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Page 1 of * 31

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

File No. * SR 2022 - * 042

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) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to amend the Exchanges fees to add two new features to the enterprise licenses at Equity 7 Section 123c

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 07/19/2022


(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.



DN:
email=john.zecca@nasdaq.com
Date: 2022.07.19 11:36:13
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-NASDAQ-2022-042 19b-4.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 *

Add Remove View

SR-NASDAQ-2022-042 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

Add Remove View

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

Add Remove View

SR-NASDAQ-2022-042 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

Add Remove View

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 add two new features to the enterprise licenses at Equity 7, Section 123(c). First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to also include distribution of data externally to Professionals for no additional fees beyond the per Subscriber charges already set forth in that section. Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using an Enhanced Display Solution for the same per Subscriber fees paid by any other purchaser of the Section 123(c) enterprise licenses. The Proposal also includes a number of technical and conforming changes, described in further detail below.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

a. Purpose

As explained above, the Exchange proposes to add two new features to the enterprise licenses at Equity 7, Section 123(c).³

First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to also include distribution of data externally to Professionals for no additional fees beyond the per Subscriber charges already set forth in that section.

Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using an

³ The Exchange initially proposed these fee changes on June 14, 2022, in SR-Nasdaq-2022-037. On July 19, 2022, the Exchange withdrew that filing and submitted the instant filing, which proposes the same changes as SR-Nasdaq-2022-037.

Enhanced Display Solution for the same per Subscriber fees paid by any other purchaser of the Section 123(c) enterprise licenses.

The Exchange also proposes two sets of conforming changes. First, Nasdaq proposes to remove the \$100,000 enterprise license at Section 123(c)(2) as redundant. The newly-modified \$25,000 enterprise license at Section 123(c)(1) will have exactly the same features as the current \$100,000 at Section 123(c)(2), rendering the latter unnecessary. Second, the Exchange proposes a few conforming changes related to paragraph numbering and presentation, discussed in detail below.⁴

Products and Current Fees

Nasdaq TotalView

Nasdaq TotalView provides customers with all orders and quotes from Nasdaq members displayed in the Nasdaq Market Center, as well as the aggregate size of such orders and quotes at each price level executed at the Nasdaq Market Center, with respect to stocks listed on Nasdaq and those listed on NYSE, NYSE American, and regional exchanges.⁵ Customers that purchase TotalView also receive the Net Order Imbalance Indicator (“NOII”), a supply and demand monitor that provides information leading up to key liquidity events such as the Open, Close, Halt Resumptions, and Initial Public

⁴ See infra note 19.

⁵ See Equity 7, Section 123 (a)(1)(B) (“Nasdaq TotalView means, with respect to stocks listed on Nasdaq and on an exchange other than Nasdaq, all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center.”). Nasdaq TotalView is one of two Depth-of-Book feeds. The other is Nasdaq Level 2. See Section 123(a)(1) (defining Depth-of-Book as “data feeds containing price quotations at more than one price level,” and identifying the two Depth-of-Book fees as Nasdaq Level 2 and Nasdaq TotalView); see also Nasdaq TotalView (product description), available at <https://www.nasdaq.com/solutions/nasdaq-totalview>.

Offerings (“IPOs”).⁶ For IPOs, NOII shows the details of all orders during the pre-IPO quoting period and the number of shares and orders that would execute if the cross were to occur at an indicative price and time.

Customers that purchase Nasdaq TotalView pay per Subscriber fees as set forth at Equity 7, Section 123(b)(2). In the alternative, Nasdaq offers customers the option of lowering their costs by purchasing one of three different enterprise licenses.

The first of these three, set forth in Section 123(c)(1), permits the dissemination of Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to Non-Professional Subscribers with whom the firm has a brokerage relationship, for a monthly fee of \$25,000, plus Professional and Non-Professional Subscriber fees.⁷

The second, at Section 123(c)(2), permits dissemination of Nasdaq TotalView for Display Usage for Internal Distribution, as well as External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship.⁸ The monthly fee for this license is \$100,000, plus Professional and Non-

⁶ See Securities Exchange Act Release No. 79863 (January 23, 2017), 82 FR 8632 (January 27, 2017) (SR-NASDAQ-2017-004).

