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

File No.* SR - 2017 - * 113
Amendment No. (req. for Amendments *)

Filing by NASDAQ Stock Market

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 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 QView fees at Rule 7058.

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 * Associate General Counsel
E-mail * daniel.cantu@nasdaq.com
Telephone * (301) 978-8469 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 10/20/2017
By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

edward.knight@nasdaq.com

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

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View	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	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 Advance Notice by Clearing Agencies * Add Remove View	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, security-based swap submission, or advance notice 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 Add Remove View Exhibit Sent As Paper Document ☐	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 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	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 4 - Marked Copies Add Remove View	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	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 at Rule 7058 to: (i) offer to waive fees under this Rule for 30 days for any new, prospective, or returning purchaser of either QView or the Latency Optics add-on service; and (ii) remove language offering a subscription to TradeInfo for up to five users at no additional cost to subscribers of the Latency Optics add-on service. The proposal, which also includes conforming changes, is 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.

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") on September 19, 2017. 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:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

Daniel A. Cantu
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

The Exchange proposes to amend its fees at Rule 7058 to: (i) offer to waive fees under this Rule for 30 days for any new, prospective, or returning purchaser of either QView or the Latency Optics add-on service; and (ii) remove language offering a subscription to TradeInfo for up to five users at no additional cost to subscribers of the Latency Optics add-on service, along with conforming changes. The purposes of the proposed changes are to: (i) encourage new, prospective, and returning purchasers of either QView or the Latency Optics add-on service to examine these products more closely and thereby increase the number of customers for this product; and (ii) remove a rarely used fee provision in order to render the Latency Optics subscription easier to administer.

Current Products

QView

QView is a web-based tool designed to provide a subscribing member with the ability to track its trading activity on the Exchange through both real-time and historical order and execution summaries, available on a daily or a monthly basis. The QView dashboard allows the member to view a summary of its executions and open orders, including, but not limited to: the number of executions and their dollar value; executions by symbol; total volume; whether an order has been added or removed; whether the order is for a buy or a sell; whether an order is open; and information related to routing strategies. QView also includes ranking and market share statistics, such as how the subscribing member firm ranks in Nasdaq market activity as compared to other Nasdaq participants. QView data may be segregated by individual Market Participant Identifiers (MPIDs) or ports. QView was developed to work in conjunction with TradeInfo (discussed below) to allow the QView purchaser to view specific order and execution information provided by the QView dashboard interface.

As set forth in Rule 7058(a), members may subscribe to QView for a fee of $600 per month.

Latency Optics

A member that subscribes to QView may also purchase the Latency Optics add-on service, which provides the member with the ability to monitor three types of latency for order messages and compare that latency to the average on the Nasdaq system:[3] (1) roundtrip time between order entry and receipt of acknowledgement; (2) roundtrip time between order entry and the time that the order appears on the TotalView ITCH multicast feed; and (3) the roundtrip time between the entry of an order cancellation request and the time that the message in reply is received by the client device. Data is displayed graphically and in table format, and may be segregated by MPID or ports. Subscribers may also set hourly or end-of-day alert notifications.

As set forth in Rule 7058(b), the Latency Optics add-on is available for a fee of $2,900 per month.

[3] The service measures the historical latency of the member firm's order messages sent to and from the Nasdaq Market Center through the member firm's OUCH ports and received on ITCH ports. See Securities Exchange Act Release No. 68617 (January 10, 2013), 78 FR 3480 (January 16, 2013) (SR-NASDAQ-2013-15). OUCH ports are used for order entry; multicast ITCH ports are used for the dissemination of ITCH multicast feeds.

TradeInfo

TradeInfo is a web-based tool that allows a member to see the status of orders, executions, cancels and breaks, generate reports for download, and cancel or correct open orders.

As set forth in Rule 7015(f), TradeInfo is complementary as part of the Nasdaq workstation or may be purchased separately for a fee of $95 per user per month. Under Rule 7058(b), a purchaser of the Latency Optics add-on may obtain TradeInfo for up to 5 users at no additional cost.

Proposed Changes

The Exchange proposes to: (i) introduce a fee waiver for 30 days for any new, prospective or returning purchaser of either QView or the Latency Optics add-on service to encourage testing and dissemination of the product; and (ii) remove a rarely used provision of Rule 7058 that offers subscribers of the Latency Optics add-on service a subscription to TradeInfo for up to five users at no additional cost.

The Exchange proposes to initiate the new fee waiver program to foster interest in QView or the Latency Optics add-on service and encourage sales for both products. The waiver will be available only once per customer for any version of either product. New versions will be announced by the Exchange on www.nasdaqtrader.com.

