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 Web site 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–NYSE–2017–03 and should be submitted on or before March 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.12
Eduardo A. Aleman, Assistant Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange’s Data Fees at Rule 7026


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 January 30, 2017, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange’s data fees at Rule 7026 to raise the monthly Enterprise License fee for distribution of an Enhanced Display Solution from $30,000 to $33,500, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on February 1, 2017.

The text of the proposed rule change is available on the Exchange’s Web site 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 purpose of the proposed rule change is to raise the monthly Enterprise License fee for distribution of an Enhanced Display Solution from $30,000 to $33,500, and to correct a cross reference to Rule 7023.

EDS Enterprise License

An Enhanced Display Solution (“EDS”) provides a display of Nasdaq depth-of-book data—data feeds with price quotations at more than one price level, such as TotalView, OpenView and Level 2—with the capability of connecting to an Application Programming Interface (“API”). The API allows Subscribers to export the depth-of-book data to a display application of their choosing, provided that the Distributor controls access to the application, monitors its use, and prevents redistribution of the data, either externally or internally.

The Enterprise License fee allows Distributors to purchase an EDS for professional subscribers at a fixed monthly per-subscriber rate. The current fee of $30,000 per month permits the distribution of Nasdaq depth-of-book data to an unlimited number of professional subscribers at a monthly per-subscriber rate of $70 for TotalView and Level 2, and a monthly per-subscriber rate of $6 for OpenView. The monthly per-subscriber fees for Distributors that elect not to purchase an EDS Enterprise License fee are $74 for TotalView and Level 2 and $6 for OpenView, as provided in Rule 7026(a)(1)(B). All Distributors who purchase an EDS, whether or not an Enterprise License is purchased, must pay the distributor fees set forth in Rule 7026(a)(1)(A). The Enterprise License is designed to provide a lower fee to the largest Distributors of depth-of-book data to encourage distribution of such data.

Proposed Changes

The Exchange proposes to raise the monthly EDS Enterprise License fee from $30,000 to $33,500, and to correct a cross reference to Rule 7023.

EDS Enterprise License

The proposed increase in the monthly EDS Enterprise License fee is reasonable in light of the value of EDS to Distributors and Subscribers, which has increased significantly due to technological advances that have occurred since EDS was introduced in January of 2012, particularly for those Distributors with sufficient volume to purchase an Enterprise License.

The key feature of EDS—the capability of connecting to an API—allows the Subscriber to transfer Nasdaq data to any number of applications. When EDS was first introduced, data was transferred to relatively simple applications, such as spreadsheets. Since 2012, EDS has become more valuable as the use of the API has moved from spreadsheets to complex analytic tools, enhancing the value of EDS to both Subscribers and Distributors.

Distributors that purchase EDS through the Enterprise License are among the greatest beneficiaries of EDS because they have the largest number of Subscribers. They are also in the best position to bear the cost of an increase in the price of EDS because of that larger subscriber base.

In summary, the price increase is justified by the increasing value of EDS to Distributors that purchase an Enterprise License.

Technical Correction

Nasdaq also proposes to correct a cross reference to Rule 7023 (Nasdaq Depth-of-Book Data).

On January 5, 2012, the Exchange filed with the Commission a proposal to amend Rule 7026 to offer an optional
tiered fee for enhanced displays.\textsuperscript{3} At the
time of its inception, the EDS fee
eexemption made reference to the
previous iteration of Rule 7023 (then,
Nasdaq Total View), which established,
under section (a)(1)(C), the Enterprise
License fees available to a Distributor.
Following the January 2012 rule change,
on March 28 of that year, Nasdaq filed
with the Commission a proposal to fully
amend Rule 7023,\textsuperscript{4} renaming the rule,
and providing an expanded description of the
Enterprise License fees under section (c) of that rule.
Although the Exchange has changed
Rule 7026 since then, it has not yet
updated the reference to the Enterprise
License fees. The cross reference
provided under Rule 7026(a)(1)(A),
establishing that Distributors
subscribing to certain enterprise depth
capped fees will be exempt from paying
the EDS Distributor Fee, currently
points to a section under Rule 7023
which provides a definition for the
TotalView data feed, and not to the
Enterprise License fees that would allow
a Distributor to be exempt from paying
the EDS distributor fee. The Exchange
therefore proposes to correct that cross
reference provided to Rule 7023(c) (Enterprise
License Fees), and to modify the
language to make the reference clearer,
without changing its application.
The EDS Enterprise License—and the
entire EDS program—is entirely optional in that Nasdaq is not required
to offer it and Distributors are not
required to pay for it. Distributors and
Subscribers can discontinue its use at
any time and for any reason, including
an assessment of the fees charged.
The proposed change does not raise the
cost of any other Nasdaq product,
except to the extent that it increases the
total cost of purchasing depth-of-book
data for those who obtain such data
through an EDS Enterprise License.