⁷ See Equity 7, Section 123 (c)(1) (“A Distributor that is also a broker-dealer pays a monthly fee of \$25,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of \$9 for each Non-Professional Subscriber and a monthly fee of \$60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.”).

⁸ See Equity 7, Section 123 (c)(2) (“A Distributor that is also a broker-dealer pays a monthly fee of \$100,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of

Professional Subscriber fees. The key difference between the first and second licenses is the latter allows External Distribution to Professionals.

The third, at Section 123(c)(3), permits Internal and External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship for a monthly fee of \$500,000.⁹ The key difference between the third enterprise license and the first two is that the third has no Professional or Non-Professional Subscriber fees.

Enhanced Display Solution

An Enhanced Display Solution (“EDS”) allows the purchaser to display Depth-of-Book data and connect to an Application Programming Interface (“API”) that allows users to export data to a display application of their choosing.¹⁰ EDS is available for Display Usage¹¹ only, and may not be used for Non-Display¹² purposes.¹³

\$9 for each Non-Professional Subscriber and a monthly fee of \$60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.”).

⁹ See Section 123 (c)(3) (“As an alternative to subsections (1) and (2) above, a Distributor that is also a broker-dealer may pay a monthly fee of \$500,000 to provide Nasdaq Level 2 or Nasdaq TotalView for Display Usage by Professional or Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License shall not apply to relevant Level 1 or Depth Distributor fees.”).

¹⁰ See Securities Exchange Act Release No. 80015 (February 10, 2017), 82 FR 10944 (February 16, 2017) (SR-NASDAQ-2017-007).

¹¹ See Equity 7, Section 123(a)(2)(A) (“Display Usage means any method of accessing Depth-of-Book 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 . . .”).

¹² See Equity 7, Section 123(a)(2)(B) (“Non-Display Usage means any method of accessing Depth-of-Book data that involves access or use by a machine or

Customers that wish to purchase EDS pay a Distributor fee¹⁴ and a per Subscriber fee.¹⁵ EDS may also be purchased through an enterprise license for \$33,500 per month.¹⁶

Proposed Changes

As explained above, the Exchange proposes to add two features to the enterprise licenses at Equity 7, Section 123(c).

First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to allow distribution of data externally to Professionals as well as Non-Professionals. The Exchange will charge no additional fees for this external distribution beyond the per Subscriber charges already set

automated device without access or use of a display by a natural person or persons.”)

¹³ See Securities Exchange Act Release No. 73807 (December 10, 2014), 79 FR 74784 (December 16, 2014) (SR-NASDAQ-2014-117) (“While Distributors are not required to technically control against non-display usage (due to the difficulty of achieving such control), the Distributor is required to restrict non-display usage contractually by including such restrictions in any agreements with recipients of the Information.”); see also Nasdaq, US Equities and Options Data Policies at 20-21, available at <http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/USEquitiesandOptionsDataPolicies.pdf>.

¹⁴ See Equity 7, Section 126(a)(1). The Distributor fee is based on the number of users, as follows: \$4,000/month for 1-399 users; \$7,500/month for 400-999 users; \$15,000/month for 1,000 users.

¹⁵ The per Subscriber fee is \$80 per month for Professionals, and the underlying rate for Nasdaq Level 2 or TotalView for Non-Professionals. See Equity 7, Section 126(a)(1)(B).

¹⁶ See Equity 7, Section 126(a)(1)(C) (“EDS Distributors may elect to purchase an Enterprise License for \$33,500 per month. Such Enterprise License shall entitle the EDS Distributor to distribute to an unlimited number of Professional EDS Subscribers for a monthly fee of \$76 for TotalView and/or Level 2, notwithstanding the fees set forth in subsection (B) above.”).

forth in that section. To accomplish this, the Exchange proposes to add Professional Subscribers to the list of users eligible for External Distribution in that subsection.

Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using EDS for the same per Subscriber fee paid by a purchaser of any of the Section 123(c) enterprise licenses. Under the current rule, Distributors that subscribe to the enterprise depth fees at Section 123(c) are exempt from paying EDS Distributor fees.¹⁷ The proposed change is to add a clause exempting such purchasers from the EDS per Subscriber fees as well. Such customers would pay only the applicable per Subscriber fees set forth in Section 123(c).

As a conforming change, the Exchange proposes to remove the \$100,000 enterprise license at Section 123(c)(2) as redundant. As explained above, the newly modified \$25,000 enterprise license at Section 123(c)(1) will have exactly the same features that the \$100,000 at Section 123(c)(2) has currently, rendering the latter unnecessary.¹⁸ The Proposal also includes a number of other minor conforming changes to paragraph numbering and presentation.¹⁹

¹⁷ See Equity 7, Section 126(a)(1)(A)

¹⁸ The proposed removal of the \$100,000 enterprise license at Section 123(c)(2) will not impact current customers, as no customers currently purchase this license.

¹⁹ The Exchange proposes the following additional conforming changes: (i) change the numbering of current subparagraph 123(c)(3) to 123(c)(2) to reflect removal of the current \$100,000 enterprise license and to remove references to the former paragraph; (ii) substitute the word “license” for “depth” at Section 126(a)(1)(A) as a more accurate description of the license at Section 123(c); and (iii) remove the asterisk from Section 123(c), given that the modified subsection no longer applies solely to Distributor fees.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ 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 proposed changes are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n 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’”²² Market data, often mistakenly characterized as the “exhaust” of an exchange, is related to order flow because it advertises liquidity available on the exchange, which encourages firms to send more order flow to the exchange.

²⁰ See 15 U.S.C. 78f(b).

²¹ See 15 U.S.C. 78f(b)(4) and (5).

²² See NetCoalition, 615 F.3d at 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)).

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²³

Congress directed the Commission to “rely on ‘competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.’”²⁴ As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. “If 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 In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁴ See NetCoalition, 615 F.3d at 534-35; see also H.R. Rep. No. 94-229 at 92 (1975) (“[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.”).

²⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

²⁶ See id.

competitive environment, such as cost, only if a “proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.”²⁷

This specific Proposal will support and expand competition by providing customers with more options for lowering fees or enhancing services. The options available to a particular customer depends on that customer’s use cases. The Proposal will enable a customer that currently purchases the \$25,000 enterprise license at Section 123(c)(1) to distribute information externally to Professional Subscribers, enhancing the value of that license. A customer that would otherwise purchase the \$100,000 enterprise license at Section 123(c)(2) would be able to obtain the same service for the lower monthly fee of \$25,000 under the proposed modifications. A customer that currently purchases the \$25,000 license at proposed Section 123(c)(1) and also uses EDS as a delivery method would be able to pay the relatively lower per Subscriber fees at the proposed Section 123(c)(1). A customer that pays for the \$500,000 enterprise license at proposed Section 123(c)(2) and uses EDS would be required to pay no additional per Subscriber fees at all.

All of these proposed modifications enhance customer choice. If the total cost of service based on the underlying fees exceeds the cost of the enterprise license, the customer will purchase the enterprise license to reduce cost; otherwise, the customer will not. Customer choice—the customer’s ability to choose whether or not to purchase an enterprise license depending on whether the purchase is economically advantageous—is a

²⁷ See U.S. Securities and Exchange Commission, “Staff Guidance on SRO Rule filings Relating to Fees” (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

competitive force that constrains the ability of the Exchange to charge excessive fees for enterprise licenses.

The proposed changes are not unfairly discriminatory. As explained above, a customer chooses whether to purchase an enterprise license based on its economic benefits. Customers that choose to avail themselves of the additional features will benefit. Customers that do not choose to purchase any of these licenses, or which choose not to avail themselves of the additional features, will remain unaffected.

The enterprise licenses subject to the Proposal are available to all potential customers on a non-discriminatory basis. They are entirely optional in that Nasdaq is not required to offer them and customers are not required to purchase them. Customers can discontinue their use at any time and for any reason, including an assessment of the fees charged.

