

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2016 - * 036	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposal to include U.S. non display policies in the Nasdaq rule book under Nasdaq Rule 7023."/>				
Contact Information				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Jonathan"/>		Last Name *	<input type="text" value="Cayne"/>
Title *	<input type="text" value="Senior Associate General Counsel"/>			
E-mail *	<input type="text" value="Jonathan.Cayne@nasdaq.com"/>			
Telephone *	<input type="text" value="(301) 978-8493"/>	Fax	<input type="text"/>	
Signature				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="03/04/2016"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="edward.knight@nasdaq.com"/>				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to include U.S. non-display policies in the Nasdaq rule book under Nasdaq Rule 7023.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (“Board”) on July 1, 2015. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Jonathan F. Cayne
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8493

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend Nasdaq Rule 7023 (NASDAQ Depth-of-Book Data) by adding IM-7023-1. Nasdaq Rule 7023(a)(2)(B) defines “Non-Display Usage” as any method of accessing depth-of-book³ “data that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.” IM-7023-1 will incorporate guidance regarding U.S. non-display policies into the Nasdaq rule book to provide additional detail with regard to specific data usages and thereby ensure greater transparency. The inclusion of these policies into the Nasdaq rule book will lessen ambiguity in this area without necessitating any changes by market participants. The Exchange has been working with both the industry and customers to ensure that they understand these policies.

Specifically, IM-7023-1 will, in large part, include guidance regarding: (i) devices (or servers) used in the transportation, dissemination or aggregation of data and ways to count such devices; (ii) examples and details of what constitutes fee-liable Non-Display Usage; (iii) examples and details of what Non-Display Usage does not include; and (iv) examples of how to report Non-Display Usage.

IM-7023-1 will apply most specifically to distributors⁴ who access Nasdaq U.S. information and use it in a non-display manner. IM-7023-1 will also provide guidance in the form of examples of use cases and details on how the Nasdaq U.S. non-display

³ See Nasdaq Rule 7023(a)(1), which states that “Depth-of-Book” refers to data feeds containing price quotations at more than one price level. These Nasdaq data feeds include Nasdaq Level 2, Nasdaq OpenView, and Nasdaq TotalView.

⁴ See Nasdaq Rule 7023(a)(4).

policies should be applied and reported.

The Exchange believes that it will be beneficial to both distributors specifically and to market participants more generally to incorporate these policies into the Nasdaq rule book through the addition of IM-7023-1, as well as adding IM-7026-1, IM-7037-1, IM-7039-1, IM-7047-1, and IM-7057-1 (collectively, the “IMs”) that will be added following each of their respective rules and each refers back to IM-7023-1.

The result will be to provide distributors additional clarity through increased transparency into U.S. non-display policies, including reporting requirements pertaining to non-display usage. The presentation of this guidance in a more transparent manner will, in turn, provide distributors with greater precision in making fee-liable Non-Display Usage determinations.

These policies are a result of the Exchange working with the industry, as well as soliciting feedback from customers. Technology changes that create any new use cases will result in a separate Nasdaq filing. These U.S. non-display policies already are publicly available and can be found at https://www.nasdaqtrader.com/Trader.aspx?id=GDP_Ops , but their inclusion into the Exchange’s rule book provides an additional way for market participants to easily find and review such policies.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act⁶ in

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸ Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based

⁷ 15 U.S.C. 78f(b)(5).

⁸ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

approach.¹⁰ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹¹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹² Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The proposed rule change to add IM-7023-1 and the other IMs to the rule book will, in large part, include guidance regarding: (i) devices (or servers) used in the transportation, dissemination or aggregation of data and ways to count such devices; (ii) examples and details of what constitutes fee-liable Non-Display Usage; (iii) examples and details of what Non-Display Usage does not include; and (iv) examples of how to report Non-Display Usage.

The Exchange believes that the proposed rule change is reasonable because it does not change any of the current practices or any dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange

¹⁰ See NetCoalition, at 534.

¹¹ Id. at 537.

¹² Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

operates or controls. Rather, it adds transparency for market participants and provides for the equitable treatment for distributors through making all such U.S. non-display policies easily available and accessible to all distributors on an equal basis.

In sum, the Exchange believes that the proposed rule change will provide transparency, clarity, and eliminate potential confusion that may exist for distributors and market participants regarding Non-Display Usage and, thereby, will promote just and equitable principles of trade.

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

The Exchange does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will provide market participants guidance and greater clarity in making fee-liable Non-Display Usage determinations and, as a result, will serve to enhance competition.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹³ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

regulatory organization, which renders the proposed rule change effective upon filing.

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

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2016-036)

March __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Include U.S. Non-Display Policies in the Nasdaq Rule Book

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 March 4, 2016, 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 include U.S. non-display policies in the Nasdaq rule book under Nasdaq Rule 7023.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend Nasdaq Rule 7023 (NASDAQ Depth-of-Book Data) by adding IM-7023-1. Nasdaq Rule 7023(a)(2)(B) defines “Non-Display Usage” as any method of accessing depth-of-book³ “data that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.” IM-7023-1 will incorporate guidance regarding U.S. non-display policies into the Nasdaq rule book to provide additional detail with regard to specific data usages and thereby ensure greater transparency. The inclusion of these policies into the Nasdaq rule book will lessen ambiguity in this area without necessitating any changes by market participants. The Exchange has been working with both the industry and customers to ensure that they understand these policies.

