Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2017 - * 134

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 * ☑	Amendment * ☐	Withdrawal ☐

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

Rule

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

☐ 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

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

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 Exchange Rule 7037

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 * Danie   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.

(Title *)

Date 12/26/2017

By Edward S. Knight

Executive Vice President and General Counsel

(Name *)

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.

edward.knight@nasdaq.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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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 *

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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, 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

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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

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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

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1.   Text of the Proposed Rule Change

(a)   The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange"), pursuant to

Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4

thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or

"Commission") a proposal to amend Exchange Rule 7037 to reflect substantial

enhancements to the data feeds underlying FilterView since the current fees were set in

2006. Specifically, the Exchange proposes to modify the monthly subscription fee for

FilterView from $500 to $750 per month per subset of data. The proposal is described

further below.

While these amendments are effective upon filing, the Exchange has designated

the proposed amendments to be operative on January 1, 2018.

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 adjust the fee schedule for FilterView to reflect

substantial enhancements to its underlying data feeds since the current fee was set in

2006.[3] Specifically, the Exchange proposes to change the monthly subscription fee for

FilterView from $500 to $750 per month per subset of data.

       FilterView

       FilterView allows market data Distributors to receive a subset of any other real-

time data feed offered by the Exchange, allowing Distributors to control information

processing costs by lowering the bandwidth required to process Exchange data.

FilterView is commonly purchased in two types: NLS FilterView and Nasdaq NOIView.

NLS FilterView separates Nasdaq Last Sale ("NLS")[4] data into two distinct data streams:

(i) NLS data from the Nasdaq execution system, and (ii) NLS data from the

FINRA/Nasdaq Trade Trade Reporting Facility ("TRF") system. Nasdaq NOIView

distributes order imbalance information from Nasdaq TotalView[5] in the minutes leading

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[3]   See Securities Exchange Act Release No. 54286 (August 8, 2006), 71 FR 46955
       (August 15, 2006) (SR-NASDAQ-2006-028).

[4]   NLS is a market data product that contains real-time last sale information for
       trades executed on the Exchange or reported to the FINRA/Nasdaq Trade
       Reporting Facility.

[5]   TotalView is the Exchange's complete Depth-of-Book data feed for Nasdaq-listed
       securities as well as securities listed by other exchanges, and provides every
       eligible order at each price level for all Nasdaq members. TotalView includes the

up to the Nasdaq Opening and Closing Crosses. This includes an indicative clearing

price and net order imbalance in the Nasdaq execution system.

Proposed Change

As a result of substantial enhancements to the data feeds underlying FilterView

since the current fee was set in 2006, the Exchange proposes to change its monthly

subscription fee from $500 to $750 per month per subset of data.

The value of Nasdaq FilterView, a subset of other market data feeds, is

inextricably connected to trade execution: market data feeds require trade orders to

provide useful information, and investors utilize such data to make trading decisions.

Over the eleven years that have elapsed since the current distribution fees were set,[6] the

Exchange has invested in an array of upgrades to both its trade execution and market

information services, increasing the overall value of these services, including

FilterView.[7] These upgrades include:

- Enhanced Services. In 2013, the Exchange enhanced its data feeds by: (i)

  converting to binary codes to make more efficient use of bandwidth and to

  provide greater timestamp granularity; (ii) adding a symbol directory message

  to identify a security and its key characteristics; (iii) adding a new IPO

  message for Nasdaq-listed securities for quotation release time and IPO price;

Net Order Imbalance Indicator ("NOII"), which provides data relating to buy and sell interest at the open and close of the trading day, in the context of an Initial Public Offering, and after a trading halt.

[6]   See Securities Exchange Act Release No. 54286 (August 8, 2006), 71 FR 46955 (August 15, 2006) (SR-NASDAQ-2006-028).