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. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. Because competitors are free to modify their own fees in response to proposed changes, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

As explained above, the Proposal will support and expand competition by providing customers with more options for lowering fees or enhancing services. Customers that choose to purchase the enterprise licenses will benefit from lower fees

and enhanced features. Customers that elect not to purchase the enterprise licenses, or not to avail themselves of the additional services, will remain unaffected.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because all self-regulatory organization will have the option of proposing changes to their own fee schedules.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because each customer will be able to decide whether or not to purchase an enterprise license depending on whether it is economically advantageous for it to do so.

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,²⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-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

²⁸ See 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-042)

July __, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Fees to Add Two New Features to the Enterprise Licenses at Equity 7, Section 123(c)

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 July 19, 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 add two new features to the enterprise licenses at Equity 7, Section 123(c). First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to also include distribution of data externally to Professionals for no additional fees beyond the per Subscriber charges already set forth in that section. Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

license options listed at Section 123(c) to deliver TotalView using an Enhanced Display Solution for the same per Subscriber fees paid by any other purchaser of the Section 123(c) enterprise licenses. The Proposal also includes a number of technical and conforming changes, described in further detail below.

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 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

As explained above, the Exchange proposes to add two new features to the enterprise licenses at Equity 7, Section 123(c).³

First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to also include distribution

³ The Exchange initially proposed these fee changes on June 14, 2022, in SR-Nasdaq-2022-037. On July 19, 2022, the Exchange withdrew that filing and submitted the instant filing, which proposes the same changes as SR-Nasdaq-2022-037.

of data externally to Professionals for no additional fees beyond the per Subscriber charges already set forth in that section.

Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using an Enhanced Display Solution for the same per Subscriber fees paid by any other purchaser of the Section 123(c) enterprise licenses.

The Exchange also proposes two sets of conforming changes. First, Nasdaq proposes to remove the \$100,000 enterprise license at Section 123(c)(2) as redundant. The newly-modified \$25,000 enterprise license at Section 123(c)(1) will have exactly the same features as the current \$100,000 at Section 123(c)(2), rendering the latter unnecessary. Second, the Exchange proposes a few conforming changes related to paragraph numbering and presentation, discussed in detail below.⁴

Products and Current Fees

Nasdaq TotalView

Nasdaq TotalView provides customers with all orders and quotes from Nasdaq members displayed in the Nasdaq Market Center, as well as the aggregate size of such orders and quotes at each price level executed at the Nasdaq Market Center, with respect to stocks listed on Nasdaq and those listed on NYSE, NYSE American, and regional exchanges.⁵ Customers that purchase TotalView also receive the Net Order Imbalance

⁴ See infra note 19.

⁵ See Equity 7, Section 123 (a)(1)(B) (“Nasdaq TotalView means, with respect to stocks listed on Nasdaq and on an exchange other than Nasdaq, all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center.”). Nasdaq TotalView is one of two Depth-of-Book feeds. The other is Nasdaq Level 2. See Section 123(a)(1)

Indicator (“NOII”), a supply and demand monitor that provides information leading up to key liquidity events such as the Open, Close, Halt Resumptions, and Initial Public Offerings (“IPOs”).⁶ For IPOs, NOII shows the details of all orders during the pre-IPO quoting period and the number of shares and orders that would execute if the cross were to occur at an indicative price and time.

Customers that purchase Nasdaq TotalView pay per Subscriber fees as set forth at Equity 7, Section 123(b)(2). In the alternative, Nasdaq offers customers the option of lowering their costs by purchasing one of three different enterprise licenses.

The first of these three, set forth in Section 123(c)(1), permits the dissemination of Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to Non-Professional Subscribers with whom the firm has a brokerage relationship, for a monthly fee of \$25,000, plus Professional and Non-Professional Subscriber fees.⁷

The second, at Section 123(c)(2), permits dissemination of Nasdaq TotalView for Display Usage for Internal Distribution, as well as External Distribution to both

(defining Depth-of-Book as “data feeds containing price quotations at more than one price level,” and identifying the two Depth-of-Book fees as Nasdaq Level 2 and Nasdaq TotalView); see also Nasdaq TotalView (product description), available at <https://www.nasdaq.com/solutions/nasdaq-totalview>.

