdaq Basic to the general investing public for Display Usage.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Daniel A. Cantu
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8469.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the Proposal is to create a monthly Media Enterprise License for the distribution of Nasdaq Basic to the general investing public for Display Usage.³

Nasdaq Basic

Nasdaq Basic is a real-time market data product that offers best bid and offer and last sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq Trade Reporting Facilities at Chicago and Carteret (“TRFs”). It is a subset of the core quotation and last sale data provided by securities information processors (“SIPs”), which distribute consolidated data pursuant to the CTA/CQ Plan and the UTP Plan.

Nasdaq Basic is separated into three components, which may be purchased individually or in combination: (i) Nasdaq Basic for Nasdaq, which contains the best bid and offer on the Nasdaq Market Center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRFs for Nasdaq-listed stocks; (ii) Nasdaq Basic for NYSE, which covers NYSE-listed stocks, and (iii) Nasdaq Basic for NYSE American, which provides data on stocks listed on NYSE American and other listing venues that disseminate quotes and trade reports on Tape B. The specific data elements available through Nasdaq Basic are: (i) Nasdaq Basic Quotes (“QBBO”), the best bid and offer and associated size

³ The Exchange initially filed the proposed pricing changes on January 31, 2022 (SR-NASDAQ-2022-014). On February 14, 2022, the Exchange withdrew that filing and submitted a new filing (SR-NASDAQ-2022-016). The second filing was withdrawn on February 28, 2022, and replaced with another filing (SR-NASDAQ-2022-018). This last filing was withdrawn on March 9, 2022, and replaced with this filing.

available in the Nasdaq Market Center, as well as last sale transaction reports;⁴ (ii) Nasdaq opening and closing prices, as well as IPO and trading halt cross prices; and (iii) general exchange information, including systems status reports, trading halt information, and a stock directory.

Proposed Changes

Media Enterprise License

Nasdaq proposes to introduce a Media Enterprise License that will allow any External Distributor⁵ to disseminate Nasdaq Basic, or any subset thereof,⁶ to the general investing public for Display Usage⁷ for a monthly fee of \$100,000.⁸ Information may be distributed via television, websites, mobile devices, or any other unrestricted means of

⁴ Last sale transaction reports are available from both Nasdaq Last Sale and Nasdaq Last Sale Plus. See Equity 7, Section 139(e) (“NLS Plus may be received by itself or in combination with Nasdaq Basic.”). The customer that purchases Nasdaq Basic will also receive Nasdaq Last Sale because it is a component of Nasdaq Basic.

⁵ The term “Distributor” refers to any entity that receives Nasdaq Basic data directly from Nasdaq or indirectly through another entity and then distributes it to one or more Subscribers. Equity 7, Section 147(d)(1). “External Distributors” are Distributors that receive Nasdaq Basic data and then distribute that data to one or more Subscribers outside the Distributor’s own entity. Equity 7, Section 147(d)(1)(B).

⁶ The Exchange expects most purchasers of the proposed license to distribute last sale transaction reports and best bid and offer information. Firms will have the discretion, however, to distribute less than the full set of information available—for example, some firms may distribute last sale information only—or to distribute all of the information available on Nasdaq Basic.

⁷ “Display Usage” means any method of accessing Nasdaq Basic data that involves the display of such data on a screen or other visualization mechanism for access or use by a natural person or persons. Equity 7, Section 147(d)(2).

⁸ The proposed license will not cover the Distributor Fee for Nasdaq Basic set forth in Equity 7, Section 147(c)(1).

transmission to an unlimited number of Users.⁹ A Hosted Display Solution¹⁰ may be used to distribute data under this license, provided that the External Distributor purchases a separate Media Enterprise License for each such Hosted Display Solution.

Distribution of Nasdaq Basic through the Media Enterprise License will be subject to two primary restrictions. First, distribution of Derived Data¹¹ is not permitted. The purpose of the license is to disseminate accurate market information to the general investing public. Derived Data—which cannot be reverse engineered to recreate Nasdaq information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information—does not serve that purpose.

Second, data may only be used for informational and non-trading purposes. Nasdaq Basic information may only be distributed on platforms pre-approved by the Exchange as providing a reasonable basis to conclude that all Users of such Information

⁹ The Exchange proposes to define a “User” as “a natural person who has access to Exchange information.” Equity 7, Section 147(d)(7).

¹⁰ A “Hosted Display Solution” is a product, solution or capability provided by a Distributor in which the Distributor makes available Nasdaq data or Derived Data to an application branded or co-branded with the third-party brand for use by external subscribers of the third-party entity or Distributor. The Distributor maintains control of the data, entitlements and display of the product, solution or capability. Hosted Display Solutions include, but are not limited to: (1) “Widgets” (such as an iframe, applet, or other solution), in which the Hosted Display Solution is a part or a subset of a website or platform hosted or maintained by the third-party entity; and (2) “White Labels,” in which the Distributor hosts or maintains the website or platform on behalf of the third-party entity. Equity 7, Section 147(d)(5).

¹¹ “Derived Data” is pricing data or other information that is created in whole or in part from Nasdaq information; it cannot be reverse engineered to recreate Nasdaq information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information. Equity 7, Section 147(d)(6).

are either Non-Professionals¹² or Professionals¹³ whom the Distributor has no reason to believe are using Nasdaq Basic in their professional capacity. A Distributor has “no reason to believe” that Nasdaq Basic is being used in a professional capacity when, for example, the data is made available to the general investing public in a format that would be “unlikely to be of significant use to Professionals acting in a professional capacity.”¹⁴

The proposed Media Enterprise License does not cover the Distributor Fee for Nasdaq Basic set forth in subparagraph (c)(1).

Extension to Broker-Dealer Enterprise Licenses

Nasdaq also proposes to provide the Media Enterprise License at no additional cost to broker-dealers that purchase either of the following two enterprise licenses: (i) the license to distribute Nasdaq Basic to natural persons in a brokerage relationship with the broker-dealer at Equity 7, Section 147(b)(5); or (ii) the Market Data Enterprise License for Display Usage at Equity 7, Section 132. All of the terms and conditions set forth in

¹² A “Non-Professional Subscriber” is a natural person who is not: (A) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodity 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 Advisers Act of 1940 (whether or not registered or qualified under that Act); or (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. Equity 7, Section 147(d)(4)(A).