The Exchange also proposes to remove a rarely used provision of Rule 7058 that offers subscribers of the Latency Optics add-on service a subscription to TradeInfo for up to five users at no additional cost. As stated in Rule 7015(f), TradeInfo is complementary as part of the Nasdaq workstation. Because TradeInfo is already available free of charge with the Nasdaq workstation, customers have expressed little interest in this discount, and that provision has been rarely, if ever, used. As such, the Exchange proposes to eliminate that provision.[4]

The proposed changes do not affect the cost of any other Nasdaq product.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] 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 fee waiver proposal is an equitable allocation of reasonable dues, fees and other charges because it will reduce fees for new, prospective, and returning purchasers of QView or Latency Optics, while not disadvantaging continuing subscribers because their fees will not change. Moreover, the additional subscriptions resulting from the fee waiver will increase market transparency, and, as the total number of subscribers increases, the additional subscriptions will decrease the likelihood of future fee increases as a result of rising fixed costs.

Removal of the provision in Rule 7058(b) allowing a free subscription to TradeInfo for five users is an equitable allocation of reasonable dues, fees and other charges because all members will be charged the same fees for the same product.

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4 As a conforming change, the Exchange proposes to delete an obsolete reference to a free trial period that expired in September 2013. In addition, a comma is added after the phrase “In addition,” in Rule 7058(b) to correct a grammatical error.

5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(4) and (5).

Moreover, the proposed change will have little substantive impact on fees because the discount was rarely, if ever, used. This proposed change will not permit unfair discrimination between customers, issuers, brokers, or dealers because the proposal will remove a basis for price differentiation among customers that currently exists.[7]

In adopting Regulation NMS,[8] the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Regulation NMS—deregulating the market in proprietary data—furthers the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[9]

Nasdaq believes that QView, the Latency Optics add-on and TradeInfo—which provide members with the ability to track order flow, observe latency and obtain order data—is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

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7 Availability of QView, the Latency Optics add-on service and TradeInfo is already limited to members of the Exchange, which is not unfair discrimination because the information provided solely concerns a member firm's trading activity on the Exchange.

8 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

9 Id.

In NetCoalition v. Securities and Exchange Commission[10] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[11] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[12] "No 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'…."[13]

Data products such as QView, the Latency Optics add-on and TradeInfo are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. The need

10 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

11 See NetCoalition, at 534 - 535.

12 Id. at 537.

13 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.[14]

Fees for QView, the Latency Optics add-on and TradeInfo are optional in that they apply only to firms that elect to purchase these products, which, like all proprietary data products, they may cancel at any time.

For all of the reasons set forth above, the Exchange has provided a substantial basis demonstrating that the proposed fee is equitable, fair, reasonable and not unreasonably discriminatory, and therefore consistent with and in furtherance of the purposes of the Act.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Introduction of the proposed fee waiver will enhance competition by increasing customer familiarity with the product, thereby leading to more informed purchase decisions. Further, the product itself enhances competition by promoting transparency, and the increased use of the product generated by the fee waiver will increase the amount of information available to the market. Moreover, removal of the provision in 7058(b) allowing a free subscription to TradeInfo for five users will enhance competition by simplifying the fee structure for these products.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data

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14 See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

offered, and the value provided. Exchanges compete with each other for listings, trades, and market data itself. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (e.g., if the software can be downloaded over the internet after being purchased).[15] In Nasdaq's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information

15 See William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," Antitrust Law Journal, Vol. 70, No. 3 (2003).

and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products. The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, as well as internalizing BDs and various forms of alternative trading systems (“ATSs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, and the BATS exchanges.

Firms make decisions regarding market data based on the total cost of interacting with the Exchange, and an “excessive” price for one product has the potential to impair revenues from all products. If the price of QView, the Latency Optics add-on or

TradeInfo were to become unattractive to member firms,[16] those firms would opt not to purchase the product, or may reduce their purchases of other products sold by the Exchange.

