

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-036 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-CboeBZX-2021-036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2021-036 and should be submitted on or before June 8, 2021.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91874; File No. SR-NASDAQ-2021-036]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Broker-Dealers That Purchase the Nasdaq Basic Enterprise License at Equity 7, Section 147(b)(5) to Distribute Nasdaq Last Sale ("NLS") to the General Investing Public

May 12, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 30, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to allow broker-dealers that purchase the Nasdaq Basic enterprise license at Equity 7, Section 147(b)(5) to distribute Nasdaq Last Sale ("NLS") to the general investing public under the same terms and conditions currently permitted under the NLS enterprise license at Equity 7, Section 139(b)(4). The current

Nasdaq Basic enterprise license at Section 147(b)(5) allows distribution of NLS to natural persons in a brokerage relationship with the broker-dealer, while the current NLS enterprise license at Section 139(b)(4) allows distribution to the general investing public for Display Usage, and requires the Distributor to have a reasonable basis to conclude that all Users of such information are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using NLS in their professional capacity. The proposal is to allow broker-dealers that purchase the Nasdaq Basic enterprise license at Section 147(b)(5) to distribute NLS to the general investing public for Display Usage under the same conditions as set forth at Section 139(b)(4).

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to allow broker-dealers that purchase the Nasdaq Basic enterprise license at Equity 7, Section 147(b)(5) to distribute NLS to the general investing public under the same terms and conditions currently permitted under the NLS enterprise license at Equity 7, Section 139(b)(4). The current Nasdaq Basic enterprise license at Section 147(b)(5) limits distribution of NLS to natural persons in a brokerage relationship with the broker-dealer, while the current NLS enterprise license at Section 139(b)(4) allows distribution to the general

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

investing public for Display Usage,<sup>3</sup> and requires the Distributor<sup>4</sup> to have a reasonable basis to conclude that all Users of such information are either Non-Professionals<sup>5</sup> or Professionals<sup>6</sup> whom the Distributor has no reason to believe are using NLS in their professional capacity. The proposal is to allow broker-dealers that purchase the Nasdaq Basic enterprise license at Section 147(b)(5) to distribute NLS to the general investing public for Display Usage under the same conditions set forth at Section 139(b)(4).<sup>7</sup>

No exchange fees will change as a result of the Proposal.

#### Current Enterprise Licenses for Nasdaq Basic and NLS

##### Nasdaq Basic

Nasdaq Basic is a real-time market data product that offers best bid and offer and last sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center and trades reported to the

<sup>3</sup> “Display Usage” means “any method of accessing Exchange Information that involves the display of such data on a screen or other mechanism designed for access or use by a natural person or persons.” Equity 7, Section 139(f)(2).

<sup>4</sup> A “Distributor” is “an entity, as identified in the Nasdaq Global Data Agreement (or any successor agreement), that executes such an Agreement and has access to Exchange Information, together with its affiliates having such access.” Equity 7, Section 139(f)(3).

<sup>5</sup> A “Non-Professional Subscriber” is “a natural person who is not: (A) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.” Equity 7, Section 139(f)(6).

<sup>6</sup> A “Professional Subscriber” is “any natural person, proprietorship, corporation, partnership, or other entity whatever other than a Non-Professional.” Equity 7, Section 139(f)(7).

<sup>7</sup> The Exchange also proposes to introduce three conforming changes. First, Nasdaq proposes language to clarify that the approval requirements for electronic systems discussed in Section 147 apply to the distribution of Nasdaq Basic, not to the distribution of NLS. Distribution of NLS will be approved according to the standards set forth in Section 139, and will be subject to all of the provisions, excluding the payment of fees, set forth in Section 139(b)(4). Second, the Exchange proposes to replace an incorrect citation to Equity 7, Section 147(d)(3) with the correct citation to Equity 7, Section 147(d)(4). Third, the Exchange proposes to remove a reference to Section 139(c) to clarify that the enterprise license under Section 147(b)(5) covers the fees for distribution to the general investing public listed in Equity 7, Section 139(b), but not the fees for specialized use cases set forth in Equity 7, Section 139(c).