¹³ A “Professional Subscriber” is any Subscriber other than a Non-Professional Subscriber. Equity 7, Section 147(d)(4)(B).

¹⁴ Securities Exchange Act Release No. 34-82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-NASDAQ-2018-010) (discussing when a distributor of NLS has “no reason to believe” that it is being used by Professionals acting in their professional capacity).

Equity 7, Section 147(b)(6) will apply to any broker-dealer obtaining the license pursuant to either of these subsections.

The enterprise license at Equity 7, Section 147(b)(5), allows a broker-dealer to distribute Nasdaq Basic, or Derived Data therefrom, through any electronic system approved by Nasdaq, to an unlimited number of Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship for a monthly fee of \$100,000.¹⁵ That license currently includes the right to distribute Nasdaq Last Sale (“NLS”)¹⁶ data to the general investing public for Display Usage without paying the fees set forth in Equity 7, Section 139(b), subject to all of the provisions set forth therein, excluding those related to the payment of fees.¹⁷

¹⁵ Equity 7 Section 147(b)(5).

¹⁶ NLS provides real-time last sale information for executions occurring within the Nasdaq market center and trades reported to the jointly-operated FINRA/Nasdaq TRFs. The NLS data feed, which provides price, volume and time of execution data for last sale transactions, includes transaction information for Nasdaq-listed stocks (“NLS for Nasdaq”) and for stocks listed on NYSE, NYSE American, and other Tape B listing venues (“NLS for NYSE/NYSE American”). It is, like Nasdaq Basic, a non-core product that provides a subset of the core data provided by the SIPs under the CTA and UTP plans. *See, e.g.*, Securities Exchange Act Release No. 91874 (May 12, 2021), 86 FR 26985 (May 18, 2021) (SR-Nasdaq-2021-036).

¹⁷ The Nasdaq Basic enterprise license also includes a number of other provisions and restrictions, including but not limited to: (i) A limitation that the use of the data by a Professional Subscriber shall be limited to the brokerage relationship, except that Nasdaq Basic data may be made available for up to 4,500 internal Subscribers without incurring additional fees; (ii) a requirement for a separate enterprise license for each discrete electronic system; (iii) a requirement that the broker-dealer pay distributor fees under paragraph (c)(1); and (iv) a requirement that the broker-dealer report the number of Subscribers receiving Nasdaq Basic under this license. Equity 7, Section 147(b)(5).

Nasdaq proposes to add a reference to the Media Enterprise License to Equity 7, Section 147(b)(5). If a customer chooses to continue to distribute NLS it may do so without change.

The Market Data Enterprise License for Display Usage at Equity 7, Section 132, allows a Distributor that is also a broker-dealer or an investment adviser to distribute, for Display Usage only, Depth-of-Book data and Nasdaq Basic to an unlimited number of internal and external recipients, to be used only in the context of a brokerage relationship with a broker-dealer or an engagement with an Investment Adviser. The license currently allows unlimited external distribution of NLS and NLS Plus through one of the mechanisms for the general investing public identified at Equity 7, Section 139(b), provided that platforms distributing such information are pre-approved by the Exchange as reasonably designed to meet the requirements with respect to each of the products identified. This license may be purchased for a monthly fee of \$600,000, or the Distributor may purchase a full twelve months of the license in advance for a monthly fee of \$500,000.

The Exchange proposes to add a reference to Nasdaq Basic for the Market Data Enterprise License. If the purchaser wishes to continue to distribute NLS after the Proposal, it may do so without change.

Extension to Short Interest Report

Nasdaq distributes a Short Interest Report under a fee schedule set forth at Equity 7, Section 122(c). Distributors that currently purchase enterprise licenses at Equity 7, Section 123(c)(3) or Equity 7, Section 147(b)(5), or that expend \$5,000 or more on any product offered at Equity 7, Section 139 in a particular month, excluding distributor fees

at Equity 7, Section 139(c), may distribute the Short Interest Report to an unlimited number of external Subscribers, or on an open website, for \$1,500 per month. The Exchange proposes to add the Media Enterprise License at Equity 7, Section 147(b)(6) to the list of licenses which will allow distribution of the Short Interest Report to an unlimited number of external Subscribers or on an open website for \$1,500 per month.¹⁸

Discussion

This Proposal is a response to customer requests. A number of firms, including financial media firms, mobile application vendors, and data vendors, have informed Nasdaq that they have observed an increase in demand for bid and offer information from the general investing public, and requested that Nasdaq create the proposed enterprise license. These potential customers compared Nasdaq's market data fee schedule to that of one of its competitors, which already allows general news websites to distribute real-time quote and trade information on open public websites and applications,¹⁹ and concluded that overall market transparency would be improved if Nasdaq Basic Quotes were distributed on open public websites and applications as well.

Upon consideration of these requests, Nasdaq has determined that distribution of best bid and offer information is in the best interest of our customers and the market as a

¹⁸ In addition, Nasdaq proposes to correct current references to "NYSE MKT," which no longer exists, to "NYSE American," and revise numbering to accommodate the addition of new Subsection 147(b)(6).

¹⁹ See, e.g., Securities Exchange Act Release No. 79699 (December 28, 2016), 82 FR 892 (January 4, 2017) (SR-BatsEDGA-2016-32) (introducing the digital media license for Bats EDGA); see also Cboe One Feed, Digital Media License, available at https://www.cboe.com/us/equities/market_data_services/cboe_one/ (allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

whole. When NLS was introduced in 2007, it was a significant leap forward for Retail Investors. NLS allowed, for the first time, a cost-effective method for the retail audience to gain insights into the real time price movements of US securities on open websites. The release of pre-trade information on a similar basis is the next step in expanding the availability and accessibility of accurate and reliable trading information, increasing overall transparency.