[7]   Many of these upgrades are common to several Nasdaq-affiliated exchanges, as improvements to the products and services of one exchange are reproduced in other exchanges.

and (iv) adding the Market Wide Circuit Breaker ("MWCB") Decline Level message to inform recipients of the setting for MWCB breach points for the trading day, and an MWCB Status Level Message to inform data recipients when an MWCB has breached an established level.[8]

- Exchange Traded Managed Funds ("ETMFs"). In 2015, the Exchange modified its data feeds to accommodate ETMFs, a type of investment vehicle that combines the features of an open-end mutual funds and an Exchange Traded Fund ("ETF") to support an actively managed-investment strategy.[9] ETF trading differs from other types of equity trading in that it uses a trading protocol called ''Net Asset Value-Based Trading,'' in which all bids, offers, and execution prices are expressed as a premium or discount to the ETMF's next-determined Net Asset Value ("NAV"). This distinct pricing format requires an entirely new set of data fields in which to distribute information related to prices and trades, and the Exchange modified Nasdaq Basic to accommodate that format.[10]

- Nanosecond Granularity. In 2016, Nasdaq introduced a new version of QBBO which allows for timestamp granularity to the nanosecond.[11]

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[8]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-45 and http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-33.

[9]   See Securities Exchange Act Release No. 73562 (November 7, 2014), 79 FR 68309 (November 14, 2014) (SR-NASDAQ-2014-020) (approving the listing and trading of Exchange-Traded Managed Fund Shares).

[10]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-7.

[11]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2016-03.

- Geographic Diversity. In 2015, all of the Nasdaq Exchanges moved their

  Disaster Recover ("DR") center from Ashburn, Virginia, to Chicago Illinois.

  As a result, customers can both receive market data and send orders through

  the Chicago facility, potentially reducing overall networking costs. Adding

  such geographic diversity helps protect the market in the event of a

  catastrophic event impacting the entire East Coast.[12]

- Chicago "B" Feeds. In 2017, all of the Nasdaq exchanges added a multicast

  IP address for proprietary equity and options data feeds in Chicago, allowing

  firms the choice of having additional redundancy to ensure data continuity.[13]

- Adjusted Closing Price. In 2013, Nasdaq introduced the adjusted closing

  price as a field to reflect a security's previous day official closing price,

  adjusted for corporate actions. For Nasdaq-listed securities, the Nasdaq

  Official Closing Price is used,[14] and the consolidated close from the security's

  listing exchange is used for non-Nasdaq securities.[15]

- New System Event Messages. In 2013, Nasdaq began disseminating event

  messages to indicate the start and end of system hours.[16]

While these many changes were in the process of implementation, fees for

Nasdaq FilterView were falling in real terms. Indeed, the proposed increase from $500 to

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[12]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-17.

[13]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2017-02.

[14]   Nasdaq's closing cross process produces a tradable closing price that represents
         either the closing cross or the best available price at the time of the transaction.

[15]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-25.

[16]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-20.

$750 per month is at least partially offset by inflation,[17] and represents only an approximately 3.75 percent annual increase over the course of the eleven years that elapsed between 2006 and 2017. The Exchange believes that the remaining increase is more than justified by the substantial upgrades described above.

As a result of these upgrades, the Exchange proposes to change the monthly subscription fee for FilterView from $500 to $750 per month per subset of data. Given these specific enhancements to the data feeds underlying FilterView, and to the Exchange's systems generally, and given the fact that the Exchange has not increased the subscription fee since 2006, the Exchange believes that the proposed fee increase is appropriate.

Nasdaq FilterView is optional in that the Exchange is not required to offer it and broker-dealers are not required to purchase it. Firms can discontinue use at any time and for any reason, including an assessment of the fees charged.

The proposed change does not change the cost of any other Exchange product.

b.   Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] 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.

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[17]   The Consumer Price Index increased by approximately 21 percent between August 2006 and November 2017. See https://data.bls.gov/cgi-bin/cpicalc.pl

[18]   15 U.S.C. 78f(b).

[19]   15 U.S.C. 78f(b)(4) and (5).

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining 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."[20]

Likewise, in NetCoalition v. Securities and Exchange Commission[21] ("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.[22] 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."[23]

Further, "[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

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[20]   See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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

[22]   See NetCoalition, at 534 - 535.

