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–FICC–2017–805 and should be submitted on or before August 21, 2018.

By the Commission.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2018–16707 Filed 8–3–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83751; File No. SR–NASDAQ–2018–058]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License

July 31, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2018, 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 lower fees and administrative costs for Distributors of Nasdaq Basic, Nasdaq Last Sale ("NLS"), NLS Plus and the Nasdaq Depth-of-Book products (TotalView and Level 2) by introducing a consolidated enterprise license for the Display Usage of all five products. This market data enterprise license will allow Distributors who are broker-dealers or Investment Advisers to disseminate these products to a wide audience for a monthly fee of $600,000, with the opportunity to lower that fee further to

$500,000 per month if the Distributor contracts for twelve months of the service in advance. The proposed enterprise license will be introduced through an amendment to Rule [3] 7032, which is currently reserved. The proposal is described in further detail below.

This amendment is immediately effective upon filing.[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 lower fees and administrative costs for Distributors [5] of Nasdaq Basic, NLS, NLS Plus and the Nasdaq Depth-of-Book products (TotalView and Level 2) by introducing a consolidated enterprise license for the Display Usage [6] of all five

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[3] References to rules are to Nasdaq rules, unless otherwise noted.

[4] This proposed change was initially filed on July 3, 2018, and became immediately effective on that date. *See* SR–NASDAQ–2018–055, available at *http://nasdaq.cchwallstreet.com/.* A firm eligible to purchase the proposed license may purchase it for the month of July, effective on July 3, 2018, and the monthly fee for the license will be prorated for the period July 3 through July 31, 2018. Any fees owed by the purchaser of the enterprise license for the use of Nasdaq Basic, NLS, NLS Plus and the Nasdaq Depth-of-Book products on July 1 and July 2, 2018, will also be prorated accordingly.

[5] "Distributor" will be defined in proposed Rule 7032(c)(3) by reference to Rules 7023(a)(4), 7039(f)(3), and 7047(d)(1) to reflect the current definitions of that term as set forth in each of these rules. Those definitions will continue to apply to each product, respectively. At a later date, Nasdaq will submit an additional proposed rule change to consolidate generally-applicable definitions and move these definitions to a new rule that will apply to all market data fee rules in the 7000 series.

[6] "Display Usage" will be defined in Rule 7032(c)(2) by reference to Rules 7023(a)(2),

products. This license will allow Distributors who are broker-dealers or Investment Advisers [7] to disseminate these products to a wide audience for a monthly fee of $600,000, with the opportunity to lower that fee further to $500,000 per month if they contract for twelve months of service in advance. No fees will increase as a result of this license. As discussed below, this fee reduction responds to competitive pressures exerted by other exchanges that sell market data.

Current Enterprise License Fees

The Exchange currently offers enterprise licenses for Depth-of-Book products and Nasdaq Basic. There is no enterprise license for the distribution of NLS to the general investing public, but there is a cap of $41,500 per month on such fees, and NLS may also be distributed under one of the enterprise licenses for Nasdaq Basic.[8]

Depth-of-Book Products

Nasdaq offers two Depth-of-Book products, TotalView and Level 2.[9] TotalView, Nasdaq's premier Depth-of-Book product, provides complete, real-time depth data for Nasdaq and non-

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7039(f)(2), and 7047(d)(2), to reflect the current definitions of that term as set forth in each of these rules. Those definitions will continue to apply to each product, respectively.

[7] "Investment Adviser" will be defined in proposed Rule 7032(c)(4) by reference to Section 202(a)(11) of the Investment Advisers Act of 1940, as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . ."

[8] *See* Rule 7048(b)(5) (providing that a broker-dealer that purchases this enterprise license will also have the right to distribute NLS data to an unlimited number of Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship). In addition, there is an enterprise license for specialized usage of NLS at Rule 7039(c)(3), but specialized usage is not relevant to this proposal, which focuses on distribution to the general investing public and the professionals servicing retail investors through brokerage or retail advisory accounts.