Nasdaq believes that there is little risk that the proposed license will change the way that Professionals use pre-trade data. Although the new license may occasionally result in incidental professional use, data that is generally available to online customers via television, open websites, mobile devices, or any other unrestricted means of transmission is unlikely to have the breadth or depth of information, or desktop applications, used by professionals. Information for professional use is typically distributed through firewall-protected websites, intranet sites, secured terminals, or is otherwise protected from widespread dissemination.²⁰ As an additional safeguard, Nasdaq proposes that any platform used to distribute data under this license contain sufficient controls to ensure that the feeds cannot be modified into a data feed or otherwise made suitable for professional use.

The Exchange expects the new license to be attractive to financial media outlets, search engines and firms engaged in the development and sale of new financial applications. Based on Nasdaq's familiarity with the market, it also believes that broker-

²⁰ Professionals are also subject to regulatory requirements not applicable to the general investing public that require different sets of information to be displayed. SEC Rule 603(c), for example, requires Professionals to provide consolidated information, rather than proprietary data, under certain circumstances. See 17 CFR 242.603(c).

dealers that currently distribute last sale transaction reports to the general investing public would similarly be interested in distributing QBBO information on their open websites to generate traffic and attract customers.

Any firm that is interested in distributing Nasdaq Basic to the general investing public under the conditions set forth in the proposed rule would be able to do so. The Exchange expects financial media firms, firms engaged in the development and sale of new financial applications, broker-dealers, and data vendors in particular to benefit from the proposed license. The Proposal will promote competition as it is similar to a media license already offered by another exchange.²¹

b. Statutory Basis

The Exchange believes that its Proposal is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

²¹ See Cboe One Feed, Digital Media License, available at https://www.cboe.com/us/equities/market_data_services/cboe_one/ (allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

²² See 15 U.S.C. § 78f(b).

²³ See 15 U.S.C. § 78f(b)(4) and (5).

The Proposal is an Equitable Allocation of Reasonable Dues, Fees and Other Charges

As the Commission and courts²⁴ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”²⁵ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”²⁶ Competition among exchanges in the sale of top-of-book data is a powerful competitive force that constrains the price of top-of-book data products.

Nasdaq Basic provides choices to broker-dealers and other data consumers by offering less than the quantum of data provided through the consolidated tape feeds, but at a lower price. All of the top-of-book proprietary products offered by the exchanges are readily substitutable for each other.

²⁴ The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” NetCoalition I, at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74,771 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

²⁶ Id.

Top-of-book data can be used for many purposes—from a retail investor casually surveying the market to sophisticated market participants using it for a variety of applications, such as investment analysis, risk management, or portfolio valuation.

All major exchange groups compete to sell top-of-book data. Nasdaq Basic provides data derived from liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq TRFs. The NYSE BQT feed disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca, NYSE National and NYSE Chicago exchanges.²⁷ The Cboe One Summary Feed provides data from the four Cboe equities exchanges: BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.²⁸

Nasdaq, NYSE and Cboe compete on price and quality. Like Nasdaq, both NYSE²⁹ and Cboe³⁰ offer enterprise licenses for their top-of book feeds. All of these top-of-book data feeds are substitutes. The value of the data depends on its quality, which is in large part determined by the amount of order flow attracted by the exchange—the more order flow, the more quotes and trades, and the better the exchange data will be able to match the NBBO.

²⁷ See New York Stock Exchange, NYSE Best Quote & Trades (BQT), available at <https://www.nyse.com/market-data/real-time/nyse-bqt>.

²⁸ See Cboe Market Data Services, U.S. Equities, U.S. Equities Market Data Products, available at: https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20To%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book.

²⁹ See New York Stock Exchange, NYSE Best Quote & Trades (BQT), available at <https://www.nyse.com/market-data/real-time/nyse-bqt>.

³⁰ See Cboe, Market Data Services, Cboe One Feed, available at https://markets.cboe.com/us/equities/market_data_services/cboe_one/.

Competition among exchanges for order flow has long been recognized by the courts. As the D.C. Circuit stated in NetCoalition v. Securities and Exchange Commission, “[n]o one disputes that competition for order flow is ‘fierce.’ ... ‘In the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”³¹

The proposed Media Enterprise License is an element of the competition among exchanges for the sale of top-of-book feeds. As explained above, it was drafted in response to requests from potential customers, including financial media firms, mobile application vendors, and data vendors, and also as a response to the license offered by one of Nasdaq’s competitors allowing general news websites to distribute real-time quote and trade information.³² The Exchange expects the new license to be attractive to financial media outlets, search engines, and firms engaged in the development and sale of new financial applications, as well as broker-dealers, and

³¹ See NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

³² See, e.g., Securities Exchange Act Release No. 79699 (December 28, 2016), 82 FR 892 (January 4, 2017) (SR-BatsEDGA-2016-32) (introducing the digital media license for Bats EDGA); see also Cboe One Feed, Digital Media License, available at https://www.cboe.com/us/equities/market_data_services/cboe_one/ (allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

expects that the increased dissemination of Nasdaq data will enhance Nasdaq's ability to compete with other exchanges in the sale of top-of-book data.

In addition to the new Media Enterprise License, Nasdaq proposes to expand the broker-dealer enterprise license at Equity 7, Section 147(b)(5), and the Market Data Enterprise License for Display Usage at Equity 7, Section 132, to include the Media Enterprise License at no additional cost. The Exchange also proposes to add the Media Enterprise License at Equity 7, Section 147(b)(6) to the list of licenses which will allow distribution of the Short Interest Report to an unlimited number of external Subscribers or on an open website for a monthly fee. All of these changes will expand existing services at no additional cost to the purchaser.

The fact that the new Media Enterprise License is subject to competition provides a substantial basis for a finding that the terms of the proposal are equitable, fair, and reasonable.

The Proposal Does Not Permit Unfair Discrimination

The Proposal is not unfairly discriminatory. The proposed license will be available to any External Distributor to disseminate Nasdaq Basic to the general investing public for Display Usage. Broker-dealers that purchase the enterprise licenses at Equity 7, Sections 147(b)(5) and 132 will be able to distribute the same data to the general investing public at no additional charge, beyond the fees for the underlying licenses, and, as discussed above, these broker-dealers may continue to distribute NLS as they did before this change. Any firm that is interested in distributing Nasdaq Basic to the general investing public under the conditions set forth in the proposed rule would be able to do so on a non-discriminatory basis.

