A proposal to amend proposed Nasdaq Rule 7046 (Nasdaq Trading Insights) by adding the corresponding fees for the optional Nasdaq Trading Insights product.
| Form 19b-4 Information * | 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. |
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| Exhibit 1 - Notice of Proposed Rule Change * | 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. |
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| Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * | 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. |
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| Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications | 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. |
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| Exhibit 3 - Form, Report, or Questionnaire | 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. |
| Add | Remove | View |

| Exhibit 4 - Marked Copies | 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. |
| Add | Remove | View |

| Exhibit 5 - Proposed Rule Text | 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. |
| Add | Remove | View |

| Partial Amendment | 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 Proposed Rule Change**

   (a) Pursuant to the provisions of Section 19(b)(1) under 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 ("SEC" or "Commission") a proposal to amend proposed Nasdaq Rule 7046 (Nasdaq Trading Insights) by adding the corresponding fees for the optional Nasdaq Trading Insights product.

   A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1 and a copy of the applicable portion of the Exchange’s Pricing Schedule is attached hereto 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 on August 15, 2016. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. 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

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3. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

a. **Purpose**

The Exchange proposes to amend Nasdaq Rule 7046 (Nasdaq Trading Insights) by adding the corresponding fees for the optional Nasdaq Trading Insights product.\(^3\) As discussed in the NTI Filing, the Nasdaq Trading Insights product is a single optional market data service comprised of four market data components: (a) Missed Opportunity – Liquidity; (b) Missed Opportunity – Latency; (c) Peer Benchmarking; and (d) Liquidity Dynamics Analysis.

Upon request by a potential subscribing firm, Nasdaq will provide the Nasdaq Trading Insights product for a 14-day period at no charge. This waiver may be provided only once per firm. A firm will be charged the monthly fee rate listed in Nasdaq Rule 7046(b)(2) if it does not cancel by the conclusion of the trial offer and the fee will not be pro-rated.

The monthly fee rates set forth in Nasdaq Rule 7046(b), as well as in the chart below, will apply to a firm that subscribes to the Nasdaq Trading Insights product. The monthly fee will be based on the number of ports the firm is subscribing to within the Nasdaq Trading Insights product and in no case will the Nasdaq Trading Insights fees be pro-rated. The fees for the Nasdaq Trading Insights product will be in accordance with the following table:

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<table>
<thead>
<tr>
<th>TIERS</th>
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<td>6-15</td>
<td>$2,000</td>
</tr>
<tr>
<td>Tier 3</td>
<td>16-25</td>
<td>$2,500</td>
</tr>
<tr>
<td>Tier 4</td>
<td>26+</td>
<td>$3,500</td>
</tr>
</tbody>
</table>

b. **Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,\(^4\) in general, and with Sections 6(b)(4) and (5) of the Act,\(^5\) in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

In adopting Regulation NMS,\(^6\) the Commission granted SROs and broker-dealers ("BDs") increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that its Nasdaq Trading Insights market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in

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

proprietary data—would itself further the Act’s goals of facilitating efficiency and
competition:

Efficiency 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.7

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

Moreover, fee liable data products such as the Nasdaq Trading Insights product are a means by which exchanges compete to attract order flow, and this proposal simply adds the relevant fee structure into an Exchange rule. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

The fee structure for the Nasdaq Trading Insights product, including the 14-day trial offer, also reflects an equitable allocation and will not be unfairly discriminatory

7 Id.
because it is a voluntary product designed to ensure that the amount of the charge is
tailored to the specific port usage patterns of the subscriber. Thus, for example, a
subscriber’s monthly charge for receiving access to the Nasdaq Trading Insights product
for five ports is $1,500, while a subscriber’s monthly charge for receiving access to the
Nasdaq Trading Insights product for 26 ports is $3,500. The range of fee options further
ensures that subscribers are not charged a fee that is inequitably disproportionate to the
use that they make of the product. Additionally, the 14-day trial offer provides a
potential subscriber an opportunity to try the product before signing on to receive it for a
fee.

The proposal would not permit unfair discrimination because the Nasdaq Trading
Insights product will be available to all interested market participants opting to subscribe,
regardless of whether they take advantage of the 14-day trial offer, and will help to
protect a free and open market by continuing to provide additional non-core data (offered
on an optional basis for a fee) to the marketplace and by providing investors with greater
choices.8

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

The Exchange does not believe that the proposed rule change will impose any
burden on competition not necessary or appropriate in furtherance of the purposes of the
Act. The proposed fee structure is designed to ensure a fair and reasonable use of

8 See Sec. Indus. Fin. Mkts. Ass’n (SIFMA), Initial Decision Release No. 1015,
2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous
competition with respect to non-core market data). See also the decision of the
United States Court of Appeals for the District of Columbia Circuit in
NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010) (“NetCoalition I”)
(upholding the Commission’s reliance upon competitive markets to set reasonable
and equitably allocated fees for market data).
Exchange resources by allowing the Exchange to recoup costs while continuing to offer its data products at competitive rates to firms.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. The Nasdaq Trading Insights product is part of the existing market for proprietary market data products that is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. 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 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). In Nasdaq’s case, it is costly to build and maintain a
trading platform, but the incremental cost of trading each additional share on an existing
platform, or distributing an additional instance of data, is very low. Market information
and executions are each produced jointly (in the sense that the activities of trading and
placing orders are the source of the information that is distributed) and are each subject to
significant scale economies. In such cases, marginal cost pricing is not feasible because
if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs
of providing the joint products.

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 and credits to attract orders, charges

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See William J. Baumol and Daniel G. Swanson, “The New Economy and
Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of
relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an “excessive” price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.10

Moreover, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (“ATSS”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data.
The proposed charges for the Nasdaq Trading Insights product are designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs and ease administrative burden while continuing to offer its data products at competitive rates to firms.