[9] *See* Rule 7023(a)(1). The Exchange proposes to incorporate the definition of Depth-of-Book data currently set forth at Rule 7023(a)(1) by reference at proposed Rule 7032(c)(1). Rule 7023(a)(1) defines Depth-of-Book as "data feeds containing price quotations at more than one price level"; the Depth-of-Book data feeds are Nasdaq Level 2, which means "with respect to stocks listed on Nasdaq, the best-priced orders or quotes from each Nasdaq member displayed in the Nasdaq Market Center," and Nasdaq TotalView, which means "with respect to stocks listed on Nasdaq and on an exchange other than Nasdaq, all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center."

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

[2] 17 CFR 240.19b–4.

Nasdaq-listed securities, including all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center, the aggregate size of such orders and quotes, and Net Order Imbalance Information, which supplies data on the daily auctions that take place at the open and close of the market, as well as in the context of an IPO or after a halt.[10] Nasdaq Level 2, which will be retired as a separate product after transition to TotalView is complete for all Distributors,[11] provides the best-priced orders from each Nasdaq member on the Nasdaq Market Center for Nasdaq-listed securities.

The Exchange offers three enterprise licenses for its Depth-of-Book products. The first allows a Distributor that is also a broker-dealer to pay a monthly fee of $25,000, plus $9 per month for each Non-Professional Subscriber and $60 per month for each Professional Subscriber, for the right to distribute Nasdaq TotalView internally for Display Usage or externally to Non-Professional Subscribers with whom the firm has a brokerage relationship.[12]

The second allows a Distributor that is also a broker-dealer to pay a monthly fee of $100,000, plus $9 per month for each Non-Professional Subscriber and $60 per month for each Professional Subscriber, for the right to distribute TotalView for Display Usage internally, or externally to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship.[13]

The third allows a Distributor that is also a broker-dealer to pay a monthly fee of $500,000 to provide Nasdaq Level 2 or Nasdaq TotalView for Display Usage by Non-Professional Subscribers with whom the firm has a brokerage relationship, with no additional per Subscriber fees, albeit with Distributor fees.[14]

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 from the Nasdaq Market Center and the FINRA/ Nasdaq Trade Reporting Facility ("TRF").[15] It is comprised of 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 (formerly NYSE MKT), which provides data on stocks listed on NYSE American and other listing venues whose quotes and trade reports are disseminated on Tape B. Nasdaq Basic provides customers with: (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.

The Exchange offers two enterprise licenses for Nasdaq Basic. The first is aimed primarily at internal distribution for professionals, allowing the dissemination of Nasdaq Basic or Derived Data therefrom for a fee of $365,000 per month, provided that if the broker-dealer obtains the license for usage of Nasdaq Basic provided by an External Distributor that controls display of the product, the fee will be $365,000 per month for up to 16,000 internal Professional Subscribers, plus $2 for each additional internal Professional Subscriber over 16,000.[16] This license includes access to NLS for the Distributor's own securities and those of up to ten of its competitors or

peers for Display Usage on the broker-dealer's internal website.[17]

The second is directed primarily at external distribution to investors with brokerage relationships. Nasdaq Basic or Derived Data therefrom, as well as NLS, may be distributed to an unlimited number of Professional and Non-Professional Subscribers who are natural persons and who have a brokerage relationship with the broker-dealer for a monthly fee of $100,000.[18] Information also may be distributed to 4,500 internal Professional Subscribers, provided that the information may only be used to support brokerage services,[19] and any internal electronic system used to distribute such information must be approved by Nasdaq.[20] The license does not cover the Distributor fee for Nasdaq Basic,[21] and is subject to reporting requirements regarding the number of Professional and Non-Professional Subscribers.

