

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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6)²¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission will institute proceedings 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. Please include File Number SR-CboeBZX-2022-023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2022-023. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2022-023

and should be submitted on or before April 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94466; File No. SR-NASDAQ-2022-024]

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

March 18, 2022.

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.

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

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ 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).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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

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.

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

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 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

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).

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

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 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

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).

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).

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 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

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).

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

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).

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 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

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).

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).

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

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

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).

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)).

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.

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

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

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%20Top%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/.

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 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,

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).

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.

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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2022-024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2022-024. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2022-024 and

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

should be submitted on or before April 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-06187 Filed 3-23-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94468; File No. SR-ISE-2022-07]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Qualifications for the Market Maker Plus Program in Options 7, Section 3

March 18, 2022.

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 4, 2022, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule

change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the qualifications for the Exchange’s Market Maker Plus program in its Pricing Schedule at Options 7, Section 3.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, 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 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 proposed rule change is to amend the qualifications for the Exchange’s Market Maker Plus program in its Pricing Schedule at Options 7, Section 3. The Exchange initially filed the proposed pricing changes on February 23, 2022 (SR-ISE-2022-05). On March 4, 2022, the Exchange withdrew that filing and submitted this filing.

Today, the Exchange operates a Market Maker Plus program for regular orders in Select Symbols³ and Non-Select Symbols⁴ that provides the below tiered incentives to Market Makers⁵ based on time spent quoting at the National Best Bid or National Best Offer (“NBBO”). This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select and Non-Select Symbols.

SELECT SYMBOLS OTHER THAN SPY, QQQ, IWM, AMZN, FB, AND NVDA

Market Maker Plus tier (specified percentage)	Maker rebate
Tier 1 (80% to less than 85%)	(\$0.15)
Tier 2 (85% to less than 95%)	(0.18)
Tier 3 (95% or greater)	(0.22)

SPY, QQQ, AND IWM

Market Maker Plus tier (specified percentage)	Regular Maker rebate	Linked Maker rebate
Tier 1a (50% to less than 65%)	(\$0.00)	N/A
Tier 1b (65% to less than 80%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume)	(0.05)	N/A
Tier 2 (80% to less than 85%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume)	(0.18)	(\$0.15)
Tier 3 (85% to less than 90%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume)	(0.22)	(0.19)
Tier 4 (90% or greater) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume)	(0.26)	(0.23)

AMZN, FB, AND NVDA

Market Maker Plus tier (specified percentage)	Maker rebate
Tier 1 (70% to less than 85%)	(\$0.15)
Tier 2 (85% to less than 95%)	(0.18)

³⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Select Symbols” are options overlying all symbols listed on the Exchange that are in the Penny Interval Program.

⁴ “Non-Select Symbols” are options overlying all symbols excluding Select Symbols.

⁵ The term “Market Makers” refers to Competitive Market Makers and Primary Market Makers, collectively.