Specifically, IM-7023-1 will, in large part, include guidance regarding: (i) devices (or servers) used in the transportation, dissemination or aggregation of data and

³ See Nasdaq Rule 7023(a)(1), which states that “Depth-of-Book” refers to data feeds containing price quotations at more than one price level. These Nasdaq data feeds include Nasdaq Level 2, Nasdaq OpenView, and Nasdaq TotalView.

ways to count such devices; (ii) examples and details of what constitutes fee-liable Non-Display Usage; (iii) examples and details of what Non-Display Usage does not include; and (iv) examples of how to report Non-Display Usage.

IM-7023-1 will apply most specifically to distributors⁴ who access Nasdaq U.S information and use it in a non-display manner. IM-7023-1 will also provide guidance in the form of examples of use cases and details on how the Nasdaq U.S. non-display policies should be applied and reported.

The Exchange believes that it will be beneficial to both distributors specifically and to market participants more generally to incorporate these policies into the Nasdaq rule book through the addition of IM-7023-1, as well as adding IM-7026-1, IM-7037-1, IM-7039-1, IM-7047-1, and IM-7057-1 (collectively, the “IMs”) that will be added following each of their respective rules and each refers back to IM-7023-1.

The result will be to provide distributors additional clarity through increased transparency into U.S. non-display policies, including reporting requirements pertaining to non-display usage. The presentation of this guidance in a more transparent manner will, in turn, provide distributors with greater precision in making fee-liable Non-Display Usage determinations.

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⁴ See Nasdaq Rule 7023(a)(4).

Exchange's rule book provides an additional way for market participants to easily find and review such policies.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act⁶ 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ 15 U.S.C. 78f(b)(5).

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸ Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁰ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹¹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹² Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

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⁸ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

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¹¹ Id. at 537.

¹² Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

transportation, dissemination or aggregation of data and ways to count such devices; (ii) examples and details of what constitutes fee-liable Non-Display Usage; (iii) examples and details of what Non-Display Usage does not include; and (iv) examples of how to report Non-Display Usage.

The Exchange believes that the proposed rule change is reasonable because it does not change any of the current practices or any dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. Rather, it adds transparency for market participants and provides for the equitable treatment for distributors through making all such U.S. non-display policies easily available and accessible to all distributors on an equal basis.

In sum, the Exchange believes that the proposed rule change will provide transparency, clarity, and eliminate potential confusion that may exist for distributors and market participants regarding Non-Display Usage and, thereby, will promote just and equitable principles of trade.

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

The Exchange does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will provide market participants guidance and greater clarity in making fee-liable Non-Display Usage determinations and, as a result, will serve to enhance 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

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹³. 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.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-036 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2016-036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2016-036 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; there are no proposed deletions.

* * * * *

7023. NASDAQ Depth-of-Book Data

(a) – (f) No change.

IM-7023-1. U.S. Non-Display Information

(a) Devices (or servers) used in the transportation, dissemination or aggregation of data (distribution) are not necessarily fee liable, but the Distributor should be able to identify such Devices that exist within the market data infrastructure and identify how many Devices are used for distribution separate and apart from the Devices that are used for the reasons listed in the examples below.

(b) Unit of Count

For purposes of counting Non-Display Devices, Distributors are required to report the greater of (i) the number of Subscribers that can modify the application in real-time, or (ii) the number of Devices (usually servers) that receive and benefit from the information.

(1) “Subscriber” is defined as a device or computer terminal or an automated service which is entitled to receive Information. Nasdaq may also use the terms “Interrogation Device” or “Device” or “Access”.

If the Distributor is unable to count the physical number of Subscribers or the number of Devices, then the Distributor may submit usage reports for (i) the number of IP addresses, or (ii) the number of hosts that have access to Nasdaq U.S. Information.

(2) Distributors should have a quantifiable and auditable procedure in place to count and exclude all Devices that are non-fee liable. For clarification purposes, the following are considered Devices and should be reported unless otherwise excluded:

(A) Blade server (a type of server);

(B) Rack server; or

(C) FPGA may not necessarily be a server, but if an FPGA is run on a server that server may be fee liable.

(3) Nasdaq does not recognize the following terms to determine whether a device is fee liable for Non-Display purposes:

(A) Cores. Nasdaq understands that Devices may utilize multiple cores or processors to

handle market data and trading. If two or more cores sit on the same physical device then Nasdaq would require the Distributor to report one Subscriber.

(B) GPU, Xeon Phi cards, memory or chassis linked to a server utilizing these hardware devices that is already counted.

(C) Virtual machines run on the same Device (whether one or multiple cores) would be reported as one Subscriber.

(e) Non-Display Examples

Examples of fee-liable Non-Display use include, but are not limited to, what is described below. Nasdaq provides these examples to help Distributors understand how Non-Display may be applied.