[23]   Id. at 537.

share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'...."[24]

The Exchange proposes to change the monthly subscription fee for FilterView from $500 to $750 per month per subset of data. The Exchange believes that the proposed fee increase is reasonable. While the Exchange has not increased such fees since 2006, the Exchange has added a number of enhancements to the data feeds underlying FilterView, as well as to the Exchange systems in general supporting FilterView. These enhancements, which are described in greater detail above, correspondingly enhance the value of FilterView. The proposed fee increase is therefore reflective of, and closely aligned to, these enhancements and the correspondingly increased value of the data feed. The proposed changes are equitable allocations of reasonable dues, fees and other charges because all recipients will be charged the same fee for the same service. The proposed changes do not permit unfair discrimination between customers, issuers, brokers, or dealers because this service will be available on a non-discriminatory basis to all similarly-situated recipients.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers ("BDs") 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. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

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[24]   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)).

[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.[25]

The Commission was speaking to the question of whether BDs should be subject to a regulatory requirement to purchase data, such as depth-of-book data, that is *in excess of* the data provided through the consolidated tape feeds, and the Commission concluded that the choice should be left to them. Accordingly, Regulation NMS removed unnecessary regulatory restrictions on the ability of exchanges to sell their own data, thereby advancing the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well. 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]

The proposed fees, like all market data fees, are constrained by the Exchange's need to compete for order flow, as discussed below, and are subject to competition from other exchanges and among broker-dealers for customers. If Nasdaq is incorrect in its assessment of price, it will lose market share as a result.

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

[26]   Id.

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. In terms of inter-market competition, the Exchange notes that it 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, or rebate opportunities

available at other venues to be more favorable. In such an environment, the Exchange

must continually adjust its fees to remain competitive with other exchanges and with

alternative trading systems that have been exempted from compliance with the statutory

standards applicable to exchanges. Because competitors are free to modify their own fees

in response, and because market participants may readily adjust their order routing

practices, the Exchange believes that the degree to which fee changes in this market may

impose any burden on competition is extremely limited.

As noted above, Nasdaq FilterView most commonly includes elements of NLS

and TotalView, which are both types of "non-core" data that provide subsets of the

"core" quotation and last sale data provided by securities information processors under

the CTA Plan and the Nasdaq UTP Plan. In 2016, an Administrative Law Judge in an

application for review by the Securities Industry and Financial Markets Association of

actions taken by Self-Regulatory Organizations examined whether another "non-core"

product, Depth-of-Book data, is constrained by competitive forces.[27] After a four-day

hearing and presentation of substantial evidence, the administrative law judge stated that

"competition plays a significant role in restraining exchange pricing of depth-of-book

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[27]   See Securities Industry and Financial Markets Association, Initial Decision
          Release No. 1015, 2016 SEC LEXIS 2278 (A.L.J. June 1, 2016).

products"[28] because "depth-of-book products from different exchanges function as

substitutes for each other,"[29] and, as such, "the threat of substitution from depth-of-book

customers constrains their depth-of-book prices."[30] As a result, "[s]hifts in order flow

and threats of shifting order flow provide a significant competitive force in the pricing of

. . . depth-of-book data."[31] The judge concluded that "[u]nder the standards articulated

by the Commission and D.C. Circuit, the Exchanges have shown that they are subject to

significant competitive forces in setting fees for depth-of-book data: the availability of

alternatives to the Exchanges' depth-of-book products, and the Exchanges' need to attract

order flow from market participants constrains prices."[32] In addition, the administrative

law judge stated that "[s]hifts in order flow and threats of shifting order flow provide a

significant competitive force in the pricing of . . . depth-of-book data."[33] As such,

Nasdaq's depth-of-book fees are "constrained by significant competitive forces."[34]

Market forces constrain the price of Nasdaq FilterView, just as they do other

market data fees, in the competition among exchanges and other entities to attract order

flow and in the competition among Distributors for customers. Order flow is the "life

blood" of the exchanges. Broker-dealers currently have numerous alternative venues for

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[28]   Id. at *92.