NLS

NLS is composed of two proprietary data feeds containing real-time last sale information for trades executed on the Nasdaq exchange or reported to the FINRA/Nasdaq TRF: (i) NLS for Nasdaq, which contains transaction reports for Nasdaq-listed stocks, and (ii) NLS for NYSE/NYSE American, which contains transaction reports for NYSE-listed stocks and stocks listed on NYSE American and other Tape B listing venues.[22]

NLS is designed to enable market data Distributors to provide access to Exchange information to millions of individual investors through website

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[10] See Securities Exchange Act Release No. 79863 (January 23, 2017), 82 FR 8632 (January 27, 2017) (SR–NASDAQ–2017–004). Net Order Imbalance Information refers to 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. See Securities Exchange Act Release No. 80891 (June 8, 2017), 82 FR 27318 (June 14, 2017) (SR–NASDAQ–2017–054).

[11] See Securities Exchange Act Release No. 79863 (January 23, 2017) 82 FR 8632 (January 27, 2017) (SR–NASDAQ–2017–004) (explaining that Level 2 will be retired as a separate product).

[12] See Rule 7023(c)(1).

[13] See Rule 7023(c)(2). Note that the $100,000 license at paragraph (c)(2) allows for external distribution to both Professional and Non-Professional Subscribers with whom the firm has a brokerage relationship, while the $25,000 license at paragraph (c)(1) is limited to Non-Professional Subscribers.

[14] See Rule 7023(c)(3).

[15] The Exchange proposes to use the same definition for "Nasdaq Basic" currently set forth in Rule 7047(a), incorporated by reference in proposed Rule 7032(c)(5). Rule 7047(a) defines Nasdaq Basic as "proprietary data feeds containing real-time market information from the Nasdaq Market Center and the FINRA/Nasdaq Trade Reporting Facility ('TRF'). (1) 'Nasdaq Basic for Nasdaq' shall contain Nasdaq's best bid and offer and last sale for Nasdaq-listed stocks from Nasdaq and the FINRA/Nasdaq TRF; and (2) 'Nasdaq Basic for NYSE' shall contain Nasdaq's best bid and offer and last sale for NYSE-listed stocks from Nasdaq and the FINRA/Nasdaq TRF. (3) 'Nasdaq Basic for NYSE MKT' shall contain Nasdaq's best bid and offer and last sale for stocks listed on NYSE MKT and other Tape B listing venues from Nasdaq and the FINRA/Nasdaq TRF."

[16] See Rule 7047(b)(4).

[17] Distributor fees at Rule 7047(c)(1) are excluded from this license.

[18] See Rule 7047(b)(5).

[19] Such information may not be used in support of proprietary trading, surveillance activities, or other functions solely for the benefit of the broker-dealer. Also, a Professional Subscriber who obtains Nasdaq Basic through his or her own brokerage relationship with the broker-dealer may not use that data within the scope of any professional engagement or registration. See Rule 7047(b)(5).

[20] A separate enterprise license is required for each discrete electronic system that is approved by Nasdaq and used by the broker-dealer. See Rule 7047(b)(5).

[21] See Rule 7047(c)(1).

[22] The Exchange proposes to use the definition for "NLS" currently set forth at Rule 7039(a), incorporated by reference in proposed Rule 7032(c)(6). Rule 7039(a) defines NLS as "two proprietary data feeds containing real-time last sale information for trades executed on Nasdaq or reported to the FINRA/Nasdaq Trade Reporting Facility. 'Nasdaq Last Sale for Nasdaq' contains all such transaction reports for Nasdaq-listed stocks, and 'Nasdaq Last Sale for NYSE/NYSE American' contains all such transaction reports for NYSE-listed stocks and stocks listed on NYSE American and other Tape B listing venues."

distribution.[23] This design is reflected in the pricing schedule, in which one set of prices is dedicated to distribution to the general investing public, and another for specialized usage by Professionals, or usage that otherwise does not fit within the models for distribution to the general investing public.[24]