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,\(^\text{11}\) the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

   At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

   Not applicable

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products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.
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. Completed notice of proposed rule change for publication in the *Federal Register*.

    5. Proposed rule text.
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-________; File No. SR-NASDAQ-2016-124)

September ____, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq Rule 7046

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 September 23, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a 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

Nasdaq is proposing to amend proposed Nasdaq Rule 7046 (Nasdaq Trading Insights) by adding the corresponding fee for the optional Nasdaq Trading Insights product.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at Nasdaq’s principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. **Purpose**

The Exchange proposes to amend Nasdaq Rule 7046 (Nasdaq Trading Insights) by adding the corresponding fees for the optional Nasdaq Trading Insights product. As discussed in the NTI Filing, the Nasdaq Trading Insights product is a single optional market data service comprised of four market data components: (a) Missed Opportunity – Liquidity; (b) Missed Opportunity – Latency; (c) Peer Benchmarking; and (d) Liquidity Dynamics Analysis.

Upon request by a potential subscribing firm, Nasdaq will provide the Nasdaq Trading Insights product for a 14-day period at no charge. This waiver may be provided only once per firm. A firm will be charged the monthly fee rate listed in Nasdaq Rule 7046(b)(2) if it does not cancel by the conclusion of the trial offer and the fee will not be pro-rated.

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The monthly fee rates set forth in Nasdaq Rule 7046(b), as well as in the chart below, will apply to a firm that subscribes to the Nasdaq Trading Insights product. The monthly fee will be based on the number of ports the firm is subscribing to within the Nasdaq Trading Insights product and in no case will the Nasdaq Trading Insights fees be pro-rated. The fees for the Nasdaq Trading Insights product will be in accordance with the following table

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2. **Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,\(^4\) in general, and with Sections 6(b)(4) and (5) of the Act,\(^5\) in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

In adopting Regulation NMS,\(^6\) the Commission granted SROs and broker-dealers (“BDs”) increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to the public.

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

consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that its Nasdaq Trading Insights market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. 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.7

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

Moreover, fee liable data products such as the Nasdaq Trading Insights product are a means by which exchanges compete to attract order flow, and this proposal simply adds the relevant fee structure into an Exchange rule. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places

7 Id.
substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

The fee structure for the Nasdaq Trading Insights product, including the 14-day trial offer, also reflects an equitable allocation and will not be unfairly discriminatory because it is a voluntary product designed to ensure that the amount of the charge is tailored to the specific port usage patterns of the subscriber. Thus, for example, a subscriber’s monthly charge for receiving access to the Nasdaq Trading Insights product for five ports is $1,500, while a subscriber’s monthly charge for receiving access to the Nasdaq Trading Insights product for 26 ports is $3,500. The range of fee options further ensures that subscribers are not charged a fee that is inequitably disproportionate to the use that they make of the product. Additionally, the 14-day trial offer provides a potential subscriber an opportunity to try the product before signing on to receive it for a fee.

The proposal would not permit unfair discrimination because the Nasdaq Trading Insights product will be available to all interested market participants opting to subscribe, regardless of whether they take advantage of the 14-day trial offer, and will help to protect a free and open market by continuing to provide additional non-core data (offered on an optional basis for a fee) to the marketplace and by providing investors with greater choices.\footnote{See Sec. Indus. Fin. Mkts. Ass’n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data). See also the decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010) ("NetCoalition I") (upholding the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data).}
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. The proposed fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while continuing to offer its data products at competitive rates to firms.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. The Nasdaq Trading Insights product is part of the existing market for proprietary market data products that is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. 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 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). In Nasdaq’s case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs of providing the joint products.

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 and credits to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an “excessive” price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.\[^{10}\]

\[^{10}\] Moreover, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (“ATSs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this
The proposed charges for the Nasdaq Trading Insights product are designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs and ease administrative burden while continuing to offer its data products at competitive rates to firms.

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

Written comments were neither solicited nor 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 Act.11

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.

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competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provide further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

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-2016-124 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-2016-124. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m.
Copies of such filing also will be available for inspection and copying at the principal offices 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-2016-124, 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.\(^\text{12}\)

Robert W. Errett
Deputy Secretary

\(^{12}\) 17 C.F.R. 200.30-3(a)(12).
The text of the proposed rule change is below. New text is underlined.

The NASDAQ Stock Market Rules
Equity Rules

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7046. Nasdaq Trading Insights

(a) No change.

(b) Standard Fees

(1) 14-Day Trial Offer. Upon request, Nasdaq shall provide firms a 14-day waiver of the fees for the Nasdaq Trading Insights product, which consists of all four components listed above in (a)(1) – (a)(4). This waiver may be provided only once per firm. A firm will be charged the monthly fee rate listed below in (b)(2) if it does not cancel by the conclusion of the trial offer. The Nasdaq Trading Insights fee will not be pro-rated.

(2) The following monthly fee rates shall apply to a firm that subscribes to the Nasdaq Trading Insights product and will be based on the number of ports the firm is subscribing to in the Nasdaq Trading Insights product. The Nasdaq Trading Insights fees will not be pro-rated:

<table>
<thead>
<tr>
<th>TIERS</th>
<th>NUMBER OF PORTS</th>
<th>MONTHLY CHARGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>1-5</td>
<td>$1,500</td>
</tr>
<tr>
<td>Tier 2</td>
<td>6-15</td>
<td>$2,000</td>
</tr>
<tr>
<td>Tier 3</td>
<td>16-25</td>
<td>$2,500</td>
</tr>
<tr>
<td>Tier 4</td>
<td>26+</td>
<td>$3,500</td>
</tr>
</tbody>
</table>

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