(1) Automated trading

(A) All automated trading programs, applications, and scripts. Nasdaq recognizes that many programs including, but not limited to workbook software and applications and third party software and applications with auto-quoting/pegging (e.g. Microsoft Excel, GoogleDocs, Numbers for Mac or other third party software) may be utilized to implement an automated trade, and such use would be considered Non-Display. Other similar use cases would also require payment of the Non-Display license.

(B) Orders that are created or delivered via an automated order handling logic.

(C) Automated conditional orders, or complex order chain building whereby an algorithm responds to certain pre-set conditions.

(D) Automated order/quote generation and/or order/quote pegging.

(E) Price referencing for use in algorithmic trading.

(F) Price referencing for use in smart order routing.

(2) Program trading and high frequency trading

(A) The use of automated programs to trade instruments.

(3) Order Verification

(A) An Order Verification program that calculates estimated costs.

(B) An Order Verification program that provides warning/informational messages such as an order at a defined percentage threshold away from the quote.

(4) Automated surveillance programs

(5) Risk management that encompasses auto stop loss/position exiting functions

(A) Risk management, the process of identification and analysis of investment decision making, occurs whenever a person, bank, or other such interested party analyzes and attempts to determine their potential gain or loss and takes the appropriate action depending on their investment objectives.

(B) Automatic order cancellation, or automatic error discovery.

(6) Clearing and settlement activities

(7) Account maintenance (e.g. controlling margin for a customer account)

(8) Hot disaster recovery

(d) For avoidance of doubt, Non-Display is fee liable regardless of whether the Order Management System, Execution Management System, or trading infrastructure is:

(1) Hosted by a vendor or sub vendor;

(2) Located in the cloud;

(3) Installed locally within your own data center;

(4) Enterprise; or

(5) Locally on an individual's desktop or device.

Note: the Non-Display fee structure and reporting requirements may vary depending upon the Nasdaq U.S. Information, but the Non-Display Policy and Unit of Count are consistent across all Nasdaq U.S. Information products.

(e) Non-Display Exclusions

(1) Non-Display does not include any use of Nasdaq U.S. Information that merely enables and in actuality results in output of such use or distribution of the Nasdaq U.S. Information solely in a display. Examples include, but are not limited to:

(A) If an application is updating a portfolio and exposes such Information on the display, this use is not considered Non-Display.

(B) For example, calculating VWAPs or other derived information for use in a Display is not considered Non-Display.

(C) If an application is updating a risk management officer on a trader's position and exposing that information on a display, this is not considered Non-Display (provided there are no automated risk management/position exiting functions).

(D) Authorization and entitlement.

(E) Transportation and cold disaster recovery servers – Distributor needs to identify and

show that servers used in this process are only used for transportation of market data or trades, and are not utilized for any other fee-liable purpose identified above. Further, disaster recovery servers utilized in a cold environment are non-fee liable, but hot disaster recovery servers are fee-liable because they are typically optimized for load balancing.

(F) Devices (or servers) used in the transportation, dissemination or aggregation of data (distribution) are not considered Non-Display. The Distributor should be able to identify such Devices that exist within the market data infrastructure and identify how many Devices are used for distribution separate and apart from the Devices that are used for the reasons listed above.

(f) Reporting Examples of Non-Display

(1) Below are some reporting examples of Non-Display:

(A) The Device only displays data with no Non-Display – report one Display Subscriber.

(B) The Device supports both Non-Display and Display – report one Non-Display Subscriber and one Display Subscriber.

(C) The Device supports Display but also Non-Display on a separate server – report one Non-Display Subscriber and one Display Subscriber. Only count the separate Non-Display server once, not with every use of Display.

(D) The Device supports Display but also Non-Display use where the Nasdaq Information for the Non-Display solely originates from another third party distributor – report one Display Subscriber.

(E) The Device supports Display but automated trading is built into the Display – report one Non-Display Subscriber and one Display Subscriber.

(F) The Device supports Display with automated trading functions on a third party software that the Display connects to via an API, DDE or similar solution – report one Non-Display Subscriber and one Display Subscriber.

Note: if a Distributor receives the Information via Direct Access, they do not need to report both a Non-Display Subscriber and a Display Subscriber. They only need to report the Non-Display Subscriber. However, if the Display is on a separate device, remote desktop or similar service then both Non-Display and Display are fee liable.

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7026. Distribution Models

(a) – (c) No change.

IM-7026-1. U.S. Non-Display Information

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-Display Information.

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7037. Nasdaq FilterView Service

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

IM-7037-1. U.S. Non-Display Information

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-Display Information.

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7039. NASDAQ Last Sale and NASDAQ Last Sale Plus Data Feeds

(a) – (d) No change.

IM-7039-1. U.S. Non-Display Information

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-Display Information.

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7047. Nasdaq Basic

(a) – (d) No change.

IM-7047-1. U.S. Non-Display Information

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-Display Information.

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7057. NASDAQ MatchView Feed

(a) – (b) No change.

IM-7057-1. U.S. Non-Display Information.

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-

Display Information.

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