There is no enterprise license for distribution to the general investing public, but such dissemination is subject to a fee cap of $41,500 per month.[25] Distributors under the specialized fee schedule, however, may purchase an enterprise license for a monthly fee of $365,000 per month,[26] which is patterned after a similar enterprise license for Nasdaq Basic.[27]

NLS Plus

NLS Plus provides last sale information and consolidated volume data for the Nasdaq Stock Market, Nasdaq BX, Nasdaq PSX and the FINRA/Nasdaq TRF, and cumulative volume for real-time trading activity across all U.S. exchanges.[28] It may be purchased by itself or in combination with Nasdaq Basic. NLS Plus provides customers with Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO information, Bloomberg ID, and regulatory information such as Market Wide Circuit Breaker, Regulation SHO Short Sale Price Test Restricted Indicator, Trading Action, and Symbol Directory.

Fees for NLS Plus are based on the fees for its underlying components, as well as a Distributor fee,[29] a data

consolidation fee of $350 per month, and administrative fees for Nasdaq, BX, and PSX data feeds as set forth in their respective rule books.[30] There is no enterprise license for NLS Plus, but the distribution fees for the general investing public are capped at $41,500, under the same cap that applies to NLS.

Proposed Market Data Enterprise License

The Exchange proposes to introduce a market data enterprise license that will reduce Exchange fees and administrative costs for Distributors [31] that disseminate Nasdaq Basic, NLS, NLS Plus, TotalView and Level 2. Distributors that are broker-dealers or Investment Advisers [32] will be able to distribute information for Display Usage for all five products to an unlimited number of recipients for a monthly fee of $600,000, with an opportunity to lower that fee to $500,000 per month if they contract for twelve months of service in advance. Depth-of-Book information and Nasdaq Basic may be distributed pursuant to this market data enterprise license only for display usage and in the context of a brokerage relationship with a broker-dealer or an engagement with an Investment Adviser, and the Exchange must pre-approve any such platform to ensure that it is reasonably designed to meet this and other requirements identified in the text of the proposed rule. NLS and NLS Plus will be available for unlimited external distribution through one of the mechanisms available for distribution to the general investing public, which the Exchange expects to be the most efficient method for reaching the general investing public. Purchase of the enterprise license will eliminate per-Subscriber fees for Depth-of-Book data,[33] user fees for Nasdaq Basic,[34] distribution fees for the general investing public for NLS,[35] and

incremental NLS Plus fees,[36] whether such fees are paid directly to the Exchange or indirectly through another Distributor.[37] This enterprise license will offer a new fee option for Distributors of multiple market data products. No fee will increase as a result of this proposal.

Distributors that intend to purchase the market data enterprise license for at least twelve months may elect to purchase this product in advance for a monthly fee of $500,000. This feature is intended to simplify cost projections and budgeting for both Distributors and the Exchange. Distributors that elect not to purchase this particular feature will nevertheless be able to obtain all of the market data information offered by the product by paying the standard fee of $600,000 per month. Distributors that elect to pay the monthly fee will be able to switch to the annual fee at any time, and those that elect to purchase the annual contract would be able to change to the monthly contract, with notice, at the end of the twelve month period.

The Exchange believes that the proposed market data enterprise license will reduce exchange fees, lower administrative costs for Distributors, and help expand the availability of market information to investors, and thereby increase participation in financial markets.

Reduce Exchange Fees: The proposed market data enterprise license will lower fees by consolidating the features of three existing enterprise licenses at a lower cost, and with an expanded scope. The three current enterprise licenses that offer some, but not all,[38] of the features of the proposed license are: (i) The $500,000 per month enterprise license for Depth-of-Book;[39] (ii) the

[23] *See* 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).

[24] *See* Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010) (describing the NLS fee schedules).

[25] *See* Rule 7039(b)(4) (identifying the fee cap); Rule 7039(b)(1)–(3) (identifying fees for the Per User, Per Query and Per Device fee models).

