

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 32		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2017 - * 051	
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="A proposal to amend the Exchanges fees at Rule 7046"/>					
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="Daniel"/>		Last Name * <input type="text" value="Cantu"/>			
Title * <input type="text" value="Associate General Counsel"/>					
E-mail * <input type="text" value="daniel.cantu@nasdaq.com"/>					
Telephone * <input type="text" value="(301) 978-8469"/>		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="05/23/2017"/>		<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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Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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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

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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

Add Remove View

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) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s fees at Rule 7046 to: (i) introduce a new fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights for a \$1,000 per month sponsorship fee to be paid by the member, and fees based on the number of ports to be paid by the sponsored firm; and (ii) extend a free trial offer period from 14 to 30 days. The changes are described in further detail below.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. 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 (the “Board”) on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Daniel A. Cantu
Associate General Counsel
Nasdaq, Inc.
(301) 978-8469

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees at Rule 7046 to: (i) introduce a new fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights for a \$1,000 per month sponsorship fee to be paid by the member, and fees based on the number of ports to be paid by the sponsored firm; and (ii) extend a free trial offer period from 14 to 30 days.

Nasdaq Trading Insights

Nasdaq Trading Insights is an optional market data service that employs advanced analytics and machine learning to analyze order activity. It is comprised of three active market data components: (a) Missed Opportunity—Liquidity; (b) Missed Opportunity—Latency; and (c) Peer Benchmarking. The initial filing for this product had also proposed a fourth component—a Liquidity Dynamics Analysis—which, as reported in a prior filing,³ has been delayed in development.

The Missed Opportunity—Liquidity component identifies when an order from a market participant could have been increased in size, resulting in the execution of additional shares. This component is designed to provide information to a market participant interested in gaining insight into hidden pockets of liquidity.

The Missed Opportunity—Latency component identifies the amount of time by which an otherwise marketable order missed execution. This component is designed to

³ See Securities Exchange Release No. 79119 (October 19, 2016), 81 FR 73157 (October 24, 2016) (SR-NASDAQ-2016-138).

provide information to market participants interested in optimizing their models and trading patterns.

The Peer Benchmarking component ranks the quality of a market participant's trading performance against its peers, allowing market participants to view their relative trading performance by port,⁴ with each port ranked independently by each metric against the ports of peer firms trading on the Exchange.

Each market participant is eligible to receive information regarding only its own data for each Trading Insights component. That data is provided on a T+1 basis.

The initial proposal to create Trading Insights, filed in August of 2016,⁵ included a Liquidity Dynamics Analysis component, which was to help market participants identify pockets of accessible liquidity. In October of 2016, the Exchange announced that this component would be delayed and unavailable to subscribers.⁶

A subscription to Nasdaq Trading Insights is currently available for a monthly fee based on the number of ports for which the market participant subscribes to such information: \$1,500 for 1-5 ports; \$2,000 for 6-15 ports; \$2,500 for 16-25 ports; and \$3,500 for 26 ports or more. There is no current fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights.

⁴ A port is a means by which a member firm connects to Nasdaq's systems.

⁵ See Securities Exchange Act Release No. 78462 (August 2, 2016), 81 FR 52486 (August 8, 2016) (SR-NASDAQ-2016-101).

⁶ See Securities Exchange Act Release No. 79119 (October 19, 2016), 81 FR 73157 (October 24, 2016) (SR-NASDAQ-2016-138).

Proposed Changes

The Exchange proposes two changes to the Trading Insights product: (i) introduce a new fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights for a \$1,000 per month sponsorship fee to be paid by the member, and fees based on the number of ports to be paid by the sponsored firm; and (ii) extend a free trial offer period from 14 to 30 days.

a. Sponsorship Fee

The Exchange proposes to introduce a new fee structure that would allow members to sponsor an unlimited number of their customers to obtain access to Trading Insights' analytics for a \$1,000 per month sponsorship fee to be paid by the member, as well as standard fees based on the number of ports to be paid by the sponsored firm(s) set forth in Rule 7046(b)(2). Standard fees for both members and sponsored firms will be at the current rates: \$1,500 for 1-5 ports; \$2,000 for 6-15 ports; \$2,500 for 16-25 ports; and \$3,500 for 26 ports or more. A sponsoring member may receive data from the same port as a sponsored firm, but only the sponsored firm would be charged a fee for that data. The sponsoring member will be charged a Standard Fee for Trading Insights on all ports transmitting the proprietary data of that member, but the sponsoring member will not be charged for any data on ports subscribed by a sponsored firm.⁷