For all of the reasons set forth above, the Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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,[17] 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 the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

[16] Only member firms can purchase QView, the Latency Optics add-on, and TradeInfo.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-113)

October __, 2017

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Fees at Rule 7058

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 October 20, 2017, 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 at Rule 7058 to: (i) offer to waive fees under this Rule for 30 days for any new, prospective, or returning purchaser of either QView or the Latency Optics add-on service; and (ii) remove language offering a subscription to TradeInfo for up to five users at no additional cost to subscribers of the Latency Optics add-on service.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at http://nasdaq.cchwallstreet.com/, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 Exchange proposes to amend its fees at Rule 7058 to: (i) offer to waive fees under this Rule for 30 days for any new, prospective, or returning purchaser of either QView or the Latency Optics add-on service; and (ii) remove language offering a subscription to TradeInfo for up to five users at no additional cost to subscribers of the Latency Optics add-on service, along with conforming changes. The purposes of the proposed changes are to: (i) encourage new, prospective, and returning purchasers of either QView or the Latency Optics add-on service to examine these products more closely and thereby increase the number of customers for this product; and (ii) remove a rarely used fee provision in order to render the Latency Optics subscription easier to administer.

<u>Current Products</u>

QView

QView is a web-based tool designed to provide a subscribing member with the ability to track its trading activity on the Exchange through both real-time and historical order and execution summaries, available on a daily or a monthly basis. The QView dashboard allows the member to view a summary of its executions and open orders, including, but not limited to: the number of executions and their dollar value; executions by symbol; total volume; whether an order has been added or removed; whether the order is for a buy or a sell; whether an order is open; and information related to routing strategies. QView also includes ranking and market share statistics, such as how the subscribing member firm ranks in Nasdaq market activity as compared to other Nasdaq participants. QView data may be segregated by individual Market Participant Identifiers (MPIDs) or ports. QView was developed to work in conjunction with TradeInfo (discussed below) to allow the QView purchaser to view specific order and execution information provided by the QView dashboard interface.

As set forth in Rule 7058(a), members may subscribe to QView for a fee of $600 per month.

Latency Optics

A member that subscribes to QView may also purchase the Latency Optics add-on service, which provides the member with the ability to monitor three types of latency for order messages and compare that latency to the average on the Nasdaq system:[3] (1)

[3] The service measures the historical latency of the member firm's order messages sent to and from the Nasdaq Market Center through the member firm's OUCH ports and received on ITCH ports. <u>See</u> Securities Exchange Act Release No.

roundtrip time between order entry and receipt of acknowledgement; (2) roundtrip time between order entry and the time that the order appears on the TotalView ITCH multicast feed; and (3) the roundtrip time between the entry of an order cancellation request and the time that the message in reply is received by the client device. Data is displayed graphically and in table format, and may be segregated by MPID or ports. Subscribers may also set hourly or end-of-day alert notifications.

As set forth in Rule 7058(b), the Latency Optics add-on is available for a fee of $2,900 per month.

TradeInfo

TradeInfo is a web-based tool that allows a member to see the status of orders, executions, cancels and breaks, generate reports for download, and cancel or correct open orders.

As set forth in Rule 7015(f), TradeInfo is complementary as part of the Nasdaq workstation or may be purchased separately for a fee of $95 per user per month. Under Rule 7058(b), a purchaser of the Latency Optics add-on may obtain TradeInfo for up to 5 users at no additional cost.

Proposed Changes

The Exchange proposes to: (i) introduce a fee waiver for 30 days for any new, prospective or returning purchaser of either QView or the Latency Optics add-on service to encourage testing and dissemination of the product; and (ii) remove a rarely used

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68617 (January 10, 2013), 78 FR 3480 (January 16, 2013) (SR-NASDAQ-2013-15). OUCH ports are used for order entry; multicast ITCH ports are used for the dissemination of ITCH multicast feeds.

provision of Rule 7058 that offers subscribers of the Latency Optics add-on service a subscription to TradeInfo for up to five users at no additional cost.

The Exchange proposes to initiate the new fee waiver program to foster interest in QView or the Latency Optics add-on service and encourage sales for both products. The waiver will be available only once per customer for any version of either product. New versions will be announced by the Exchange on www.nasdaqtrader.com.

The Exchange also proposes to remove a rarely used provision of Rule 7058 that offers subscribers of the Latency Optics add-on service a subscription to TradeInfo for up to five users at no additional cost. As stated in Rule 7015(f), TradeInfo is complementary as part of the Nasdaq workstation. Because TradeInfo is already available free of charge with the Nasdaq workstation, customers have expressed little interest in this discount, and that provision has been rarely, if ever, used. As such, the Exchange proposes to eliminate that provision.[4]

The proposed changes do not affect the cost of any other Nasdaq product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and

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4 As a conforming change, the Exchange proposes to delete an obsolete reference to a free trial period that expired in September 2013. In addition, a comma is added after the phrase "In addition," in Rule 7058(b) to correct a grammatical error.