FINRA/Nasdaq Trade Reporting Facility (“TRF”). It is a subset of the “core” quotation and last sale data provided by securities information processors (“SIPs”), which distribute consolidated data pursuant to the CTA/CQ Plan and the UTP Plan.

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

Nasdaq offers an enterprise license for Nasdaq Basic that allows a broker-dealer to distribute Nasdaq Basic, or Derived Data therefrom, through any electronic system approved by Nasdaq, to an unlimited number of Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship.<sup>8</sup> The monthly fee for that license is \$100,000.<sup>9</sup> That license also provides the right to distribute NLS to an unlimited number of Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship without paying the fees set forth in Equity 7, Section 139(b) or (c).<sup>10</sup>

##### Nasdaq Last Sale

NLS provides real-time last sale information for executions occurring

<sup>8</sup> See Equity 7 Section 147(b)(5).

<sup>9</sup> See *id.*

<sup>10</sup> The Nasdaq Basic enterprise license also includes a number of other provisions and restrictions not at issue here, including but not limited to: (i) A limitation that the use of the data by a Professional Subscriber shall be limited to the brokerage relationship, except that Nasdaq Basic data may be made available for up to 4,500 internal Subscribers without incurring additional fees; (ii) a requirement for a separate enterprise license for each discrete electronic system; (iii) a requirement that the broker-dealer pay distributor fees under paragraph (c)(1); and (iv) a requirement that the broker-dealer report the number of Subscribers receiving Nasdaq Basic under this license.

within the Nasdaq market center and trades reported to the jointly-operated FINRA/Nasdaq TRF.<sup>11</sup> The NLS data feed, which provides price, volume and time of execution data for last sale transactions, includes transaction information for Nasdaq-listed stocks (“NLS for Nasdaq”) and for stocks listed on NYSE, NYSE American, and other Tape B listing venues (“NLS for NYSE/NYSE American”).<sup>12</sup> It is, like Nasdaq Basic, a non-core product that provides a subset of the core data provided by the SIPs under the CTA and UTP plans.<sup>13</sup>

The Exchange offers an enterprise license for NLS under Section 139(b)(4), which allows any Distributor that is disseminating NLS to the general investing public, and which would otherwise pay the Per User, Per Query, or Per Device fees set forth in Equity 7, Sections 139(b)(1) through (3), to purchase a monthly enterprise license for \$41,500. To be eligible for the license, NLS must be distributed on a platform(s) controlled by the Distributor and pre-approved by the Exchange as providing the Distributor with a reasonable basis to conclude that all Users of such Information<sup>14</sup> are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using Nasdaq Last Sale in their professional capacity.

##### Proposed Change

The Exchange proposes to allow broker-dealers that purchase the Nasdaq Basic enterprise license at Equity 7, Section 147(b)(5) to distribute NLS to the general investing public under the same terms and conditions currently permitted under the NLS enterprise license at Equity 7, Section 139(b)(4). Currently, broker-dealers that purchase

<sup>11</sup> See Securities Exchange Act Release No. 55255 (February 8, 2007), 72 FR 7100 (February 14, 2007) (SR-NASDAQ-2006-060) (proposing to establish Nasdaq Last Sale data feeds); see also Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060) (approving SR-NASDAQ-2006-060, as amended by Amendment Nos. 1 and 2, to implement NLS on a pilot basis).

<sup>12</sup> See Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060).

<sup>13</sup> See Securities Exchange Act Release No. 34-82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-NASDAQ-2018-010).

<sup>14</sup> “Information” means “any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) Eligible securities or other financial instruments, markets, products, vehicles, indicators or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.” See Equity 7, Section 139(f)(5).

the Nasdaq Basic enterprise license are allowed to distribute NLS to “an unlimited number of Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship,”<sup>15</sup> while Distributors that purchase the NLS enterprise license may distribute NLS to any member of the general investing public for Display Usage, provided that the Distributor has a “reasonable basis to conclude that all Users of such Information are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using Nasdaq Last Sale in their professional capacity.”<sup>16</sup> Nasdaq proposes to allow purchasers of Nasdaq Basic to distribute NLS to the general investing public for Display Usage under the same terms and conditions as the NLS enterprise license.