[29]   Id.

[30]   Id. at *93

[31]   Id. at *104.

[32]   Id. at *86.

[33]   Id. at *37.

[34]   Id. at *43.

their order flow, including self-regulatory organization ("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. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

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. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

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 and 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).[35]

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. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will disfavor a particular exchange if the expected revenues from executing trades on the exchange do not exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of

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[35]   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).

the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing more orders will become correspondingly more valuable.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Nasdaq pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an "excessive" price for one of the joint products will ultimately have to be reflected in lower prices for

other products sold by the firm, or otherwise the firm will experience a loss in the volume

of its sales that will be adverse to its overall profitability. In other words, an increase in

the price of data will ultimately have to be accompanied by a decrease in the cost of

executions, or the volume of both data and executions will fall.[36]

The proposed change is to increase the monthly subscription fee for FilterView

from $500 to $750 per month per subset of data. The proposal will not impose any

burden on competition because it is simply a price change that will not alter the overall

market structure. Because the proposed fees will become one aspect of the total cost of

interacting with the Exchange, the Exchange will lose revenue if these total costs prove to

be excessive. Accordingly, the Exchange does not believe that the proposed changes will

impair the ability of members or competing order execution venues to maintain their

competitive standing in the financial markets.

5.   <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule
      Change Received from Members, Participants, or Others</u>

No written comments were either solicited or received.

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[36]   Moreover, the level of competition and contestability in the market is evident in
        the numerous alternative venues that compete for order flow, including SRO
        markets, 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, IEX, and BATS/Direct Edge.

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,[37] 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 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.

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[37]   15 U.S.C. 78s(b)(3)(A)(ii).

5.   Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No.   ; File No. SR-NASDAQ-2017-134)

December __, 2017

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and
Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 7037

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 December 26, 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 Exchange Rule 7037 to reflect substantial

enhancements to the data feeds underlying FilterView since the current fees were set in

2006. Specifically, the Exchange proposes to modify the monthly subscription fee for

FilterView from $500 to $750 per month per subset of data. The proposal is described

further below.

While these amendments are effective upon filing, the Exchange has designated

the proposed amendments to be operative on January 1, 2018.

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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 adjust the fee schedule for FilterView to reflect

substantial enhancements to its underlying data feeds since the current fee was set in

2006.[3] Specifically, the Exchange proposes to change the monthly subscription fee for

FilterView from $500 to $750 per month per subset of data.

FilterView

FilterView allows market data Distributors to receive a subset of any other real-

time data feed offered by the Exchange, allowing Distributors to control information

processing costs by lowering the bandwidth required to process Exchange data.

FilterView is commonly purchased in two types: NLS FilterView and Nasdaq NOIView.

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[3]   See Securities Exchange Act Release No. 54286 (August 8, 2006), 71 FR 46955
       (August 15, 2006) (SR-NASDAQ-2006-028).

NLS FilterView separates Nasdaq Last Sale ("NLS")[4] data into two distinct data streams: (i) NLS data from the Nasdaq execution system, and (ii) NLS data from the FINRA/Nasdaq Trade Trade Reporting Facility ("TRF") system. Nasdaq NOIView distributes order imbalance information from Nasdaq TotalView[5] in the minutes leading up to the Nasdaq Opening and Closing Crosses. This includes an indicative clearing price and net order imbalance in the Nasdaq execution system.

Proposed Change

As a result of substantial enhancements to the data feeds underlying FilterView since the current fee was set in 2006, the Exchange proposes to change its monthly subscription fee from $500 to $750 per month per subset of data.

The value of Nasdaq FilterView, a subset of other market data feeds, is inextricably connected to trade execution: market data feeds require trade orders to provide useful information, and investors utilize such data to make trading decisions. Over the eleven years that have elapsed since the current distribution fees were set,[6] the Exchange has invested in an array of upgrades to both its trade execution and market

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[4]   NLS is a market data product that contains real-time last sale information for trades executed on the Exchange or reported to the FINRA/Nasdaq Trade Reporting Facility.