With respect to the Short Interest Report at Equity 7, Section 122(c), there is no unfair discrimination in allowing customers another means to qualify for purchase of the Short Interest Report for a reduced fee.

For all of the reasons set forth herein, the proposed Media Enterprise License will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. The Proposal will also benefit the general investing public by lowering the cost of distributing Nasdaq Basic, thereby enhancing overall market transparency.

4. 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 not necessary or appropriate in furtherance of the purposes of the Act. With respect to inter-market competition—the competition among SROs—the Exchange's ability to price market data products is constrained by competition among exchanges for top-of-book data. The proposed Media Enterprise License is itself a response to a similar product offered by another exchange, and other exchanges are free to follow Nasdaq in offering their own version of the product. With respect to intra-market competition—the competition among consumers of exchange data—the Exchange expects the Proposal to promote competition by making Nasdaq Basic freely available to any External Distributor willing to distribute it to the general investing public under the terms set forth in this license.

Intermarket Competition

As discussed in detail under Statutory Basis, Nasdaq competes with other exchanges in the sale of top-of-book products.

Nasdaq is offering the proposed Media Enterprise License to gain new customers and to compete with a similar product offered by another exchange. The Proposal will not cause any unnecessary or inappropriate burden on intermarket competition, as other exchanges are free to respond with a similar license of their own.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition. Indeed, it will foster competition by providing External Distributors—including financial media firms, search engines, vendors, and broker-dealers—with more options to deliver top-of-book information to the general investing public. The Proposal will also promote competition by increasing market transparency through greater dissemination of QBBO information to the general investing public. The license is available to all market participants that meet the terms set forth in the license, and nothing in the Proposal will place any unnecessary or inappropriate burden on intramarket competition.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³³ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2022-024)

March __, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Create a Monthly Media Enterprise License For The Distribution of Nasdaq Basic to The General Investing Public For Display Usage

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on March 9, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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

The Exchange proposes to amend the Exchange’s fees to create a monthly Media Enterprise License for the distribution of Nasdaq Basic to the general investing public for Display Usage.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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 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 aspects of such statements.

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

1. Purpose

The purpose of the Proposal is to create a monthly Media Enterprise License for the distribution of Nasdaq Basic to the general investing public for Display Usage.³

Nasdaq Basic

Nasdaq Basic is a real-time market data product that offers best bid and offer and last sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq Trade Reporting Facilities at Chicago and Carteret (“TRFs”). It is a subset of the core quotation and last sale data provided by securities information processors (“SIPs”), which distribute consolidated data pursuant to the CTA/CQ Plan and the UTP Plan.

Nasdaq Basic is separated into three components, which may be purchased individually or in combination: (i) Nasdaq Basic for Nasdaq, which contains the best bid

³ The Exchange initially filed the proposed pricing changes on January 31, 2022 (SR-NASDAQ-2022-014). On February 14, 2022, the Exchange withdrew that filing and submitted a new filing (SR-NASDAQ-2022-016). The second filing was withdrawn on February 28, 2022, and replaced with another filing (SR-NASDAQ-2022-018). This last filing was withdrawn on March 9, 2022, and replaced with this filing.

and offer on the Nasdaq Market Center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRFs for Nasdaq-listed stocks; (ii) Nasdaq Basic for NYSE, which covers NYSE-listed stocks, and (iii) Nasdaq Basic for NYSE American, which provides data on stocks listed on NYSE American and other listing venues that disseminate quotes and trade reports on Tape B. The specific data elements available through Nasdaq Basic are: (i) Nasdaq Basic Quotes (“QBBO”), the best bid and offer and associated size available in the Nasdaq Market Center, as well as last sale transaction reports;⁴ (ii) Nasdaq opening and closing prices, as well as IPO and trading halt cross prices; and (iii) general exchange information, including systems status reports, trading halt information, and a stock directory.

Proposed Changes

Media Enterprise License

Nasdaq proposes to introduce a Media Enterprise License that will allow any External Distributor⁵ to disseminate Nasdaq Basic, or any subset thereof,⁶ to the general

⁴ Last sale transaction reports are available from both Nasdaq Last Sale and Nasdaq Last Sale Plus. See Equity 7, Section 139(e) (“NLS Plus may be received by itself or in combination with Nasdaq Basic.”). The customer that purchases Nasdaq Basic will also receive Nasdaq Last Sale because it is a component of Nasdaq Basic.

⁵ The term “Distributor” refers to any entity that receives Nasdaq Basic data directly from Nasdaq or indirectly through another entity and then distributes it to one or more Subscribers. Equity 7, Section 147(d)(1). “External Distributors” are Distributors that receive Nasdaq Basic data and then distribute that data to one or more Subscribers outside the Distributor’s own entity. Equity 7, Section 147(d)(1)(B).

⁶ The Exchange expects most purchasers of the proposed license to distribute last sale transaction reports and best bid and offer information. Firms will have the discretion, however, to distribute less than the full set of information available—for example, some firms may distribute last sale information only—or to distribute all of the information available on Nasdaq Basic.

investing public for Display Usage⁷ for a monthly fee of \$100,000.⁸ Information may be distributed via television, websites, mobile devices, or any other unrestricted means of transmission to an unlimited number of Users.⁹ A Hosted Display Solution¹⁰ may be used to distribute data under this license, provided that the External Distributor purchases a separate Media Enterprise License for each such Hosted Display Solution.

Distribution of Nasdaq Basic through the Media Enterprise License will be subject to two primary restrictions. First, distribution of Derived Data¹¹ is not permitted. The purpose of the license is to disseminate accurate market information to the general investing public. Derived Data—which cannot be reverse engineered to recreate Nasdaq

⁷ “Display Usage” means any method of accessing Nasdaq Basic data that involves the display of such data on a screen or other visualization mechanism for access or use by a natural person or persons. Equity 7, Section 147(d)(2).

⁸ The proposed license will not cover the Distributor Fee for Nasdaq Basic set forth in Equity 7, Section 147(c)(1).

⁹ The Exchange proposes to define a “User” as “a natural person who has access to Exchange information.” Equity 7, Section 147(d)(7).