The Proposal will offer purchasers of the Nasdaq Basic enterprise license at Equity 7, Section 147(b)(5) the full use of the NLS enterprise license at Equity 7, Section 139(b)(4) at no extra charge. The same terms and conditions applicable to the NLS enterprise license will continue to apply to the distribution of NLS to the general investing public under the Nasdaq Basic enterprise license. These common conditions include: (i) A limitation that distribution of NLS will be limited to Display Usage;<sup>17</sup> (ii) a separate approval for each platform that will distribute NLS will be required;<sup>18</sup> and (iii) a

requirement that distribution be limited to the general investing public.<sup>19</sup> The Exchange also proposes to delete a reference Equity 7, Section 139(c) to make it clear that distributors that utilize NLS for one of the specialized use cases set forth at Equity 7, Section 139(c) will be required to pay the fees applicable to such use cases, whether or not they purchased the Nasdaq Basic or NLS enterprise licenses. All of these restrictions currently apply to purchasers of the NLS enterprise license.<sup>20</sup> The Proposal will continue to allow the distribution of Nasdaq Basic, including the last sale information that is a component of Nasdaq Basic, under the terms and conditions set forth in Equity 7, Section 147(b)(5) without change.

The Proposal will allow broader distribution of NLS to the general investing public and will lower our customers’ administrative costs, as they would not be required to restrict distribution to individuals with brokerage accounts.

#### Discussion

#### Background

Limitations on the distribution of NLS under the Nasdaq Basic enterprise license have changed over time. The enterprise license was initially proposed in 2011. At that time, distribution was limited to Non-Professional Subscribers in a brokerage relationship, and NLS was not included.<sup>21</sup> Distribution of NLS was added in 2017,<sup>22</sup> and, in 2018, distribution of NLS was limited to Professional and Non-Professional

of the Nasdaq Basic enterprise license that choose to distribute NLS outside of the brokerage relationship as customers that choose to solely purchase the NLS enterprise license.

<sup>19</sup> Distribution of NLS under any specialized use case would occur under the applicable fee set forth in Equity 7, Section 139(c). *Compare* Equity 7, Section 139(b) (identifying fees for distribution to the General Investing Public) with Equity 7, Section 139(c) (identifying fees for specialized usage of NLS).

<sup>20</sup> Current purchasers of the Nasdaq Basic enterprise license will not be circumscribed in their ability to distribute last sale data within the parameters of that license. As explained above, Nasdaq Basic contains both best bid and offer information and last sale transaction reports. Customers that purchase Nasdaq Basic will continue to be able to distribute last sale data within the brokerage relationship as part of the Nasdaq Basic enterprise license without change. The proposal will simply add a new option for Nasdaq Basic customers: to distribute NLS data outside of the brokerage relationship, under the same terms and conditions that apply to purchasers of the NLS enterprise license.

<sup>21</sup> *See* Securities Exchange Act Release No. 65526 (October 11, 2011), 76 FR 64137 (October 17, 2011) (SR–Nasdaq–2011–130).

<sup>22</sup> *See* Securities Exchange Act Release No. 81697 (September 25, 2017), 82 FR 45639 (September 29, 2017) (SR–Nasdaq–2017–095).

Subscribers who are natural persons in a brokerage relationship with the broker-dealer, the same limitation as the distribution of Nasdaq Basic.<sup>23</sup>

In 2019, Nasdaq introduced the enterprise license fee for NLS at Section 139(b)(4).<sup>24</sup> The purpose of the enterprise license was to lower the cost of distributing last sale data and expand its availability to the general investing public by eliminating certain counting requirements for NLS usage, and expanding the available mechanisms for the delivery of NLS data. Nasdaq noted in that filing that NLS had been designed to enable market-data distributors “to provide free access to [] data to millions of individual investors via the internet and television” and was expected to “increase[] the availability of N[asdaq] proprietary market data to individual investors.”<sup>25</sup>

The 2019 filing for the NLS enterprise license included the requirement that the Distributor have a reasonable basis to conclude that all Users of such Information<sup>26</sup> are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using NLS in their professional capacity—the same test applied to the Per User model of NLS distribution.<sup>27</sup> The Exchange explained that a Distributor has “no reason to believe” that NLS is being used in a professional capacity when, for example, the data is made available to the general investing public in a format that would be “unlikely to be of significant use to Professionals acting in a professional capacity,” as in the Per Query model,<sup>28</sup> or when the Information is “made freely available to internet users,” as in the Per Device model.<sup>29</sup> Any Distributor that would be eligible to disseminate NLS under the Per User, Per Query, or Per Device models would be able to meet that test because it is inherent (or explicit) within the eligibility criteria

<sup>23</sup> *See* Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010).