⁶ See Securities Exchange Act Release No. 79863 (January 23, 2017), 82 FR 8632 (January 27, 2017) (SR-NASDAQ-2017-004).

⁷ See Equity 7, Section 123 (c)(1) (“A Distributor that is also a broker-dealer pays a monthly fee of \$25,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of \$9 for each Non-Professional Subscriber and a monthly fee of \$60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.”).

Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship.⁸ The monthly fee for this license is \$100,000, plus Professional and Non-Professional Subscriber fees. The key difference between the first and second licenses is the latter allows External Distribution to Professionals.

The third, at Section 123(c)(3), permits Internal and External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship for a monthly fee of \$500,000.⁹ The key difference between the third enterprise license and the first two is that the third has no Professional or Non-Professional Subscriber fees.

Enhanced Display Solution

An Enhanced Display Solution (“EDS”) allows the purchaser to display Depth-of-Book data and connect to an Application Programming Interface (“API”) that allows

⁸ See Equity 7, Section 123 (c)(2) (“A Distributor that is also a broker-dealer pays a monthly fee of \$100,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of \$9 for each Non-Professional Subscriber and a monthly fee of \$60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.”).

⁹ See Section 123 (c)(3) (“As an alternative to subsections (1) and (2) above, a Distributor that is also a broker-dealer may pay a monthly fee of \$500,000 to provide Nasdaq Level 2 or Nasdaq TotalView for Display Usage by Professional or Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License shall not apply to relevant Level 1 or Depth Distributor fees.”).

users to export data to a display application of their choosing.¹⁰ EDS is available for Display Usage¹¹ only, and may not be used for Non-Display¹² purposes.¹³

Customers that wish to purchase EDS pay a Distributor fee¹⁴ and a per Subscriber fee.¹⁵ EDS may also be purchased through an enterprise license for \$33,500 per month.¹⁶

Proposed Changes

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- ¹⁰ See Securities Exchange Act Release No. 80015 (February 10, 2017), 82 FR 10944 (February 16, 2017) (SR-NASDAQ-2017-007).
- ¹¹ See Equity 7, Section 123(a)(2)(A) (“Display Usage means any method of accessing Depth-of-Book 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 . . .”).
- ¹² See Equity 7, Section 123(a)(2)(B) (“Non-Display Usage means any method of accessing Depth-of-Book data that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.”)
- ¹³ See Securities Exchange Act Release No. 73807 (December 10, 2014), 79 FR 74784 (December 16, 2014) (SR-NASDAQ-2014-117) (“While Distributors are not required to technically control against non-display usage (due to the difficulty of achieving such control), the Distributor is required to restrict non-display usage contractually by including such restrictions in any agreements with recipients of the Information.”); see also Nasdaq, US Equities and Options Data Policies at 20-21, available at <http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/USEquitiesandOptionsDataPolicies.pdf>.
- ¹⁴ See Equity 7, Section 126(a)(1). The Distributor fee is based on the number of users, as follows: \$4,000/month for 1-399 users; \$7,500/month for 400-999 users; \$15,000/month for 1,000 users.
- ¹⁵ The per Subscriber fee is \$80 per month for Professionals, and the underlying rate for Nasdaq Level 2 or TotalView for Non-Professionals. See Equity 7, Section 126(a)(1)(B).
- ¹⁶ See Equity 7, Section 126(a)(1)(C) (“EDS Distributors may elect to purchase an Enterprise License for \$33,500 per month. Such Enterprise License shall entitle the EDS Distributor to distribute to an unlimited number of Professional EDS Subscribers for a monthly fee of \$76 for TotalView and/or Level 2, notwithstanding the fees set forth in subsection (B) above.”).

As explained above, the Exchange proposes to add two features to the enterprise licenses at Equity 7, Section 123(c).