¹⁰ A “Hosted Display Solution” is a product, solution or capability provided by a Distributor in which the Distributor makes available Nasdaq data or Derived Data to an application branded or co-branded with the third-party brand for use by external subscribers of the third-party entity or Distributor. The Distributor maintains control of the data, entitlements and display of the product, solution or capability. Hosted Display Solutions include, but are not limited to: (1) “Widgets” (such as an iframe, applet, or other solution), in which the Hosted Display Solution is a part or a subset of a website or platform hosted or maintained by the third-party entity; and (2) “White Labels,” in which the Distributor hosts or maintains the website or platform on behalf of the third-party entity. Equity 7, Section 147(d)(5).

¹¹ “Derived Data” is pricing data or other information that is created in whole or in part from Nasdaq information; it cannot be reverse engineered to recreate Nasdaq information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information. Equity 7, Section 147(d)(6).

information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information—does not serve that purpose.

Second, data may only be used for informational and non-trading purposes. Nasdaq Basic information may only be distributed on platforms pre-approved by the Exchange as providing a reasonable basis to conclude that all Users of such Information are either Non-Professionals¹² or Professionals¹³ whom the Distributor has no reason to believe are using Nasdaq Basic in their professional capacity. A Distributor has “no reason to believe” that Nasdaq Basic is being used in a professional capacity when, for example, the data is made available to the general investing public in a format that would be “unlikely to be of significant use to Professionals acting in a professional capacity.”¹⁴

The proposed Media Enterprise License does not cover the Distributor Fee for Nasdaq Basic set forth in subparagraph (c)(1).

¹² A “Non-Professional Subscriber” is a natural person who is not: (A) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodity 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 Advisers Act of 1940 (whether or not registered or qualified under that Act); or (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. Equity 7, Section 147(d)(4)(A).

¹³ A “Professional Subscriber” is any Subscriber other than a Non-Professional Subscriber. Equity 7, Section 147(d)(4)(B).

¹⁴ Securities Exchange Act Release No. 34-82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-NASDAQ-2018-010) (discussing when a distributor of NLS has “no reason to believe” that it is being used by Professionals acting in their professional capacity).

Extension to Broker-Dealer Enterprise Licenses

Nasdaq also proposes to provide the Media Enterprise License at no additional cost to broker-dealers that purchase either of the following two enterprise licenses: (i) the license to distribute Nasdaq Basic to natural persons in a brokerage relationship with the broker-dealer at Equity 7, Section 147(b)(5); or (ii) the Market Data Enterprise License for Display Usage at Equity 7, Section 132. All of the terms and conditions set forth in Equity 7, Section 147(b)(6) will apply to any broker-dealer obtaining the license pursuant to either of these subsections.

The enterprise license at Equity 7, Section 147(b)(5), allows a broker-dealer to distribute Nasdaq Basic, or Derived Data therefrom, through any electronic system approved by Nasdaq, to an unlimited number of Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship for a monthly fee of \$100,000.¹⁵ That license currently includes the right to distribute Nasdaq Last Sale (“NLS”)¹⁶ data to the general investing public for Display

¹⁵ Equity 7 Section 147(b)(5).

¹⁶ NLS provides real-time last sale information for executions occurring within the Nasdaq market center and trades reported to the jointly-operated FINRA/Nasdaq TRFs. The NLS data feed, which provides price, volume and time of execution data for last sale transactions, includes transaction information for Nasdaq-listed stocks (“NLS for Nasdaq”) and for stocks listed on NYSE, NYSE American, and other Tape B listing venues (“NLS for NYSE/NYSE American”). It is, like Nasdaq Basic, a non-core product that provides a subset of the core data provided by the SIPs under the CTA and UTP plans. See, e.g., Securities Exchange Act Release No. 91874 (May 12, 2021), 86 FR 26985 (May 18, 2021) (SR-Nasdaq-2021-036).

Usage without paying the fees set forth in Equity 7, Section 139(b), subject to all of the provisions set forth therein, excluding those related to the payment of fees.¹⁷

Nasdaq proposes to add a reference to the Media Enterprise License to Equity 7, Section 147(b)(5). If a customer chooses to continue to distribute NLS it may do so without change.

The Market Data Enterprise License for Display Usage at Equity 7, Section 132, allows a Distributor that is also a broker-dealer or an investment adviser to distribute, for Display Usage only, Depth-of-Book data and Nasdaq Basic to an unlimited number of internal and external recipients, to be used only in the context of a brokerage relationship with a broker-dealer or an engagement with an Investment Adviser. The license currently allows unlimited external distribution of NLS and NLS Plus through one of the mechanisms for the general investing public identified at Equity 7, Section 139(b), provided that platforms distributing such information are pre-approved by the Exchange as reasonably designed to meet the requirements with respect to each of the products identified. This license may be purchased for a monthly fee of \$600,000, or the Distributor may purchase a full twelve months of the license in advance for a monthly fee of \$500,000.

¹⁷ The Nasdaq Basic enterprise license also includes a number of other provisions and restrictions, including but not limited to: (i) A limitation that the use of the data by a Professional Subscriber shall be limited to the brokerage relationship, except that Nasdaq Basic data may be made available for up to 4,500 internal Subscribers without incurring additional fees; (ii) a requirement for a separate enterprise license for each discrete electronic system; (iii) a requirement that the broker-dealer pay distributor fees under paragraph (c)(1); and (iv) a requirement that the broker-dealer report the number of Subscribers receiving Nasdaq Basic under this license. Equity 7, Section 147(b)(5).

The Exchange proposes to add a reference to Nasdaq Basic for the Market Data Enterprise License. If the purchaser wishes to continue to distribute NLS after the Proposal, it may do so without change.