<sup>24</sup> *See* Securities Exchange Act Release No. 85504 (April 3, 2019), 84 FR 14183 (April 9, 2019) (SR–NASDAQ–2019–024).

<sup>25</sup> *See id.*; *see also* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (notice of filing of Amendment No. 2 and Order granting accelerated approval to proposed rule change, as modified by Amendment Nos. 1 and 2, to establish Nasdaq last sale data feeds).

<sup>26</sup> *See supra*, note 14.

<sup>27</sup> *See* Section 139(b)(1).

<sup>28</sup> *See* Securities Exchange Act Release No. 85504 (April 3, 2019), 84 FR 14183 (April 9, 2019) (SR–NASDAQ–2019–024); *see also* Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010).

<sup>29</sup> *See id.*

<sup>15</sup> Equity 7, Section 147(b)(5).

<sup>16</sup> Equity 7, Section 139(b)(4).

<sup>17</sup> *See id.* (“For any customer that would otherwise be eligible for the Per User, Per Query, or Per Device fees set forth in subsections (1) through (3) above, excluding any requirement to count or track usage, a Distributor may purchase a monthly enterprise license for \$41,500 to distribute Nasdaq Last Sale data to the General Investing Public for Display Usage to an unlimited number of Users or Devices, including, but not limited to, television distribution. . . .”) (emphasis added).

<sup>18</sup> *See id.* (“To be eligible for the enterprise license, Nasdaq Last Sale must be distributed on platform(s) controlled by the Distributor and pre-approved by the Exchange as providing the Distributor with a reasonable basis to conclude that all Users of such Information are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using Nasdaq Last Sale in their professional capacity.”). This is a different platform approval requirement from that required to distribute Nasdaq Basic under Section 147(b)(5). The approval for a Nasdaq Basic platform under Section 147(b)(5) is used to confirm that the platform distributes information within the brokerage relationship, and meets all other requirements set forth within that license. The approval for the NLS platform under Section 139(b)(4) is used to confirm that the Distributor has a reasonable basis to conclude that all Users of such Information are either Non-Professionals or Professionals whom the Distributor has no reason to believe are using Nasdaq Last Sale in their professional capacity. This modification places the same platform approval requirement on purchasers

for each model.<sup>30</sup> One of the chief benefits of the enterprise license was that it was designed to allow Distributors to disseminate NLS data to the general investing public in a manner not easily tracked using the Per User, Per Query, or Per Device models.<sup>31</sup>

#### Basis for Proposal

At least two potential customers of the Nasdaq Basic enterprise license have requested permission to distribute NLS to the general investing public for Display Usage without requiring a brokerage relationship. Upon consideration of those customer requests, Nasdaq has determined that complying with them is in the best interest of our customers. First, the proposed change will allow broader distribution of NLS to the general investing public. Second, the Proposal will lower our customers' administrative costs as they would not be required to restrict distribution to individuals with brokerage accounts.<sup>32</sup>

There is little risk that the new standard will result in widespread distribution of NLS, which was designed for the general investing public, to professionals acting in their professional capacity. Although the new standard may occasionally result in incidental Professional use, such use is reasonable because NLS contains less

<sup>30</sup>The "no reason to believe" test is explicitly part of the criteria for the Per User model. See Section 139(b)(1). It is inherent in the Per Query model because, as noted above and in the filing instituting that fee, this model "is unlikely to be of significant use to Professionals acting in a professional capacity . . ." See Securities Exchange Act Release No. 34-82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-NASDAQ-2018-010). It is also inherent in the Per Device model because that model is designed to make information "freely available to internet users," and therefore is unlikely to be of significant use to Professionals acting in a professional capacity. See *id.*

<sup>31</sup>An example of the type of distribution model intended to benefit from the proposed license is a spreadsheet program that allows the User to refresh a stock price using an in-program command without copying data. Such usage is analogous to the Per Query model, which supplies only as much data as the User requests on an ad hoc basis, but is less susceptible to counting because the request is done using a command embedded within another program.