[26] *See* Rule 7039(c)(3).

[27] *See* Rule 7047(b)(4) (setting forth an enterprise license for Nasdaq Basic for $365,000 per month).

[28] The Exchange proposes that ''NLS Plus'' in proposed Rule 7032 have the same meaning as currently set forth at Rule 7039(e), to be incorporated by reference in proposed Rule 7032(c)(7). Rule 7039(e) defines NLS Plus in part as ''a comprehensive data feed produced by Nasdaq Information LLC. It provides last sale data as well as consolidated volume of Nasdaq U.S. equity markets (The Nasdaq Stock Market ('Nasdaq'), Nasdaq BX ('BX'), and Nasdaq PSX ('PSX')) and the FINRA/Nasdaq Trade Reporting Facility ('TRF'). Nasdaq Last Sale Plus also reflects cumulative volume real-time trading activity across all U.S. exchanges for Tape C securities. . . . ''

[29] *See* Rule 7039(d).

[30] *See* Nasdaq Rule 7035; BX Rule 7035; and Phlx Pricing Schedule § VIII. All administrative fees are charged on a per Distributor, rather than a per product, basis. Currently, there are no user or Distributor fees applicable to BX Last Sale or PSX Last Sale. However, if BX or Phlx were to adopt user fees for these products in the future, the fees would also apply to persons receiving these products by means of NLS Plus.

[31] As noted above, ''Distributor'' will be defined in proposed Rule 7032(c)(3) by reference to Rules 7023(a)(4), 7039(f)(3), and 7047(d)(1) to reflect the current definitions of that term as set forth in each of these rules. Those definitions will continue to apply to each product, respectively. *See* n.5.

[32] ''Investment Adviser'' shall have the same meaning in proposed Rule 7032 as set forth in Section 202(a)(11) of the Investment Advisers Act of 1940, incorporated by reference at proposed Rule 7032(c)(4). *See* n.7.

[33] *See* Rule 7023(b).

[34] *See* Rule 7047(b).

[35] *See* Rule 7039(b).

[36] *See* Rule 7039(e).

[37] A Distributor may receive Information subject to the proposed enterprise license either directly from the Exchange or indirectly through another Distributor. To the degree that any Distributor pays to the Exchange Subscriber fees for Depth-of-Book data at Rule 7023(b), User Fees for Nasdaq Basic at Rule 7047(b), Distribution Model fees for the General Investing Public for NLS at Rule 7039(b), and NLS Plus fees at Rule 7039(e) on behalf of the purchaser of the proposed market data enterprise license, those fees paid to the Exchange shall reduce the applicable monthly enterprise license fee owed by the amount paid.

[38] While the scope of each of the three current enterprise licenses is not identical to the proposed license, the Exchange believes that this comparison is a good approximation for the cost reduction generated by the proposal.

[39] The two other enterprise licenses for Depth-of-Book, the $25,000 enterprise license for distribution of TotalView, *see* Rule 7023(c)(1), and the $100,000 license for the right to distribute TotalView for certain Subscribers internally and externally, *see* Rule 7023(c)(2), are not comparable to the proposed license in that these two current licenses include substantial per Subscriber fees, while the proposed license does not.

$365,000 per month license for internal distribution of Nasdaq Basic; and (iii) the $100,000 per month license for external distribution of Nasdaq Basic.

As explained above, the $500,000 enterprise license for Depth-of-Book products allows a Distributor that is also a broker-dealer to distribute Nasdaq Level 2 or TotalView for Display Usage by Non-Professional Subscribers with whom the firm has a brokerage relationship.[40] This Depth-of-Book fee is nearly equal to the proposed market data enterprise license fee without a twelve month commitment—and exactly the same as the proposed fee for Distributors that contract for twelve months of service—yet without the inclusion of Nasdaq Basic, NLS and NLS Plus.