First, the Exchange proposes to expand the enterprise license at Section 123(c)(1), which currently allows External Distribution of TotalView only to Non-Professional Subscribers with whom the firm has a brokerage relationship, to allow distribution of data externally to Professionals as well as Non-Professionals. The Exchange will charge no additional fees for this external distribution beyond the per Subscriber charges already set forth in that section. To accomplish this, the Exchange proposes to add Professional Subscribers to the list of users eligible for External Distribution in that subsection.

Second, the Exchange proposes to allow a purchaser of any of the TotalView enterprise license options listed at Section 123(c) to deliver TotalView using EDS for the same per Subscriber fee paid by a purchaser of any of the Section 123(c) enterprise licenses. Under the current rule, Distributors that subscribe to the enterprise depth fees at Section 123(c) are exempt from paying EDS Distributor fees.¹⁷ The proposed change is to add a clause exempting such purchasers from the EDS per Subscriber fees as well. Such customers would pay only the applicable per Subscriber fees set forth in Section 123(c).

As a conforming change, the Exchange proposes to remove the \$100,000 enterprise license at Section 123(c)(2) as redundant. As explained above, the newly modified \$25,000 enterprise license at Section 123(c)(1) will have exactly the same features that the \$100,000 at Section 123(c)(2) has currently, rendering the latter

¹⁷ See Equity 7, Section 126(a)(1)(A)

unnecessary.¹⁸ The Proposal also includes a number of other minor conforming changes to paragraph numbering and presentation.¹⁹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ 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 proposed changes are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n 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

¹⁸ The proposed removal of the \$100,000 enterprise license at Section 123(c)(2) will not impact current customers, as no customers currently purchase this license.

¹⁹ The Exchange proposes the following additional conforming changes: (i) change the numbering of current subparagraph 123(c)(3) to 123(c)(2) to reflect removal of the current \$100,000 enterprise license and to remove references to the former paragraph; (ii) substitute the word “license” for “depth” at Section 126(a)(1)(A) as a more accurate description of the license at Section 123(c); and (iii) remove the asterisk from Section 123(c), given that the modified subsection no longer applies solely to Distributor fees.

²⁰ See 15 U.S.C. 78f(b).

²¹ See 15 U.S.C. 78f(b)(4) and (5).

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'"²² Market data, often mistakenly characterized as the "exhaust" of an exchange, is related to order flow because it advertises liquidity available on the exchange, which encourages firms to send more order flow to the exchange.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²³

Congress directed the Commission to "rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'"²⁴ As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. "If competitive forces are operative, the self-interest of the

²² See NetCoalition, 615 F.3d at 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)).

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁴ See NetCoalition, 615 F.3d at 534-35; see also H.R. Rep. No. 94-229 at 92 (1975) ("[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.").

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 In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a “proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.”²⁷

This specific Proposal will support and expand competition by providing customers with more options for lowering fees or enhancing services. The options available to a particular customer depends on that customer’s use cases. The Proposal will enable a customer that currently purchases the \$25,000 enterprise license at Section 123(c)(1) to distribute information externally to Professional Subscribers, enhancing the value of that license. A customer that would otherwise purchase the \$100,000 enterprise license at Section 123(c)(2) would be able to obtain the same service for the lower monthly fee of \$25,000 under the proposed modifications. A customer that currently purchases the \$25,000 license at proposed Section 123(c)(1) and also uses EDS as a delivery method would be able to pay the relatively lower per Subscriber fees at the proposed Section 123(c)(1). A customer that pays for the \$500,000 enterprise license at

²⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

²⁶ See id.

²⁷ See U.S. Securities and Exchange Commission, “Staff Guidance on SRO Rule filings Relating to Fees” (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

proposed Section 123(c)(2) and uses EDS would be required to pay no additional per Subscriber fees at all.

All of these proposed modifications enhance customer choice. If the total cost of service based on the underlying fees exceeds the cost of the enterprise license, the customer will purchase the enterprise license to reduce cost; otherwise, the customer will not. Customer choice—the customer’s ability to choose whether or not to purchase an enterprise license depending on whether the purchase is economically advantageous—is a competitive force that constrains the ability of the Exchange to charge excessive fees for enterprise licenses.