<sup>32</sup>See Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-NASDAQ-2018-010) (quoting SR-NASDAQ-2006-060 (Amendment No. 2, June 10, 2008), at 3.) (explaining that NLS was designed to enable market-data "distributors to provide free access to the data to millions of individual investors via the internet and television" and was expected to "increase the availability of NASDAQ proprietary market data to individual investors."); see also Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060) (notice of filing of Amendment No. 2 and Order granting accelerated approval to proposed rule change, as modified by Amendment Nos. 1 and 2, to establish Nasdaq last sale data feeds).

information and does not provide pre-trade transparency, and is therefore likely to be less useful to a Professional than Nasdaq Basic or other products that provide greater pre-trade information.

The proposed change is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other.<sup>33</sup>

The Exchange expects the Nasdaq Basic enterprise license to continue to be attractive to potential customers, but does not expect a large number of additional sales in response to this change. Nevertheless, based on conversations with potential customers and our overall familiarity with the market, as many as three additional broker-dealers may purchase the Nasdaq Basic enterprise license as a result of the proposed change.<sup>34</sup>

The Proposal will not alter any Exchange fees.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>35</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>36</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange has already shown the Nasdaq Basic enterprise license at Section 147(b)(5),<sup>37</sup> and the NLS

enterprise license at Section 139(b)(4)<sup>38</sup> to be consistent with Section 6(b) of the Act. This analysis therefore focuses on the change to the Nasdaq Basic enterprise license at Section 147(b)(5).

As explained above, the Proposal will expand the coverage of the Nasdaq Basic enterprise license at Equity 7, Section 147(b)(5) to include the full use of the NLS enterprise license at Equity 7, Section 139(b)(4) at no extra charge. The same terms and conditions applicable to the NLS enterprise license will continue to apply to the distribution of NLS to the general investing public under the Nasdaq Basic enterprise license. These common conditions include: (i) A requirement that distribution of NLS be limited to Display Usage;<sup>39</sup> (ii) a separate approval of each platform that will distribute NLS will be required;<sup>40</sup> and (iii) a restriction that distribution be limited to the general investing public.<sup>41</sup> Distributors that utilize NLS for one of the specialized use cases set forth at Equity 7, Section 139(c) will be required to pay the fees applicable to such use cases, whether or not they purchased the Nasdaq Basic or NLS enterprise licenses. All of conditions that currently apply to purchasers of the NLS enterprise license will apply to distribution of NLS for Display Usage to the general investing public under the Nasdaq Basic enterprise license.<sup>42</sup>

Both Nasdaq Basic and NLS compete with the top-of-book proprietary data products offered by other exchanges, including the NYSE BQT feed, which disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca, NYSE National, and NYSE Chicago exchanges,<sup>43</sup> and the Cboe One Summary Feed, which disseminates data from the BZX Exchange, BYX

<sup>38</sup>See Securities Exchange Act Release No. 85504 (April 3, 2019), 84 FR 14183 (April 9, 2019) (SR-NASDAQ-2019-024).

<sup>39</sup>See *supra*, note 17.

<sup>40</sup>See *supra*, note 18.

<sup>41</sup>See *supra*, note 19.

<sup>42</sup>See *supra*, note 20. Current purchasers of the Nasdaq Basic enterprise license will not be circumscribed in their ability to distribute last sale data within the parameters of that license. As explained above, Nasdaq Basic contains both best bid and offer information and last sale transaction reports. Customers that purchase Nasdaq Basic will continue to be able to distribute last sale data within the brokerage relationship as part of the Nasdaq Basic enterprise license without change. The proposal will simply add a new option for Nasdaq Basic customers: To distribute NLS data outside of the brokerage relationship, under the same terms and conditions that apply to purchasers of the NLS enterprise license.