Extension to Short Interest Report

Nasdaq distributes a Short Interest Report under a fee schedule set forth at Equity 7, Section 122(c). Distributors that currently purchase enterprise licenses at Equity 7, Section 123(c)(3) or Equity 7, Section 147(b)(5), or that expend \$5,000 or more on any product offered at Equity 7, Section 139 in a particular month, excluding distributor fees at Equity 7, Section 139(c), may distribute the Short Interest Report to an unlimited number of external Subscribers, or on an open website, for \$1,500 per month. The Exchange proposes to add the Media Enterprise License at Equity 7, Section 147(b)(6) to the list of licenses which will allow distribution of the Short Interest Report to an unlimited number of external Subscribers or on an open website for \$1,500 per month.¹⁸

Discussion

This Proposal is a response to customer requests. A number of firms, including financial media firms, mobile application vendors, and data vendors, have informed Nasdaq that they have observed an increase in demand for bid and offer information from the general investing public, and requested that Nasdaq create the proposed enterprise license. These potential customers compared Nasdaq's market data fee schedule to that of one of its competitors, which already allows general news websites to distribute real-

¹⁸ In addition, Nasdaq proposes to correct current references to "NYSE MKT," which no longer exists, to "NYSE American," and revise numbering to accommodate the addition of new Subsection 147(b)(6).

time quote and trade information on open public websites and applications,¹⁹ and concluded that overall market transparency would be improved if Nasdaq Basic Quotes were distributed on open public websites and applications as well.

Upon consideration of these requests, Nasdaq has determined that distribution of best bid and offer information is in the best interest of our customers and the market as a whole. When NLS was introduced in 2007, it was a significant leap forward for Retail Investors. NLS allowed, for the first time, a cost-effective method for the retail audience to gain insights into the real time price movements of US securities on open websites. The release of pre-trade information on a similar basis is the next step in expanding the availability and accessibility of accurate and reliable trading information, increasing overall transparency.

Nasdaq believes that there is little risk that the proposed license will change the way that Professionals use pre-trade data. Although the new license may occasionally result in incidental professional use, data that is generally available to online customers via television, open websites, mobile devices, or any other unrestricted means of transmission is unlikely to have the breadth or depth of information, or desktop applications, used by professionals. Information for professional use is typically distributed through firewall-protected websites, intranet sites, secured terminals, or is

¹⁹ See, e.g., Securities Exchange Act Release No. 79699 (December 28, 2016), 82 FR 892 (January 4, 2017) (SR-BatsEDGA-2016-32) (introducing the digital media license for Bats EDGA); *see also* Cboe One Feed, Digital Media License, available at https://www.cboe.com/us/equities/market_data_services/cboe_one/ (allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

otherwise protected from widespread dissemination.²⁰ As an additional safeguard, Nasdaq proposes that any platform used to distribute data under this license contain sufficient controls to ensure that the feeds cannot be modified into a data feed or otherwise made suitable for professional use.

The Exchange expects the new license to be attractive to financial media outlets, search engines and firms engaged in the development and sale of new financial applications. Based on Nasdaq's familiarity with the market, it also believes that broker-dealers that currently distribute last sale transaction reports to the general investing public would similarly be interested in distributing QBBO information on their open websites to generate traffic and attract customers.

Any firm that is interested in distributing Nasdaq Basic to the general investing public under the conditions set forth in the proposed rule would be able to do so. The Exchange expects financial media firms, firms engaged in the development and sale of new financial applications, broker-dealers, and data vendors in particular to benefit from the proposed license. The Proposal will promote competition as it is similar to a media license already offered by another exchange.²¹

²⁰ Professionals are also subject to regulatory requirements not applicable to the general investing public that require different sets of information to be displayed. SEC Rule 603(c), for example, requires Professionals to provide consolidated information, rather than proprietary data, under certain circumstances. See 17 CFR 242.603(c).

²¹ See Cboe One Feed, Digital Media License, available at https://www.cboe.com/us/equities/market_data_services/cboe_one/ (allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

2. Statutory Basis

The Exchange believes that its Proposal is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal is an Equitable Allocation of Reasonable Dues, Fees and Other Charges

As the Commission and courts²⁴ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”²⁵ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee

²² See 15 U.S.C. § 78f(b).

²³ See 15 U.S.C. § 78f(b)(4) and (5).

²⁴ The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” NetCoalition I, at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74,771 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”²⁶ Competition among exchanges in the sale of top-of-book data is a powerful competitive force that constrains the price of top-of-book data products.

Nasdaq Basic provides choices to broker-dealers and other data consumers by offering less than the quantum of data provided through the consolidated tape feeds, but at a lower price. All of the top-of-book proprietary products offered by the exchanges are readily substitutable for each other.

Top-of-book data can be used for many purposes—from a retail investor casually surveying the market to sophisticated market participants using it for a variety of applications, such as investment analysis, risk management, or portfolio valuation.

All major exchange groups compete to sell top-of-book data. Nasdaq Basic provides data derived from liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq TRFs. The NYSE BQT feed disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca, NYSE National and NYSE Chicago exchanges.²⁷ The Cboe One Summary Feed provides data from the four Cboe equities exchanges: BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.²⁸

²⁶ Id.

²⁷ See New York Stock Exchange, NYSE Best Quote & Trades (BQT), available at <https://www.nyse.com/market-data/real-time/nyse-bqt>.

²⁸ See Cboe Market Data Services, U.S. Equities, U.S. Equities Market Data Products, available at: https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20To%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book.

Nasdaq, NYSE and Cboe compete on price and quality. Like Nasdaq, both NYSE²⁹ and Cboe³⁰ offer enterprise licenses for their top-of book feeds. All of these top-of-book data feeds are substitutes. The value of the data depends on its quality, which is in large part determined by the amount of order flow attracted by the exchange—the more order flow, the more quotes and trades, and the better the exchange data will be able to match the NBBO.

Competition among exchanges for order flow has long been recognized by the courts. As the D.C. Circuit stated in NetCoalition v. Securities and Exchange Commission, “[n]o one disputes that competition for order flow is ‘fierce.’ ... ‘In the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”³¹

The proposed Media Enterprise License is an element of the competition among exchanges for the sale of top-of-book feeds. As explained above, it was drafted in response to requests from potential customers, including financial media firms, mobile application vendors, and data vendors, and also as a response to the

²⁹ See New York Stock Exchange, NYSE Best Quote & Trades (BQT), available at <https://www.nyse.com/market-data/real-time/nyse-bqt>.

³⁰ See Cboe, Market Data Services, Cboe One Feed, available at https://markets.cboe.com/us/equities/market_data_services/cboe_one/.