2. Statistical Basis

The Exchange believes that its
proposal is consistent with Section 6(b)
of the Act,\textsuperscript{5} in general, and furthers the
objectives of Sections 6(b)(4) and 6(b)(5)
of the Act,\textsuperscript{6} in particular, in that it
provides for the equitable allocation of reasonable dues, fees and other charges
among members and issuers and other
persons using any facility, and is not
designed to permit unfair
discrimination between customers,
issuers, brokers, or dealers.
The Commission and the courts have
repeatedly expressed their preference for
competition over regulatory
intervention in determining prices,
products, and services in the securities
markets. In Regulation NMS, while
adopting a series of steps to improve the
current market model, the Commission
highlighted the importance of market
forces in determining prices and SRO
revenues and, also, recognized that
current regulation of the market system
"has been remarkably successful in
promoting market competition in its
broader forms that are most important to
investors and listed companies."\textsuperscript{7}
Likewise, in NetCoalition v. Securities
and Exchange Commission\textsuperscript{8} ("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.\textsuperscript{9} 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."\textsuperscript{10}
Further, "[i]no 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 '[n]o exchange can afford to take its
market share of fees for granted' because
'no exchange possesses a
monopoly, regulatory or otherwise, in
the execution of order flow from broker
dealers. . . ."\textsuperscript{11}
The Exchange believes that the
proposal to raise the monthly EDS
Enterprise License fee from $30,000 to
$33,500 is fair and equitable in
accordance with Section 6(b)(4) of the Act,
and not unreasonably
discriminatory in accordance with
Section 6(b)(5) of the Act. As described
above, the proposed fee increase reflects
the increasing value of EDS to
Distributors and Subscribers, particularly those Distributors with
sufficient volume to purchase an
Enterprise License. Moreover,
Enterprise License fees are constrained by the Exchange’s need to compete for
order flow, and are subject to
competition from other exchanges and
among broker-dealers for customers. If
Nasdaq is incorrect in its assessment,
there is no barrier to block a competitor
from entering the market with a
substantially similar product.
The Exchange believes that the
proposed fee changes are an equitable allocation and not unfairly
discriminatory because the Exchange
will apply the same fee to all similarly-
situated Subscribers.

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

The Exchange does not believe that
the proposed rule change will impose
any burden on competition not
necessary or appropriate in furtherance of
the purposes of the Act. In terms of
inter-market competition, the Exchange
notes that it operates in a highly
competitive market in which market
participants can readily favor competing
venues if they deem fee levels at a
particular venue to be excessive. In such
an environment, the Exchange must
continually adjust its fees to remain
competitive with other exchanges and
with alternative trading systems that
have been exempted from compliance
with the statutory standards applicable
to exchanges. Because competitors are
free to modify their own fees in
response, and because market
participants may readily adjust their
order routing practices, the Exchange
believes that the degree to which fee
changes in this market may impose any
burden on competition is extremely
limited.
The proposed fee will raise the
monthly EDS Enterprise License fee from
$30,000 to $33,500. The EDS
Enterprise License is used to distribute
TotalView, Level 2, and OpenView,
Nasdaq’s depth-of-book products. The
question of whether the prices of depth-
of-view products are constrained by
competitive forces was examined in
2016 by an Administrative Law Judge in a
petition filed by the Securities
Industry and Financial Markets
Association for a review of certain actions by Self-Regulatory

\textsuperscript{3} See Securities Exchange Act Release No. 66165
(January 17, 2012), 77 FR 3313 (January 23, 2012)
(SR–NASDAQ–2012–005); see also Securities
79 FR 78784 [sic] (December 16, 2014) (SR–
NASDAQ–2014–117) (clarifying, among other changes, that the EDS Fee exemption applies to Distributors and not Customers).


\textsuperscript{5} 15 U.S.C. 78f(b).

\textsuperscript{6} 15 U.S.C. 78f(b)(4) and (5).

\textsuperscript{7} Securities Exchange Act Release No. 51808
(June 9, 2005), 70 FR 74976, 74999 (June 23, 2005)
("Regulation NMS Adopting Release").

\textsuperscript{8} NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir.
2010).

\textsuperscript{9} See NetCoalition, at 534–535.

\textsuperscript{10} Id. at 537.

\textsuperscript{11} Id. at 539 (quoting Securities Exchange Act
Release No. 59039 (December 2, 2008), 73 FR
74770, 74782–83 (December 9, 2008) (SR–
NYSEArca–2006–21)).
Organizations. After a four-day hearing, the Administrative Law Judge found that “competition plays a significant role in restraining exchange pricing of depth-of-book products” because “depth-of-book products from different exchanges function as substitutes for each other,” and therefore “the threat of substitution from depth-of-book customers constrains their depth-of-book prices.” As such, Nasdaq’s depth-of-book fees—including those fees for the distribution of TotalView, Level 2 and OpenView—are “constrained by significant competitive forces.” If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Market forces specifically constrain the EDS Enterprise License fee in three respects. First, the EDS Enterprise License is one element of the total cost of purchasing depth-of-book data. Firms make purchasing decisions based on the total cost of interacting with the Exchange and, if the price of the EDS Enterprise License were set above competitive levels, competition for order flow would be harmed. Second, Distributors may elect to purchase EDS through per-subscriber fees in lieu of an Enterprise License, or may reduce their purchases of proprietary data. Third, the competition among Distributors for Subscribers provides another constraint on the cost of the EDS Enterprise License.