<sup>43</sup>See Securities Exchange Act Release No. 87803 (December 19, 2019), 84 FR 71505 (December 27, 2019) (SR-NYSE-2019-70) (explaining that the NYSE BQT market data product competes "head to head with the Nasdaq Basic and Cboe One Feed market data products.").

<sup>33</sup>Although this is not a fee filing, the Exchange is addressing this question to provide as complete as possible an evaluation of the proposed change. See Division of Trading and Markets, U.S. Securities and Exchange Commission, "Staff Guidance on SRO Filings Related to Fees" (May 21, 2019) ("Staff Guidance"), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (indicating that the discussion of purpose should indicate "whether the relevant product or service, including the corresponding proposed fee or fee change, is targeted at—or expected to be limited in its applicability to—a specific segment(s) of market participants (and if so, the related details)").

<sup>34</sup>See *id.* (requesting that the discussion of purpose address "the projected number of purchasers (including members, as well as non-members) of any new or modified product or service and the expected number of purchasers likely to be subject to a new fee or pricing tier, including members and non-members . . .").

<sup>35</sup>15 U.S.C. 78f(b).

<sup>36</sup>15 U.S.C. 78f(b)(5).

<sup>37</sup>See Securities Exchange Act Release No. 81697 (September 25, 2017), 82 FR 45639 (September 29, 2017) (SR-Nasdaq-2017-095).

Exchange, EDGX Exchange and EDGA Exchange.<sup>44</sup> The proposed change will enhance competition by allowing broader distribution of NLS in the context of the Nasdaq Basic license, and lowering the cost of compliance for Nasdaq's customers by removing the need to restrict distribution to individuals with brokerage accounts. Competition with other exchanges in the sale of top-of-book products, and the likelihood that the Proposal will enhance investor understanding of securities markets and promote consumer choice by expanding the availability of NLS to the general investing public, provide a substantial basis for finding that the Proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest.

The Proposal is not unfairly discriminatory. As noted previously, both the Nasdaq Basic<sup>45</sup> and NLS<sup>46</sup> enterprise licenses were shown to be non-discriminatory and otherwise consistent with the Act. The only change here is to allow broader distribution of NLS under the Nasdaq Basic enterprise license at Section 147(b)(5). As explained above, the proposed change is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants, and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. The proposal will apply to any broker-dealer that purchases the Nasdaq Basic enterprise license without differentiation of any kind, and is therefore not unfairly discriminatory.

#### *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.

#### *Intermarket Competition*

Applying the same standard for the distribution of NLS to both the Nasdaq

Basic and NLS enterprise licenses at Sections 147(b)(5), and 139(b)(4), respectively, will place no burden on intermarket competition (the competition among SROs). Both Nasdaq Basic and NLS already compete directly against the NYSE BQT feed and the Cboe One Summary Feed. As noted above, the proposed change will enhance competition by allowing broader distribution of NLS, and lowering the cost of compliance for Nasdaq's customers by removing the need to restrict distribution to individuals with brokerage accounts. Nasdaq believes that the proposed change will enhance the value of the Nasdaq Basic enterprise license, promote customer choice, and therefore boost competition among exchanges.

#### *Intramarket Competition*

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition (competition among exchange customers). The Proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of broker-dealers, and no market participant or any segment of the general investing public is expected to benefit more than any other. As such, the Proposal does not place any category of market participant at a relative disadvantage compared to any other category, and therefore will not impose any burden on competition not necessary or appropriate in furtherance of the Act. Moreover, current purchasers of the Nasdaq Basic enterprise license will not be circumscribed in their ability to distribute last sale data within the parameters of that license. As explained above, Nasdaq Basic contains both best bid and offer information and last sale transaction reports. Customers that purchase Nasdaq Basic will continue to be able to distribute last sale data within the brokerage relationship as part of the Nasdaq Basic enterprise license without change. The proposal will simply add a new option for Nasdaq Basic customers: To distribute NLS data outside of the brokerage relationship, under the same terms and conditions that apply to purchasers of the NLS enterprise license. Given that this is an expansion of an existing license that does not curtail that license in any way, there is no burden on intramarket competition.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>47</sup> and Rule 19b-4(f)(6) thereunder.<sup>48</sup>

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

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-036 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-2021-036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

<sup>44</sup> See [https://markets.cboe.com/us/equities/market\\_data\\_services/#:-:text=Cboe%20Top%20is%20a%20real,time%20on%20%20Cboe%20book.&text=It%20is%20a%20real%20time,time%20on%20a%20Cboe%20book](https://markets.cboe.com/us/equities/market_data_services/#:-:text=Cboe%20Top%20is%20a%20real,time%20on%20%20Cboe%20book.&text=It%20is%20a%20real%20time,time%20on%20a%20Cboe%20book).