[5]   TotalView is the Exchange's complete Depth-of-Book data feed for Nasdaq-listed securities as well as securities listed by other exchanges, and provides every eligible order at each price level for all Nasdaq members. TotalView includes the Net Order Imbalance Indicator ("NOII"), which provides data relating to buy and sell interest at the open and close of the trading day, in the context of an Initial Public Offering, and after a trading halt.

[6]   See Securities Exchange Act Release No. 54286 (August 8, 2006), 71 FR 46955 (August 15, 2006) (SR-NASDAQ-2006-028).

information services, increasing the overall value of these services, including

FilterView.[7] These upgrades include:

- Enhanced Services. In 2013, the Exchange enhanced its data feeds by: (i)

  converting to binary codes to make more efficient use of bandwidth and to

  provide greater timestamp granularity; (ii) adding a symbol directory message

  to identify a security and its key characteristics; (iii) adding a new IPO

  message for Nasdaq-listed securities for quotation release time and IPO price;

  and (iv) adding the Market Wide Circuit Breaker ("MWCB") Decline Level

  message to inform recipients of the setting for MWCB breach points for the

  trading day, and an MWCB Status Level Message to inform data recipients

  when an MWCB has breached an established level.[8]

- Exchange Traded Managed Funds ("ETMFs"). In 2015, the Exchange

  modified its data feeds to accommodate ETMFs, a type of investment vehicle

  that combines the features of an open-end mutual funds and an Exchange

  Traded Fund ("ETF") to support an actively managed-investment strategy.[9]

  ETF trading differs from other types of equity trading in that it uses a trading

  protocol called ''Net Asset Value-Based Trading,'' in which all bids, offers,

  and execution prices are expressed as a premium or discount to the ETMF's

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[7]   Many of these upgrades are common to several Nasdaq-affiliated exchanges, as
        improvements to the products and services of one exchange are reproduced in
        other exchanges.

[8]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-45 and
        http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-33.

[9]   See Securities Exchange Act Release No. 73562 (November 7, 2014), 79 FR
        68309 (November 14, 2014) (SR-NASDAQ-2014-020) (approving the listing and
        trading of Exchange-Traded Managed Fund Shares).

next-determined Net Asset Value ("NAV"). This distinct pricing format requires an entirely new set of data fields in which to distribute information related to prices and trades, and the Exchange modified Nasdaq Basic to accommodate that format.[10]

- Nanosecond Granularity. In 2016, Nasdaq introduced a new version of QBBO which allows for timestamp granularity to the nanosecond.[11]

- Geographic Diversity. In 2015, all of the Nasdaq Exchanges moved their Disaster Recover ("DR") center from Ashburn, Virginia, to Chicago Illinois. As a result, customers can both receive market data and send orders through the Chicago facility, potentially reducing overall networking costs. Adding such geographic diversity helps protect the market in the event of a catastrophic event impacting the entire East Coast.[12]

- Chicago "B" Feeds. In 2017, all of the Nasdaq exchanges added a multicast IP address for proprietary equity and options data feeds in Chicago, allowing firms the choice of having additional redundancy to ensure data continuity.[13]

- Adjusted Closing Price. In 2013, Nasdaq introduced the adjusted closing price as a field to reflect a security's previous day official closing price, adjusted for corporate actions. For Nasdaq-listed securities, the Nasdaq

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[10]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-7.

[11]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2016-03.

[12]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-17.

[13]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2017-02.

Official Closing Price is used,[14] and the consolidated close from the security's

listing exchange is used for non-Nasdaq securities.[15]

- New System Event Messages. In 2013, Nasdaq began disseminating event

  messages to indicate the start and end of system hours.[16]

While these many changes were in the process of implementation, fees for

Nasdaq FilterView were falling in real terms. Indeed, the proposed increase from $500 to

$750 per month is at least partially offset by inflation,[17] and represents only an

approximately 3.75 percent annual increase over the course of the eleven years that

elapsed between 2006 and 2017. The Exchange believes that the remaining increase is

more than justified by the substantial upgrades described above.