To distribute Nasdaq Basic and NLS using currently available enterprise licenses, a Distributor would be required to purchase two enterprise licenses for Nasdaq Basic—the $365,000 per month license for internal distribution and the $100,000 per month license for external distribution—in addition to the $500,000 enterprise license for Depth-of-Book products.

The $365,000 per month enterprise license for Nasdaq Basic, aimed primarily at internal distribution for professionals, allows the dissemination of Nasdaq Basic for $365,000 per month, provided that if the broker-dealer obtains the license with respect to usage of Nasdaq Basic provided by an External Distributor that controls display of the product, the fee will be $365,000 per month for up to 16,000 internal Professional Subscribers plus $2 for each additional internal Professional Subscriber over 16,000.[41]

The $100,000 per month enterprise license allows the distribution of Nasdaq Basic and NLS to an unlimited number of Professional and Non-Professional Subscribers who are natural persons in the context of a brokerage relationship.[42] Nasdaq Basic may also be distributed to up to and including 4,500 internal Professional Subscribers employed by the broker-dealer in support of brokerage services to investors on an approved platform.[43] Even with the purchase of these two additional licenses, the Distributor would also be required to pay any

additional fees for NLS Plus.[44] The proposed fees for the market data enterprise license, which would provide the same data[45] as the $365,000 per month enterprise license for Nasdaq Basic designed for internal use, the $100,000 per month enterprise license for Nasdaq Basic designed for external use, the $500,000 enterprise license for Depth-of-Book products, and applicable fees for NLS and NLS Plus, are substantially less than the sum of the currently available enterprise licenses. Savings for the Distributor could be over $4 million per year as a result.

Lower Administrative Costs: The proposed market data enterprise license reduces administrative costs for Distributors by eliminating monthly and yearly reporting of Professional and Non-Professional Subscribers, a requirement that may be costly to administer. The market data enterprise license will have no requirement that the Distributor count and report individual Professionals and Non-Professionals on a monthly basis, but rather would simply require the Distributor to obtain approval for the platform used to disseminate such information as reasonably designed to ensure consistency with the proposed Rule.

Increase Availability of Market Data for the Retail Investor: The proposed license is designed to make an array of market data products more easily accessible to the retail investor. Broker-dealers and Investment Advisers (which did not previously have access to any of the underlying enterprise licenses) would be able to share information from TotalView, Level 2, Nasdaq Basic, NLS and NLS Plus with their customers, without regard to current distinctions between fees for Professional and Non-Professional users, creating a seamless experience in which the firm and its customers can share market data information. Because the cost to the Distributor of adding another customer would be zero, the proposed enterprise license will create an incentive to distribute the data widely to investors.

In summary, the proposed market data enterprise license will: (i) Offer

Distributors a new, lower-fee option for Distributors of TotalView, Level 2, Nasdaq Basic, NLS and NLS Plus; (ii) reduce administrative costs by lowering reporting requirements for Professional and Non-Professional Subscribers; and (iii) provide a mechanism to render market data more readily accessible to retail investors by reducing the cost of distribution to new investors.[46]

This proposal demonstrates the effectiveness of the competitive market in maintaining low costs, enhancing the customer experience, and encouraging the dissemination of market data to the general investing public. As set forth in greater detail below, the Commission granted Self-Regulatory Organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public when it adopted Regulation NMS. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition in the provision of market data. This market data enterprise license demonstrates the benefits of competition. A number of other SROs offer enterprise licenses for their market data products,[47] but this multi-product enterprise license is an innovation for the Exchange—and indeed all SROs— that demonstrates the power of the competitive market to spur innovation and change.

The proposed enterprise license is optional in that Nasdaq is not required to offer it and Distributors are not required to purchase it. Firms can discontinue its use at any time and for any reason, and may decide to purchase Nasdaq market data products individually or substitute Nasdaq products with competing products from other exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[48] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[49] 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

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[40] *See* Rule 7023(c)(3).