<sup>45</sup> See Securities Exchange Act Release No. 81697 (September 25, 2017), 82 FR 45639 (September 29, 2017) (SR-Nasdaq-2017-095).

<sup>46</sup> See Securities Exchange Act Release No. 85504 (April 3, 2019), 84 FR 14183 (April 9, 2019) (SR-NASDAQ-2019-024).

<sup>47</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>48</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-036 and should be submitted on or before June 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>49</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-10388 Filed 5-17-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91861; File No. SR-NYSEArca-2021-38]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Continue Offering Certain Connectivity Services That Have Been Suspended by the Securities and Exchange Commission

May 12, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 7, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II

below, which Items have been prepared by the self-regulatory organization. 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 continue offering certain connectivity services that have been suspended by the Securities and Exchange Commission ("Commission") at no charge, for a period of 14 days, in order to provide affected Users time to acquire substitute services before their connectivity is terminated. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts 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 continue offering certain connectivity services that have been suspended by the Commission at no charge, for a period of 14 days, in order to provide affected Users<sup>3</sup> time to acquire substitute

<sup>3</sup> For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). As specified in the NYSE Arca Equities Fees and Charges and the NYSE Arca Options Fees and Charges (together, the "Fee Schedules"), a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes

services before their connectivity is terminated.

As background, on March 10, 2021, the Exchange filed with the Commission a proposed rule change for immediate effectiveness (the "Filing") that amended the colocation services offered by the Exchange to provide Users the option to access to the systems and data feeds of various additional third parties.<sup>4</sup> The proposed rule change became operative on April 9, 2021. Since then, five Users have contracted to receive the services that were added in the Filing.

On May 7, 2021, the Commission suspended the Filing and instituted proceedings to determine whether the proposed rule change should be approved or disapproved.<sup>5</sup> Such action suspended the Exchange's ability to offer access to Third Party Systems from Long Term Stock Exchange, Members Exchange, MIAx Emerald, MIAx PEARL Equities, Morgan Stanley, and TD Ameritrade, and to offer connectivity to Third Party Data Feeds from ICE Data Services—ICE TMC, Members Exchange, MIAx Emerald, and MIAx PEARL Equities (together, the "Suspended Services").

The Commission's suspension of such services is likely to cause disruption to the current Users of such services, who must now acquire substitutes for the Suspended Services. As an accommodation to such current Users, the Exchange now proposes to provide the Suspended Services to all Users, at no charge, for a period of 14 days from the date of filing ("Transition Period"), to enable current Users to maintain their connectivity while establishing alternate connectivity.

Specifically, the Exchange proposes to amend the Fee Schedules relating to colocation to provide:

Connectivity To Suspended Third Party Systems and Suspended Third Party Data Feeds

Connectivity to the Third Party Systems and Third Party Data Feeds listed below ("Suspended Services") is available until May 24, 2021 ("Transition Period"). During the Transition Period, the Exchange will not charge any fees for the Suspended Services. At the conclusion of the

described herein. See SR-NYSE-2021-31, SR-NYSEAMER-2021-26, SR-NYSECHX-2021-10, and SR-NYSEArca-2021-13.

<sup>4</sup> See Securities Exchange Act Release No. 91388 (March 23, 2021), 86 FR 16433 (March 29, 2021) (SR-NYSEArca-2021-15).

<sup>5</sup> See Securities Exchange Act Release No. 91790 (May 7, 2021) (SR-NYSE-2021-15, SR-NYSEAMER-2021-13, SR-NYSEArca-2021-15, SR-NYSECHX-2021-04, SR-NYSEArca-2021-05).

<sup>49</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.