As a result of these upgrades, the Exchange proposes to change the monthly

subscription fee for FilterView from $500 to $750 per month per subset of data. Given

these specific enhancements to the data feeds underlying FilterView, and to the

Exchange's systems generally, and given the fact that the Exchange has not increased the

subscription fee since 2006, the Exchange believes that the proposed fee increase is

appropriate.

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[14]   Nasdaq's closing cross process produces a tradable closing price that represents
         either the closing cross or the best available price at the time of the transaction.

[15]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-25.

[16]   See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-20.

[17]   The Consumer Price Index increased by approximately 21 percent between
         August 2006 and November 2017. See https://data.bls.gov/cgi-bin/cpicalc.pl

Nasdaq FilterView is optional in that the Exchange is not required to offer it and broker-dealers are not required to purchase it. Firms can discontinue use at any time and for any reason, including an assessment of the fees charged.

The proposed change does not change the cost of any other Exchange product.

2.   Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] 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 Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining 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."[20]

Likewise, in NetCoalition v. Securities and Exchange Commission[21] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based

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[18]   15 U.S.C. 78f(b).

[19]   15 U.S.C. 78f(b)(4) and (5).

[20]   See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

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

approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[22] 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."[23]

Further, "[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'…."[24]

The Exchange proposes to change the monthly subscription fee for FilterView from $500 to $750 per month per subset of data. The Exchange believes that the proposed fee increase is reasonable. While the Exchange has not increased such fees since 2006, the Exchange has added a number of enhancements to the data feeds underlying FilterView, as well as to the Exchange systems in general supporting FilterView. These enhancements, which are described in greater detail above, correspondingly enhance the value of FilterView. The proposed fee increase is therefore reflective of, and closely aligned to, these enhancements and the correspondingly increased value of the data feed. The proposed changes are equitable allocations of

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[22]   See NetCoalition, at 534 - 535.

[23]   Id. at 537.

[24]   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)).

reasonable dues, fees and other charges because all recipients will be charged the same

fee for the same service. The proposed changes do not permit unfair discrimination

between customers, issuers, brokers, or dealers because this service will be available on a

non-discriminatory basis to all similarly-situated recipients.

In adopting Regulation NMS, the Commission granted self-regulatory

organizations ("SROs") and broker-dealers ("BDs") 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. The Commission concluded that

Regulation NMS—by deregulating the market in proprietary data—would itself further

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.[25]

The Commission was speaking to the question of whether BDs should be subject to a

regulatory requirement to purchase data, such as depth-of-book data, that is *in excess of*

the data provided through the consolidated tape feeds, and the Commission concluded

that the choice should be left to them. Accordingly, Regulation NMS removed

unnecessary regulatory restrictions on the ability of exchanges to sell their own data,

thereby advancing the goals of the Act and the principles reflected in its legislative

history. If the free market should determine whether proprietary data is sold to BDs at

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

all, it follows that the price at which such data is sold should be set by the market as well. 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]

The proposed fees, like all market data fees, are constrained by the Exchange's need to compete for order flow, as discussed below, and are subject to competition from other exchanges and among broker-dealers for customers. If Nasdaq is incorrect in its assessment of price, it will lose market share as a result.

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. In terms of inter-market competition, the Exchange notes that it 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, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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[26]   Id.