Competition for Order Flow

Depth-of-book data fees are constrained by competition among exchanges and other entities seeking to attract order flow. Order flow is the “life blood” of the exchanges. Broker-dealers currently have numerous alternative venues for their order flow, including self-regulatory organization (“SRO”) markets, as well as internalizing broker-dealers (“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 Trade Reporting Facilities (“TRFs”) compete to attract internalized transaction reports. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

The level of competition and contestability in the market for order flow is demonstrated by the numerous examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg, Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade.

Each SRO, TRF, ATS, and BD that competes for order flow is permitted to produce proprietary data products. Many currently do or have announced plans to do so, including NYSE, NYSE Amex, NYSE Arca, BATS, and IEX. This is because Regulation NMS deregulated the market for proprietary data. While BDs had previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Order routers and market data vendors can facilitate the production of proprietary data products for single or multiple BDs. The potential sources of proprietary products are virtually limitless.

The markets for order flow and proprietary data are inextricably linked: A trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with Nasdaq and other exchanges. The cost of EDS is one factor in this total platform analysis. A supra-competitive price for the EDS Enterprise License has the potential to impair competition for order flow, and the need to compete effectively for order flow will constrain its price.

Competition for Distributors

An Enterprise License is one among several methods of purchase available to EDS Distributors. If the price of the EDS Enterprise License were to become too high, Distributors would use another purchase option, such as per-subscriber fees.

The total cost of Nasdaq depth-of-book data relative to other options also functions as an effective constraint. If the total price of depth-of-book data, including the EDS Enterprise License, were to become too high, Distributors would be able to purchase similar data from a competitor such as NYSE or BATS, or curtail their purchases of other Nasdaq products.

The availability of alternative payment methods to purchase EDS, as well as the availability of depth-of-book data from other sources, will act as effective constraints on the price of the EDS Enterprise License.

Competition for Subscribers

Distributors who purchase the EDS Enterprise License are in competition for Subscribers. If the price of the Enterprise License were set above competitive levels, the Distributors that purchase that license would be at a disadvantage relative to their competitors. As such, they may lower costs by paying per-subscriber fees, curtailing their purchases of Nasdaq products, or purchasing depth-of-book data from one of Nasdaq’s competitors.

The competition among Distributors for Subscribers therefore provides another constraint on the cost of the EDS Enterprise License.

In summary, market forces constrain the price of the EDS Enterprise License through competition for order flow, the availability of other methods of delivery for depth-of-book data, and the competition among Distributors for Subscribers. For these reasons, the Exchange has provided a substantial basis demonstrating that the fee is equitable, fair, reasonable, and not unreasonably discriminatory, and therefore consistent with and in furtherance of the purposes of the Exchange Act.

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. At any time within 60 days of the filing of the proposed rule change, the

14 Id. at 33.
15 Id.
16 Id. at 33.
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.

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–2017–007 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–2017–007. 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 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 Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–007, and should be submitted on or before March 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.18

Eduardo A. Aleman, Assistant Secretary.

**BILLING CODE 8011–01–P**

**SECURITIES AND EXCHANGE COMMISSION**


Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Its Listing Standards for Special Purpose Acquisition Companies


On December 8, 2016, the New York Stock Exchange LLC (“NYSE” or “Exchange”) 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, a proposed rule change to amend its listing standards for Special Purpose Acquisition Companies (‘‘SPAC’’) to: (1) No longer require a shareholder vote and to refine existing procedures to affect business combination; and (2) adjust the quantitative requirements for initial and continued listing. The proposed rule change was published for comment in the Federal Register on December 29, 2016.3 The Commission received no comments on the proposal.

Section 19(b)(2) of the Act4 provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 12, 2017. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,5 designates March 29, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2016–72).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.6

Eduardo A. Aleman, Assistant Secretary.

**BILLING CODE 8011–01–P**

**SECURITIES AND EXCHANGE COMMISSION**


Self-Regulatory Organizations; NYSE National, Inc., Formerly National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 11.1, Hours of Trading, Interpretations and Policies .01, To Cease Trading on the Exchange’s System as of February 1, 2017


Pursuant to Section 19(b)(1)7 of the Securities Exchange Act of 1934 (the “Act”)8 and Rule 19b–4 thereunder, notice is hereby given that on February 1, 2017, NYSE National, Inc., formerly National Stock Exchange, Inc. (“NYSE National” or the “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

---