⁷ For example, a member firm that subscribes to Trading Insights information on six ports, and sponsors a firm to subscribe to Trading Insight information on one of those six ports, will be charged Standard Fees for five ports, while the sponsored firm will be charged Standard Fees for one port.

A member will only be able to view data concerning ports that contain information related to its own proprietary trading or its customers' trading.⁸ A sponsored firm will only be able to view data on ports that contain its own trading information. A member will not be able to view data concerning the ports of other members or the customers of other members. A customer will not be able to view data concerning the ports of other customers.

This proposed change will increase market transparency by creating a fee structure designed to encourage the dissemination of Trading Insights information to non-members by setting a sponsorship fee that remains flat notwithstanding the number of non-members receiving that information. As such, the proposed change is fair and reasonable.

b. Trial Offers

The Exchange proposes to extend the current 14 day free trial offer to 30 days. The trial may be repeated if the Exchange elects to release a new version of the product. The Exchange has found that the additional time is necessary for potential subscribers to thoroughly test the product, and the Exchange believes that such enhanced testing will lead to more subscriptions to the product. The Exchange will offer additional free trials if Nasdaq elects to release a new version of the product that warrants new testing. The

⁸ In Securities Exchange Act Release No. 78462 (August 2, 2016), 81 FR 52486 (August 8, 2016) (SR-NASDAQ-2016-101), the Exchange stated that it would ensure that each market participant receives only its own unique data and would not be able to obtain any other market participant's unique data. As a narrow exception to this general proposition, it is appropriate for a member to have access to its customer's information because the customer itself discloses trading activity to the member, and the Trading Insights information will enable the member to act more effectively on its customer's behalf.

Exchange will report the release of any new version of the product on the Nasdaq Trader website (www.nasdaqtrader.com), or a successor website.

There is also a technical change to Rule 7046(b)(1), the paragraph including the trial offer provision, to delete a sentence stating that the product will not be pro-rated. This sentence is unnecessary because it is repeated in Rule 7046(b)(2).

Fees for Trading Insights are optional in that they apply only to firms that elect to purchase the product. The proposed changes do not impact the cost of any other Nasdaq product.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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.

This proposal creates a fee structure designed to encourage the dissemination of Nasdaq Trading Insights to non-members by setting a sponsorship fee that remains flat notwithstanding the number of non-members receiving that information. Lengthening trial periods for new potential subscribers will also increase distribution by allowing potential subscribers to become more familiar with the benefits of the product, which may lead to additional subscriptions.

⁹ 15 U.S.C. 78f (b).

¹⁰ 15 U.S.C. 78f (b)(4) and (5).

The proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility because the proposed fee structure reasonably reflects the value that members and sponsored customers receive for their service. The new \$1,000 per month sponsorship fee for members enables them to distribute Trading Insights information to an unlimited number of customers for a flat fee, and provides the member with an opportunity to view customer port data without paying the Standard Fees paid by their customers. The Standard Fees paid by customers will allow them to obtain port information at exactly the same rates that would be paid by members. The fee structure therefore reflects the value of Trading Insights to both customers and members, respectively.

Moreover, all similarly-situated persons will be charged the same fee for the same service. All members that opt to purchase the service or sponsor a customer for that service will be charged the same standard and sponsorship fees. All customers that are sponsored by a member and opt to purchase the service will be charged the same standard fees for information on their ports. The service is not available to non-members and customers not sponsored by a member because the information provided by this service pertains only to ports used by members and their customers.

In adopting Regulation NMS,¹¹ the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that Nasdaq Trading Insights—which employs advanced analytics and machine

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“Regulation NMS Adopting Release”).

learning to analyze order activity—is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—deregulating the market in proprietary data—would 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.¹²

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.