[41] *See* Rule 7047(b)(4).

[42] *See* Rule 7047(b)(5). Note that Nasdaq Basic can be distributed to customers under this license on a password-protected website, but Nasdaq Basic would not be available for open distribution.

[43] A separate enterprise license is required for each discrete electronic system that is approved by Nasdaq and used by the broker-dealer. *See* Rule 7047(b)(5).

[44] *See* Nasdaq Rule 7035; BX Rule 7035; and Phlx Pricing Schedule § VIII. All administrative fees are charged on a per Distributor, rather than a per product, basis. Currently, there are no user or Distributor fees applicable to BX Last Sale or PSX Last Sale. However, if BX or Phlx were to adopt user fees for these products in the future, the fees would also apply to persons receiving these products by means of NLS Plus.

[45] The underlying content for each product (*i.e.,* Nasdaq Basic and Nasdaq Depth-of-Book data) is identical under each license, although the restrictions on each license are somewhat different, as described in the rule book.

[46] The proposed enterprise license will be introduced through an amendment to Rule 7032, which is currently reserved. Removal of the reserved Rule will have no impact on any market data fee or product.

[47] *See, e.g.,* Enterprise Fee for the Cboe Equities One Feed, available at *https://markets.cboe.com/us/equities/market_data_products/bats_one/.*

[48] 15 U.S.C. 78f(b).

[49] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

As described above, the proposed market data enterprise license will lower fees, reduce administrative costs, and expand the availability of market data to retail investors, which may lead to increased participation in financial markets. Distributors that are broker-dealers or Investment Advisers will be able to disseminate TotalView, Level 2, Nasdaq Basic, NLS and NLS Plus to an unlimited audience for display in the context of the brokerage or advisory relationship for a monthly fee of $600,000, or $500,000 per month for Distributors that contract with the Exchange in advance for twelve months of service.

The proposal will lower fees for Distributors able to reach the largest audiences of retail investors. Discounts for broader dissemination of market data information have routinely been adopted by exchanges and permitted by the Commission as equitable allocations of reasonable dues, fees and other charges.[50] Moreover, the specific feature of the proposal that will allow Distributors to lower fees to $500,000 for a twelve month contract is also an equitable allocation because all Distributors will have the same option of choosing between the stability of a fixed, lower rate, and the more flexible option of maintaining the ability to change market data products after a month of service. Distributors will be free to move from the monthly to the annual rate at any time, or from the annual to a monthly fee, with notice, at the expiration of the twelve month period.

The existence of this proposal demonstrates the existence of an effective, competitive market because this proposal resulted from a need to generate innovative approaches in response to competition from other exchanges that offer enterprise licenses for market data.[51] As the Commission has recognized, "[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior,"[52] and "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."[53] The proposed enterprise license will be subject to significant competition from other exchanges because each Distributor will have the ability to accept or reject the license depending on whether it will or will not lower its fees, and because other exchanges will be able to offer their own competitive responses. As the Commission has held in the past, the presence of competition provides a substantial basis for a finding that the proposal will be an equitable allocation of reasonable dues, fees and other charges.[54]

Furthermore, the proposed enterprise license will not unfairly discriminate between customers, issuers, brokers or dealers. The Act does not prohibit all distinctions among customers, but only discrimination that is unfair, and it is not unfair discrimination to charge those Distributors that are able to reach the largest audiences of retail investors a lower fee for incremental investors in order to encourage the widespread distribution of market data. This principle has been repeatedly endorsed by the Commission, as evidenced by the approval of enterprise licenses for Depth-of-Book products and Nasdaq Basic discussed above. Moreover, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each Distributor will be able to accept or reject the license depending on whether it will or will not lower costs for that particular Distributor, and, if the license is not sufficiently competitive, the Exchange may lose market share.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. 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.[55]