³¹ See NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

license offered by one of Nasdaq's competitors allowing general news websites to distribute real-time quote and trade information.³² The Exchange expects the new license to be attractive to financial media outlets, search engines, and firms engaged in the development and sale of new financial applications, as well as broker-dealers, and expects that the increased dissemination of Nasdaq data will enhance Nasdaq's ability to compete with other exchanges in the sale of top-of-book data.

In addition to the new Media Enterprise License, Nasdaq proposes to expand the broker-dealer enterprise license at Equity 7, Section 147(b)(5), and the Market Data Enterprise License for Display Usage at Equity 7, Section 132, to include the Media Enterprise License at no additional cost. The Exchange also proposes to add the Media Enterprise License at Equity 7, Section 147(b)(6) to the list of licenses which will allow distribution of the Short Interest Report to an unlimited number of external Subscribers or on an open website for a monthly fee. All of these changes will expand existing services at no additional cost to the purchaser.

The fact that the new Media Enterprise License is subject to competition provides a substantial basis for a finding that the terms of the proposal are equitable, fair, and reasonable.

³² See, e.g., Securities Exchange Act Release No. 79699 (December 28, 2016), 82 FR 892 (January 4, 2017) (SR-BatsEDGA-2016-32) (introducing the digital media license for Bats EDGA); *see also* Cboe One Feed, Digital Media License, available at https://www.cboe.com/us/equities/market_data_services/cboe_one/ (allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

The Proposal Does Not Permit Unfair Discrimination

The Proposal is not unfairly discriminatory. The proposed license will be available to any External Distributor to disseminate Nasdaq Basic to the general investing public for Display Usage. Broker-dealers that purchase the enterprise licenses at Equity 7, Sections 147(b)(5) and 132 will be able to distribute the same data to the general investing public at no additional charge, beyond the fees for the underlying licenses, and, as discussed above, these broker-dealers may continue to distribute NLS as they did before this change. Any firm that is interested in distributing Nasdaq Basic to the general investing public under the conditions set forth in the proposed rule would be able to do so on a non-discriminatory basis.

With respect to the Short Interest Report at Equity 7, Section 122(c), there is no unfair discrimination in allowing customers another means to qualify for purchase of the Short Interest Report for a reduced fee.

For all of the reasons set forth herein, the proposed Media Enterprise License will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. The Proposal will also benefit the general investing public by lowering the cost of distributing Nasdaq Basic, thereby enhancing overall market transparency.

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 not necessary or appropriate in furtherance of the purposes of the Act. With respect to inter-market competition—the competition among SROs—the Exchange's ability to price market data products is constrained by competition among exchanges for top-of-book data. The proposed Media Enterprise License is itself a

response to a similar product offered by another exchange, and other exchanges are free to follow Nasdaq in offering their own version of the product. With respect to intra-market competition—the competition among consumers of exchange data—the Exchange expects the Proposal to promote competition by making Nasdaq Basic freely available to any External Distributor willing to distribute it to the general investing public under the terms set forth in this license.

Intermarket Competition

As discussed in detail under Statutory Basis, Nasdaq competes with other exchanges in the sale of top-of-book products.

Nasdaq is offering the proposed Media Enterprise License to gain new customers and to compete with a similar product offered by another exchange. The Proposal will not cause any unnecessary or inappropriate burden on intermarket competition, as other exchanges are free to respond with a similar license of their own.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition. Indeed, it will foster competition by providing External Distributors—including financial media firms, search engines, vendors, and broker-dealers—with more options to deliver top-of-book information to the general investing public. The Proposal will also promote competition by increasing market transparency through greater dissemination of QBBO information to the general investing public. The license is available to all market participants that meet the terms set forth in the license, and nothing in the Proposal will place any unnecessary or inappropriate burden on intramarket competition.

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

No written comments were either solicited or received.

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 Act.³³

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2022-024 on the subject line.

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-NASDAQ-2022-024. 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 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; 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-2022-024 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.³⁴

J. Matthew DeLesDernier
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market LLC Rules**Equity Rules****Equity 7: Pricing Schedule**

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Section 122. Historical Research and Administrative Reports

(a) - (b) No change.

(c) The Short Interest Report is available from Nasdaq for \$500 per month. Distributors may distribute the report to an unlimited number of internal Subscribers for \$1,000 per month, or to external Subscribers according to the following schedule, which includes the right to distribute data internally:

Monthly Fee	External Subscribers
\$2,500	1-499
\$5,000	500-9,999
\$7,500	10,000+ or open website

Distributors that purchase enterprise licenses at Equity 7, Section 123(c)(3), [or]Equity 7, Section 147(b)(5), or Equity 7, Section 147(b)(6), or that expend \$5,000 or more on any product offered at Equity 7, Section 139 in a particular month, excluding distributor fees at Equity 7, Section 139(c), may distribute the Short Interest Report to an unlimited number of external Subscribers or on an open website for \$1,500 per month.

(d) – (e) No change.

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Section 132. Market Data Enterprise License for Display Usage

(a) A Distributor that is also a broker-dealer or an Investment Adviser may pay a monthly enterprise license fee of \$600,000 to distribute, for Display Usage only, Depth-of-Book data and Nasdaq Basic to an unlimited number of internal and external recipients, to be used only in the context of a brokerage relationship with a broker-dealer or an

engagement with an Investment Adviser, as well as Nasdaq Basic [NLS] under the terms and conditions set forth at Equity 7, Section 147(b)(6), and NLS and NLS Plus for unlimited external distribution through one of the mechanisms for the general investing public identified at Equity 7, Section 139(b). Platforms distributing such information shall be pre-approved by the Exchange as reasonably designed to meet the requirements with respect to all products identified herein. The monthly enterprise license fee shall be in lieu of fees for Depth-of-Book data at Equity 7, Section 123(b) and (c), fees for Nasdaq Basic at Equity 7, Section 147(b), fees for the General Investing Public for NLS at Equity 7, Section 139(b), and NLS Plus fees at Equity 7, Section 139(e), whether such fees are paid directly to the Exchange or indirectly through another Distributor.

(b) – (c) No change.