In NetCoalition v. Securities and Exchange Commission¹³ (“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.¹⁴ 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.”¹⁵ “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

¹² Id.

¹³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁴ See NetCoalition, at 534 - 535.

¹⁵ Id. at 537.

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’”¹⁶

Data products such as Nasdaq Trading Insights are a means by which exchanges compete to attract order flow. 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 provide. The need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.¹⁷

The proposed changes are consistent with Section 6(b)(5) of the Act because they increase transparency by promoting the distribution of sophisticated trading analyses to sponsored firms and providing longer trial periods to allow potential subscribers to become more familiar with the benefits of the product. The proposed changes would not permit unfair discrimination because the Exchange will apply the same fee to all similarly-situated members.

Fees for Trading Insights are optional in that they apply only to firms that elect to purchase the product, which, like all proprietary data products, they may cancel at any time.

¹⁶ 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)).

¹⁷ 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).

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. Indeed, the Exchange believes that the Nasdaq Trading Insights product enhances competition by providing new options for analyzing market data.

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. 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. 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 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).¹⁸ 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.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products. The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATs"), 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,

¹⁸ See William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," Antitrust Law Journal, Vol. 70, No. 3 (2003).

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 provides 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 the BATS exchanges.

In this competitive environment, an “excessive” price for one product will have to be reflected in lower prices for other products sold by the Exchange, or otherwise the Exchange may experience a loss in sales that may adversely affect its profitability.

In this instance, the proposed rule change enhances competition by creating a fee structure that encourages the dissemination of Nasdaq Trading Insights to non-members and expanding free trial offers to allow members and non-members to become more familiar with the product. If Nasdaq Trading Insights were to become unattractive to members and sponsored firms, those firms would opt not to purchase the product.

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,¹⁹ 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-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 Change for publication in the Federal Register.

5. Text of the proposed rule change.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2017-051)

May __, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Fees at 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 May 23, 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 fees at Rule 7046 to: (i) introduce a new fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights for a \$1,000 per month sponsorship fee to be paid by the member, and fees based on the number of ports to be paid by the sponsored firm; and (ii) extend a free trial offer period from 14 to 30 days. The changes are described in further detail below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees at Rule 7046 to: (i) introduce a new fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights for a \$1,000 per month sponsorship fee to be paid by the member, and fees based on the number of ports to be paid by the sponsored firm; and (ii) extend a free trial offer period from 14 to 30 days.

Nasdaq Trading Insights

Nasdaq Trading Insights is an optional market data service that employs advanced analytics and machine learning to analyze order activity. It is comprised of three active market data components: (a) Missed Opportunity—Liquidity; (b) Missed Opportunity—Latency; and (c) Peer Benchmarking. The initial filing for this product had also proposed

a fourth component—a Liquidity Dynamics Analysis—which, as reported in a prior filing,³ has been delayed in development.

The Missed Opportunity—Liquidity component identifies when an order from a market participant could have been increased in size, resulting in the execution of additional shares. This component is designed to provide information to a market participant interested in gaining insight into hidden pockets of liquidity.

The Missed Opportunity—Latency component identifies the amount of time by which an otherwise marketable order missed execution. This component is designed to provide information to market participants interested in optimizing their models and trading patterns.

The Peer Benchmarking component ranks the quality of a market participant's trading performance against its peers, allowing market participants to view their relative trading performance by port,⁴ with each port ranked independently by each metric against the ports of peer firms trading on the Exchange.

Each market participant is eligible to receive information regarding only its own data for each Trading Insights component. That data is provided on a T+1 basis.

The initial proposal to create Trading Insights, filed in August of 2016,⁵ included a Liquidity Dynamics Analysis component, which was to help market participants

³ See Securities Exchange Release No. 79119 (October 19, 2016), 81 FR 73157 (October 24, 2016) (SR-NASDAQ-2016-138).

⁴ A port is a means by which a member firm connects to Nasdaq's systems.