5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(4) and (5).

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 fee waiver proposal is an equitable allocation of reasonable dues, fees and other charges because it will reduce fees for new, prospective, and returning purchasers of QView or Latency Optics, while not disadvantaging continuing subscribers because their fees will not change. Moreover, the additional subscriptions resulting from the fee waiver will increase market transparency, and, as the total number of subscribers increases, the additional subscriptions will decrease the likelihood of future fee increases as a result of rising fixed costs.

Removal of the provision in Rule 7058(b) allowing a free subscription to TradeInfo for five users is an equitable allocation of reasonable dues, fees and other charges because all members will be charged the same fees for the same product. Moreover, the proposed change will have little substantive impact on fees because the discount was rarely, if ever, used. This proposed change will not permit unfair discrimination between customers, issuers, brokers, or dealers because the proposal will remove a basis for price differentiation among customers that currently exists.[7]

In adopting Regulation NMS,[8] the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers,

7 Availability of QView, the Latency Optics add-on service and TradeInfo is already limited to members of the Exchange, which is not unfair discrimination because the information provided solely concerns a member firm's trading activity on the Exchange.

8 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

and also spur innovation and competition for the provision of market data. Regulation NMS—deregulating the market in proprietary data—furthers the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[9]

Nasdaq believes that QView, the Latency Optics add-on and TradeInfo—which provide members with the ability to track order flow, observe latency and obtain order data—is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

In NetCoalition v. Securities and Exchange Commission[10] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[11] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[12] "No 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

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9 Id.

10 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

11 See NetCoalition, at 534 - 535.

12 Id. at 537.

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'…."[13]

Data products such as QView, the Latency Optics add-on and TradeInfo are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. The need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.[14]

Fees for QView, the Latency Optics add-on and TradeInfo are optional in that they apply only to firms that elect to purchase these products, which, like all proprietary data products, they may cancel at any time.

For all of the reasons set forth above, the Exchange has provided a substantial basis demonstrating that the proposed fee is equitable, fair, reasonable and not unreasonably discriminatory, and therefore consistent with and in furtherance of the purposes of the Act.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Introduction of the proposed fee waiver will enhance competition by increasing

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13 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

14 See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

customer familiarity with the product, thereby leading to more informed purchase decisions. Further, the product itself enhances competition by promoting transparency, and the increased use of the product generated by the fee waiver will increase the amount of information available to the market. Moreover, removal of the provision in 7058(b) allowing a free subscription to TradeInfo for five users will enhance competition by simplifying the fee structure for these products.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. Exchanges compete with each other for listings, trades, and market data itself. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange’s transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (e.g., if the software can be downloaded over the internet after being purchased).[15] In Nasdaq's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products. The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce

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15 See William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," Antitrust Law Journal, Vol. 70, No. 3 (2003).

proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, and the BATS exchanges.

Firms make decisions regarding market data based on the total cost of interacting with the Exchange, and an “excessive” price for one product has the potential to impair revenues from all products. If the price of QView, the Latency Optics add-on or TradeInfo were to become unattractive to member firms,[16] those firms would opt not to purchase the product, or may reduce their purchases of other products sold by the Exchange.

For all of the reasons set forth above, the Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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.[17]

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16 Only member firms can purchase QView, the Latency Optics add-on, and TradeInfo.

17 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-2017-113 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-2017-113. 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-2017-113 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.[18]

Eduardo A. Aleman
Assistant Secretary

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[18] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is <u>underlined</u>.

The Nasdaq Stock Market Rules

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7058. QView

(a) No change.

(b) A QView subscriber may subscribe to the Latency Optics add-on service. Latency Optics is a web-based tool accessed through QView that provides a subscribing member the ability to monitor the latency of its order messages through its OUCH ports on the Nasdaq system in real-time, analyze the latency of messages sent to the Nasdaq system, and compare its latency to the average latency on the Nasdaq system at any given time. In addition, users can view latency detail for order to book (i.e., how quickly an order is visible on the ITCH feed).

A member may subscribe to the Latency Optics add-on for a fee of $2,900 per month/per member.[A member that is a new subscriber may subscribe at no cost for the month of August 2013. Normal fees will apply to all subscribers beginning September 2013. A Latency Optics subscription includes subscription to TradeInfo for up to 5 users at no additional cost.]

<u>(c) The Exchange shall waive fees under this Rule for 30 days for any new, prospective, or returning purchaser of either QView or the Latency Optics add-on service. This waiver will be available only once per customer for any version of QView or the add-on service.</u>

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