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Section 147. Nasdaq Basic

(a) Nasdaq shall offer proprietary data feeds containing real-time market information from the Nasdaq Market Center and the FINRA/Nasdaq Trade Reporting Facility (“TRF”).

(1) “Nasdaq Basic for Nasdaq” shall contain Nasdaq’s best bid and offer and last sale for Nasdaq-listed stocks from Nasdaq and the FINRA/Nasdaq TRF; and

(2) “Nasdaq Basic for NYSE” shall contain Nasdaq’s best bid and offer and last sale for NYSE-listed stocks from Nasdaq and the FINRA/Nasdaq TRF.

(3) “Nasdaq Basic for NYSE [MKT]American” shall contain Nasdaq’s best bid and offer and last sale for stocks listed on NYSE [MKT]American and other Tape B listing venues from Nasdaq and the FINRA/Nasdaq TRF.

(b) User Fees

(1) Except as provided in (b)(2) through (b)(5)(6), for the Nasdaq Basic product, or Derived Data therefrom, there shall be a per Subscriber monthly charge of: \$13 for Nasdaq Basic for Nasdaq, \$6.50 for Nasdaq Basic for NYSE, and \$6.50 for Nasdaq Basic for NYSE [MKT]American; or

(2) For each Non-Professional Subscriber, there shall be a per Subscriber monthly charge for the following Nasdaq Basic products or Derived Data therefrom, of: \$0.50 for Nasdaq Basic for Nasdaq, \$0.25 for Nasdaq Basic for NYSE, and \$0.25 for Nasdaq Basic for NYSE [MKT]American; or

(3) There shall be a per query fee for Nasdaq Basic of \$0.0025 for Nasdaq Basic for Nasdaq, \$0.0015 for Nasdaq Basic for NYSE, and \$0.0015 for Nasdaq Basic for NYSE [MKT]American. The per query fees assessed to individual Professional and

Non-Professional users shall be capped on a monthly basis at the level of the monthly fee for each category of Subscribers as set forth above.

(4) As an alternative to (b)(1), a broker-dealer may purchase an enterprise license for internal Professional Subscribers to receive Nasdaq Basic for Nasdaq, Nasdaq Basic for NYSE, and Nasdaq Basic for NYSE [MKT]American, or Derived Data therefrom. The fee will be \$155,000 per month; provided that the broker-dealer must obtain a separate enterprise license for each External Distributor that controls display of the product if it wishes such External Distributor to be covered by an enterprise license rather than per-Subscriber fees. A broker-dealer that purchases an enterprise license under this provision may also receive, at no additional charge, access to Nasdaq Last Sale data (as described in Equity 7, Section 139) for its own stock price and the stock price of up to ten of its competitors or peers, for display use on the broker-dealer's internal website. The enterprise license is in addition to the Distributor Fee listed in (c)(1).

(5) As an alternative to (b)(1) and (b)(2), a broker-dealer may purchase an enterprise license at a rate of \$100,000 per month for the distribution of any Nasdaq Basic Product, or Derived Data therefrom, through any electronic system approved by Nasdaq to an unlimited number of Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship. A broker-dealer that purchases this enterprise license will also have the right to distribute Nasdaq Last Sale data to the general investing public for Display Usage without paying the fees set forth in Equity 7, Section 139(b), subject to all of the provisions set forth in Section 139(b)(4), excluding those related to the payment of fees, and to distribute Nasdaq Basic to the general investing public via television, websites, mobile devices, or any other unrestricted means of transmission for Display Usage, without paying the fees set forth in Subsection (b)(6) below, subject to all of the provisions set forth therein. Use of the Nasdaq Basic data obtained through this license by any Professional Subscriber shall be limited to the context of the brokerage relationship between that person and the broker-dealer, except that a Distributor may make Nasdaq Basic data obtained through this license available to up to and including 4,500 internal Subscribers operating on an electronic system approved by Nasdaq, which may be used by Professional Subscribers employed by the broker-dealer in support of brokerage services to investors; any distribution to over 4,500 internal Subscribers, or any usage by Professional Subscribers not in support of brokerage services to investors on an approved platform, would be subject to any applicable fees set forth in Equity 7, Section 147(b). A Professional Subscriber who obtains Nasdaq Basic data through a brokerage relationship with the broker-dealer may not use that data within the scope of any professional engagement or registration identified in Equity 7, Section 147(d)(4). A separate enterprise license would be required for each discrete electronic system for distribution of Nasdaq Basic that is approved by Nasdaq and used by the broker-dealer. The enterprise license would allow distribution of Nasdaq Basic through the approved electronic system, but would not cover distribution through any Distributor other than the broker-dealer obtaining the license and any approved system. The broker-dealer

must also pay the Distributor Fee for Nasdaq Basic under paragraph (c)(1), and report the number of Subscribers receiving Nasdaq Basic under this license that are used by: (i) Professional and Non-Professional Subscribers in a brokerage relationship at least once per calendar year; and (ii) Professional Subscribers employed by the broker-dealer on a monthly basis.

(6) As an alternative to (b)(1), (b)(2) and (b)(3), an External Distributor may purchase a monthly Media Enterprise License for \$100,000 to distribute all or part of Nasdaq Basic for Display Usage to the general investing public. Information may be made available via television, websites, mobile devices, or any other unrestricted means of transmission for Display Usage, to an unlimited number of Users. An External Distributor may use a Hosted Display Solution to distribute the data, provided that the External Distributor purchases a separate Media Enterprise License for each such Hosted Display Solution. Distribution of Derived Data is not permitted within the license. Data may only be used for informational and non-trading purposes. To be eligible for the enterprise license, Nasdaq Basic may only be distributed on a platform that is pre-approved by the Exchange as providing the External Distributor with a reasonable basis to conclude that all Users of such Information are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using Nasdaq Basic in their professional capacity. The External Distributor will also pay the Distributor Fee for Nasdaq Basic set forth in subparagraph (c)(1) of this Section.

[[6]7] For purposes of calculating the number of Professional Subscribers receiving Nasdaq Basic for Display Usage, the following netting rules will be applied:

- (A) – (D) No change.
- (c) No change.
- (d) Definitions.
 - (1) – (6) No change.
 - (7) “User” shall mean a natural person who has access to Exchange information.

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