⁵ See Securities Exchange Act Release No. 78462 (August 2, 2016), 81 FR 52486 (August 8, 2016) (SR-NASDAQ-2016-101).

identify pockets of accessible liquidity. In October of 2016, the Exchange announced that this component would be delayed and unavailable to subscribers.⁶

A subscription to Nasdaq Trading Insights is currently available for a monthly fee based on the number of ports for which the market participant subscribes to such information: \$1,500 for 1-5 ports; \$2,000 for 6-15 ports; \$2,500 for 16-25 ports; and \$3,500 for 26 ports or more. There is no current fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights.

Proposed Changes

The Exchange proposes two changes to the Trading Insights product: (i) introduce a new fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights for a \$1,000 per month sponsorship fee to be paid by the member, and fees based on the number of ports to be paid by the sponsored firm; and (ii) extend a free trial offer period from 14 to 30 days.

a. Sponsorship Fee

The Exchange proposes to introduce a new fee structure that would allow members to sponsor an unlimited number of their customers to obtain access to Trading Insights' analytics for a \$1,000 per month sponsorship fee to be paid by the member, as well as standard fees based on the number of ports to be paid by the sponsored firm(s) set forth in Rule 7046(b)(2). Standard fees for both members and sponsored firms will be at the current rates: \$1,500 for 1-5 ports; \$2,000 for 6-15 ports; \$2,500 for 16-25 ports; and \$3,500 for 26 ports or more. A sponsoring member may receive data from the same port

⁶ See Securities Exchange Release No. 79119 (October 19, 2016), 81 FR 73157 (October 24, 2016) (SR-NASDAQ-2016-138).

as a sponsored firm, but only the sponsored firm would be charged a fee for that data. The sponsoring member will be charged a Standard Fee for Trading Insights on all ports transmitting the proprietary data of that member, but the sponsoring member will not be charged for any data on ports subscribed by a sponsored firm.⁷

A member will only be able to view data concerning ports that contain information related to its own proprietary trading or its customers' trading.⁸ A sponsored firm will only be able to view data on ports that contain its own trading information. A member will not be able to view data concerning the ports of other members or the customers of other members. A customer will not be able to view data concerning the ports of other customers.

This proposed change will increase market transparency by creating a fee structure designed to encourage the dissemination of Trading Insights information to non-members by setting a sponsorship fee that remains flat notwithstanding the number of non-members receiving that information. As such, the proposed change is fair and reasonable.

⁷ For example, a member firm that subscribes to Trading Insights information on six ports, and sponsors a firm to subscribe to Trading Insight information on one of those six ports, will be charged Standard Fees for five ports, while the sponsored firm will be charged Standard Fees for one port.

⁸ In Securities Exchange Act Release No. 78462 (August 2, 2016), 81 FR 52486 (August 8, 2016) (SR-NASDAQ-2016-101), the Exchange stated that it would ensure that each market participant receives only its own unique data and would not be able to obtain any other market participant's unique data. As a narrow exception to this general proposition, it is appropriate for a member to have access to its customer's information because the customer itself discloses trading activity to the member, and the Trading Insights information will enable the member to act more effectively on its customer's behalf.

b. Trial Offers

The Exchange proposes to extend the current 14 day free trial offer to 30 days. The trial may be repeated if the Exchange elects to release a new version of the product. The Exchange has found that the additional time is necessary for potential subscribers to thoroughly test the product, and the Exchange believes that such enhanced testing will lead to more subscriptions to the product. The Exchange will offer additional free trials if Nasdaq elects to release a new version of the product that warrants new testing. The Exchange will report the release of any new version of the product on the Nasdaq Trader website (www.nasdaqtrader.com), or a successor website.

There is also a technical change to Rule 7046(b)(1), the paragraph including the trial offer provision, to delete a sentence stating that the product will not be pro-rated. This sentence is unnecessary because it is repeated in Rule 7046(b)(2).

Fees for Trading Insights are optional in that they apply only to firms that elect to purchase the product. The proposed changes do not impact the cost of any other Nasdaq product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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.

⁹ 15 U.S.C. 78f (b).

¹⁰ 15 U.S.C. 78f (b)(4) and (5).

This proposal creates a fee structure designed to encourage the dissemination of Nasdaq Trading Insights to non-members by setting a sponsorship fee that remains flat notwithstanding the number of non-members receiving that information. Lengthening trial periods for new potential subscribers will also increase distribution by allowing potential subscribers to become more familiar with the benefits of the product, which may lead to additional subscriptions.

The proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility because the proposed fee structure reasonably reflects the value that members and sponsored customers receive for their service. The new \$1,000 per month sponsorship fee for members enables them to distribute Trading Insights information to an unlimited number of customers for a flat fee, and provides the member with an opportunity to view customer port data without paying the Standard Fees paid by their customers. The Standard Fees paid by customers will allow them to obtain port information at exactly the same rates that would be paid by members. The fee structure therefore reflects the value of Trading Insights to both customers and members, respectively.

Moreover, all similarly-situated persons will be charged the same fee for the same service. All members that opt to purchase the service or sponsor a customer for that service will be charged the same standard and sponsorship fees. All customers that are sponsored by a member and opt to purchase the service will be charged the same standard fees for information on their ports. The service is not available to non-members and customers not sponsored by a member because the information provided by this service pertains only to ports used by members and their customers.

In adopting Regulation NMS,¹¹ the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that Nasdaq Trading Insights—which employs advanced analytics and machine learning to analyze order activity—is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—deregulating the market in proprietary data—would 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.¹²

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.

In NetCoalition v. Securities and Exchange Commission¹³ (“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-

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹² Id.

¹³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

based approach.¹⁴ 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.”¹⁵ “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] ‘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’”¹⁶

Data products such as Nasdaq Trading Insights are a means by which exchanges compete to attract order flow. 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 provide. The need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.¹⁷

The proposed changes are consistent with Section 6(b)(5) of the Act because they increase transparency by promoting the distribution of sophisticated trading analyses to

¹⁴ See NetCoalition, at 534 - 535.

¹⁵ Id. at 537.

¹⁶ 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)).

¹⁷ 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).

sponsored firms and providing longer trial periods to allow potential subscribers to become more familiar with the benefits of the product. The proposed changes would not permit unfair discrimination because the Exchange will apply the same fee to all similarly-situated members.

Fees for Trading Insights are optional in that they apply only to firms that elect to purchase the product, which, like all proprietary data products, they may cancel at any time.

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. Indeed, the Exchange believes that the Nasdaq Trading Insights product enhances competition by providing new options for analyzing market data.

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. 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. 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 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).¹⁸ 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.

¹⁸ See William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," Antitrust Law Journal, Vol. 70, No. 3 (2003).

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products. The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, as well as internalizing BDs and various forms of alternative trading systems (“ATs”), 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 ATs 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 products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, and the BATS exchanges.

In this competitive environment, an “excessive” price for one product will have to be reflected in lower prices for other products sold by the Exchange, or otherwise the Exchange may experience a loss in sales that may adversely affect its profitability.

In this instance, the proposed rule change enhances competition by creating a fee structure that encourages the dissemination of Nasdaq Trading Insights to non-members and expanding free trial offers to allow members and non-members to become more

familiar with the product. If Nasdaq Trading Insights were to become unattractive to members and sponsored firms, those firms would opt not to purchase the product

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.¹⁹

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.

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

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2017-051 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-2017-051. 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, 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-2017-051 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The NASDAQ Stock Market Rules

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7046. Nasdaq Trading Insights

(a) No change.

(b) Standard Fees

(1) 30[14]-Day Trial Offer. Upon request, Nasdaq shall provide firms a 30[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). However, availability of the Liquidity Dynamics Analysis component is currently delayed. This waiver may be provided only once per firm for each version of the product, as designated by Nasdaq. 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:

TIERS	NUMBER OF PORTS	MONTHLY CHARGE
Tier 1	1-5	\$1,500
Tier 2	6-15	\$2,000
Tier 3	16-25	\$2,500
Tier 4	26+	\$3,500

(3) A member will be charged for all ports for which it subscribes to Trading Insights information, excluding any fees for such ports paid by a sponsored firm.

(4) A member that provides access to Nasdaq Trading Insights to one or more sponsored firms will pay a sponsor fee of \$1,000 per month.

(5) A sponsored firm will be charged for all ports for which it subscribes to Trading Insights information.

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