The proposed changes are not unfairly discriminatory. As explained above, a customer chooses whether to purchase an enterprise license based on its economic benefits. Customers that choose to avail themselves of the additional features will benefit. Customers that do not choose to purchase any of these licenses, or which choose not to avail themselves of the additional features, will remain unaffected.

The enterprise licenses subject to the Proposal are available to all potential customers on a non-discriminatory basis. They are entirely optional in that Nasdaq is not required to offer them and customers are not required to purchase them. Customers can discontinue their use at any time and for any reason, including an assessment of the fees charged.

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. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be

excessive. Because competitors are free to modify their own fees in response to proposed changes, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

As explained above, the Proposal will support and expand competition by providing customers with more options for lowering fees or enhancing services. Customers that choose to purchase the enterprise licenses will benefit from lower fees and enhanced features. Customers that elect not to purchase the enterprise licenses, or not to avail themselves of the additional services, will remain unaffected.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because all self-regulatory organization will have the option of proposing changes to their own fee schedules.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because each customer will be able to decide whether or not to purchase an enterprise license depending on whether it is economically advantageous for it to do so.

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.²⁸

²⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-042 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-2022-042. 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-2022-042 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.²⁹

J. Matthew DeLesDernier
Assistant Secretary

²⁹ 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**

* * * * *

Section 123. Nasdaq Depth-of-Book Data

(a) – (b) No change.

(c) Enterprise License Fees

(1) A Distributor that is also a broker-dealer pays a monthly fee of \$25,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of \$9 for each Non-Professional Subscriber and a monthly fee of \$60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.

[(2) A Distributor that is also a broker-dealer pays a monthly fee of \$100,000 for the right to provide Nasdaq TotalView for Display Usage for Internal Distribution, or for External Distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License fee shall be in addition to a monthly fee of \$9 for each Non-Professional Subscriber and a monthly fee of \$60 for each Professional Subscriber for Display Usage based upon Direct or Indirect Access.]

[(3)](2) As an alternative to subsection[s] (1)[and (2) above], a Distributor that is also a broker-dealer may pay a monthly fee of \$500,000 to provide Nasdaq Level 2 or Nasdaq TotalView for Display Usage by Professional or Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License shall not apply to relevant Level 1 or Depth Distributor fees.

(d) No change.

* * * * *

Section 126. Distribution Models

(a) Display Solutions

(1) Enhanced Display Solution (“EDS”) (optional delivery method)

(A) The charges to be paid by Distributors for offering EDS Subscribers of Nasdaq Depth Information with access to an API or similar solution shall be:

	Number of Downstream EDS Subscribers
Monthly Enhanced Display Solution Fee per Distributor for the right to offer an API or similar solution [*]	1-399 users = \$4,000/month
	400-999 users = \$7,500/month
	1,000 users or more = \$15,000/month

[*]Distributors that subscribe to the enterprise license[depth] fees described in Nasdaq Equity 7, Section 123(c) are exempt from this fee, and shall pay any Professional and Non-Professional Subscriber fees set forth in that subsection in lieu of the Professional and Non-Professional Subscriber fees set forth in this section.

(B) The monthly fee per Professional EDS Subscriber for utilizing Nasdaq Level 2 or Nasdaq TotalView data on a product with access to an API or similar solution is \$80 per month.

The monthly fee per Non-Professional EDS Subscriber for utilizing Nasdaq Level 2 or Nasdaq TotalView data on a product with access to an API or similar solution is the applicable Nasdaq Level 2 or Nasdaq TotalView rate.

(C) EDS Enterprise License: EDS Distributors may elect to purchase an Enterprise License for \$33,500 per month. Such Enterprise License shall entitle the EDS Distributor to distribute to an unlimited number of Professional EDS Subscribers for a monthly fee of \$76 for TotalView and/or Level 2, notwithstanding the fees set forth in subsection (B) above.

(2) The term “Non-Professional” shall have the same meaning as set forth in Nasdaq Equity 7, Section 111(b).

(3) The term “Distributor” shall have the same meaning as set forth in Equity 7, Section 119(c).

(b)- (c) No change.

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