The Commission was speaking to the question of whether broker-dealers 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 broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

The proposed enterprise license will compete with other enterprise licenses of the Exchange, underlying fee schedules promulgated by the Exchange, and enterprise licenses and fee structures implemented by other exchanges. As such, it is a voluntary product for which market participants can readily find substitutes. Accordingly, Nasdaq is constrained from introducing a fee that would be inequitable or 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. This proposal will: (i) Offer Distributors a new, lower fee option for TotalView, Level 2, Nasdaq Basic, NLS and NLS Plus; (ii) save administrative costs for Distributors by lowering reporting requirements for Professional and Non-Professional Subscribers; and (iii) establish a mechanism to render market data more readily accessible to retail investors, thereby encouraging broader dissemination of information. It will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, but rather will enhance competition by introducing an innovative fee structure for market data, lowering prices and enhancing competition.

The market for data products is extremely competitive and firms may freely choose alternative venues and

[50] For example, the Commission has permitted pricing discounts for market data under Nasdaq Rules 7023(c) and 7047(b). *See also* Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR–NYSE–2017–60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

[51] *See* n. 47.

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

[53] *Id.*
[54] *Id.*

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

data vendors based on the aggregate fees assessed, the data offered, and the value provided. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

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, the cost of implementing cybersecurity to protect the data from external threats 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).[56]

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 each are 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. Similarly, data products cannot make use of trade reports from the TRF without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,[57] and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer 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 broker-dealer 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 broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing more orders will become correspondingly more valuable.

Similarly, vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals

impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers offer their retail customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, Nasdaq believes that market data products can enhance order flow to Nasdaq by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to Distributors and investors decreases if order flow falls, because the products contain less content.

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

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[56] *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).

[57] It should be noted that the costs of operating the FINRA/Nasdaq TRF borne by Nasdaq include regulatory charges paid by Nasdaq to FINRA.

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.[58]

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 broker-dealers 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 broker-dealers to further 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, broker-dealers, 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 broker-dealer is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE American, NYSE Arca, IEX, and BATS/ Direct Edge.

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.[59]

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.

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[58] *Cf. Ohio* v. *American Express,* No. 16–1454 (S. Ct. June 25, 2018), *https://www.supremecourt.gov/ opinions/17pdf/16-1454_5h26.pdf* (recognizing the need to analyze both sides of a two sided platform market in order to determine its competitiveness).

[59] 15 U.S.C. 78s(b)(3)(A)(ii).

If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/ rules/sro.shtml*); or

• Send an email to *rule-comments@ sec.gov.* Please include File Number SR– NASDAQ–2018–058 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–2018–058. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/ rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–058 and

should be submitted on or before August 27, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Robert W. Errett,
Deputy Secretary.
[FR Doc. 2018–16720 Filed 8–3–18; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83753; File No. SR–FINRA– 2018–015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change To Amend FINRA Rule 6433 To Adopt the OTC Quotation Tier Pilot as Permanent

July 31, 2018.

I. Introduction

On April 20, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6433 to adopt as permanent the minimum quotation sizes that are applicable to quotations in over-the-counter (''OTC'') equity securities and that were implemented on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on May 7, 2018.[3] The Commission received one comment letter on the proposed rule change.[4] On June 13, 2018, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] In a letter dated July 5, 2018, FINRA responded to the comment letter.[7]

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[60] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83129 (April 30, 2018), 83 FR 20131 (''Notice'').

[4] *See* Letter from Eugene P. Torpey, Chief Compliance Officer, Vandham Securities Corp., dated May 10, 2018. Comments on the proposed rule change are available at *https://www.sec.gov/ comments/sr-finra-2018-015/finra2018015.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 83422, 83 FR 28483 (June 19, 2018).

[7] *See* Letter from Racquel L. Russell, Associate General Counsel, FINRA, to Brent J. Fields, Secretary, Commission (''FINRA Letter''). The