As noted above, Nasdaq FilterView most commonly includes elements of NLS and TotalView, which are both types of "non-core" data that provide subsets of the "core" quotation and last sale data provided by securities information processors under the CTA Plan and the Nasdaq UTP Plan. In 2016, an Administrative Law Judge in an application for review by the Securities Industry and Financial Markets Association of actions taken by Self-Regulatory Organizations examined whether another "non-core" product, Depth-of-Book data, is constrained by competitive forces.[27] After a four-day hearing and presentation of substantial evidence, the administrative law judge stated that "competition plays a significant role in restraining exchange pricing of depth-of-book products"[28] because "depth-of-book products from different exchanges function as substitutes for each other,"[29] and, as such, "the threat of substitution from depth-of-book customers constrains their depth-of-book prices."[30] As a result, "[s]hifts in order flow and threats of shifting order flow provide a significant competitive force in the pricing of . . . depth-of-book data."[31] The judge concluded that "[u]nder the standards articulated by the Commission and D.C. Circuit, the Exchanges have shown that they are subject to significant competitive forces in setting fees for depth-of-book data: the availability of alternatives to the Exchanges' depth-of-book products, and the Exchanges' need to attract

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[27]   See Securities Industry and Financial Markets Association, Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (A.L.J. June 1, 2016).

[28]   Id. at *92.

[29]   Id.

[30]   Id. at *93

[31]   Id. at *104.

order flow from market participants constrains prices."[32] In addition, the administrative

law judge stated that "[s]hifts in order flow and threats of shifting order flow provide a

significant competitive force in the pricing of . . . depth-of-book data."[33] As such,

Nasdaq's depth-of-book fees are "constrained by significant competitive forces."[34]

Market forces constrain the price of Nasdaq FilterView, just as they do other

market data fees, in the competition among exchanges and other entities to attract order

flow and in the competition among Distributors for customers. Order flow is the "life

blood" of the exchanges. Broker-dealers currently have numerous alternative venues for

their order flow, including self-regulatory organization ("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. The existence of fierce

competition for order flow implies a high degree of price sensitivity on the part of BDs,

which may readily reduce costs by directing orders toward the lowest-cost trading

venues.

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

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[32]   Id. at *86.

[33]   Id. at *37.

[34]   Id. at *43.

attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

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 and 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).[35]

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

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[35]   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).

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. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will disfavor a particular exchange if the expected revenues from executing trades on the exchange do not exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing more orders will become correspondingly more valuable.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Nasdaq pays rebates to attract orders, charges relatively low

prices for market information and charges relatively high prices for accessing posted

liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to

attract orders, setting relatively low prices for accessing posted liquidity, and setting

relatively high prices for market information. Still others may provide most data free of

charge and rely exclusively on transaction fees to recover their costs. Finally, some

platforms may incentivize use by providing opportunities for equity ownership, which

may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for

one of the joint products in an industry in which suppliers face competitive constraints

with regard to the joint offering. Such regulation is unnecessary because an "excessive"

price for one of the joint products will ultimately have to be reflected in lower prices for

other products sold by the firm, or otherwise the firm will experience a loss in the volume

of its sales that will be adverse to its overall profitability. In other words, an increase in

the price of data will ultimately have to be accompanied by a decrease in the cost of

executions, or the volume of both data and executions will fall.[36]

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[36]   Moreover, the level of competition and contestability in the market is evident in
         the numerous alternative venues that compete for order flow, including SRO
         markets, 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

The proposed change is to increase the monthly subscription fee for FilterView from $500 to $750 per month per subset of data. The proposal will not impose any burden on competition because it is simply a price change that will not alter the overall market structure. Because the proposed fees will become one aspect of the total cost of interacting with the Exchange, the Exchange will lose revenue if these total costs prove to be excessive. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

      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.[37]

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.

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many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, IEX, and BATS/Direct Edge.

[37]   15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-134 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-2017-134. 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-2017-134 and should

be submitted on or before [insert date 21 days from publication in the <u>Federal Register</u>].

For the Commission, by the Division of Trading and Markets, pursuant to

delegated authority.[38]

> Eduardo A. Aleman
> Assistant Secretary

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[38]   17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

Equity Rules

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7037. Nasdaq FilterView Service

The Nasdaq FilterView service shall allow a Distributor to receive a sub-set of an existing real-time data feed distributed by Nasdaq. FilterView service shall be available for a subscription fee of $[500]<u>750</u> per month per sub-set of data, in addition to the fees associated with the relevant underlying data feed. There shall be no incremental user charges for distributors related to use of the FilterView service.

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