

Dated: December 28, 2021.

**J. Matthew DeLesDernier,**

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93868; File No. SR-NASDAQ-2021-102]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Withdraw Its Trading Insights Product From Sale

December 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 16, 2021, The Nasdaq Stock Market LLC (“Nasdaq” or “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 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 withdraw its Trading Insights product from sale.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 withdraw the Trading Insights product from sale. Trading Insights is an optional market data service designed to help members analyze their own order activity. Nasdaq has determined, however, that the product is no longer needed, and, for certain components of the product, members are able to gather similar insights into their own order activity using existing messaging received on their order acknowledgments. Because Trading Insights is no longer needed in the industry, Nasdaq has decided to redirect the resources used to offer Trading Insights toward new tools and services, and withdraw the product from sale.

##### Trading Insights

Trading Insights is an optional market data service designed to help members analyze their own order activity. It is comprised of three components: (a) Missed Opportunity—Liquidity; (b) Missed Opportunity—Latency; and (c) Peer Benchmarking.<sup>3</sup>

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, and is designed to provide information to a market participant interested in gaining insight into pockets of liquidity.<sup>4</sup>

<sup>3</sup> See Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR-Nasdaq-2016-101); see also Securities Exchange Release No. 79035 (October 4, 2016), 81 FR 70207 (October 11, 2016) (SR-Nasdaq-2016-124) (setting fees for Trading Insights); Securities Exchange Act Release No. 80856 (June 5, 2017), 82 FR 26820 (June 9, 2017) (SR-Nasdaq-2017-051) (modifying fees to allow members to sponsor their customers to receive Trading Insights and extending a free trial offer). The initial proposal had included a Liquidity Dynamics Analysis component, which was to help market participants identify pockets of accessible liquidity, but the Exchange later announced that this component would be delayed and was never made available to subscribers. See Securities Exchange Release No. 79119 (October 19, 2016), 81 FR 73157 (October 24, 2016) (SR-Nasdaq-2016-138).

<sup>4</sup> The data elements for this component, in summary, are: (i) Issue (Nasdaq symbol for the issue); (ii) Buy/Sell Indicator (side of the market at which the market participants are quoting); (iii) Price (the price (inclusive of decimal point) at which Nasdaq Market Center market participants had order interest for the given security at the given time); (iv) Order Reference Number (the unique reference number assigned to the new order at the time of receipt); (v) Order Entry Time Stamp (the time order was received in the system); (vi) Share Quantity (total number of shares submitted on original order); and (vii) Missed Opportunity Quantity (total number of shares missed).

The Missed Opportunity—Latency component identifies the amount of time by which an otherwise marketable order missed execution, and is designed to provide information to market participants interested in optimizing their models and trading patterns.<sup>5</sup>

The Peer Benchmarking component ranks the quality of a market participant’s trading performance against its peers, allowing each participant to view its relative trading performance by port.<sup>6</sup> It is designed to help participants better understand trends over time, their relative performance relative to their competitors in general, and whether behavioral changes translate into expected results.

All of the data offered by Trading Insights is specific to the market participant’s port, and no participant would be able to receive another market participant’s data.

All data is provided on a T+1 basis.

##### Proposed Withdrawal

Nasdaq regularly reviews its product catalog to ensure that the tools and services it offers fit the needs of its customers. As explained above, Trading Insights is an optional market data service designed to help members analyze their own order activity. Nasdaq

<sup>5</sup> The data elements for this component, in summary, are: (i) Issue (Nasdaq symbol for the issue); (ii) Buy/Sell Indicator (side of the market at which the market participants are quoting); (iii) Price (the price (inclusive of decimal point) at which Nasdaq Market Center market participants had order interest for the given security at the given time); (iv) Order Reference Number (the unique reference number assigned to the new order at the time of receipt); (v) Order Size; (vi) Matching Engine times for incoming orders; (vii) Missed Opportunity times; and (viii) Reasons for not getting fills. The Missed Opportunity—Latency component would not provide specific information about resting orders on the Exchange order book.

<sup>6</sup> A port is a means by which a member firm connects to Nasdaq’s systems. Each port would be categorized into a peer grouping that would be based upon a given set of metrics that would share similar trading behavior characteristics, and there would be at least ten peers within a security. The data elements for this component, in summary, include: (i) Total Dollar Volume; (ii) Total Share Volume, Share Volume of Liquidity Provision and Accessible for Tape A, Tape B and Tape C; (iii) Number of Trades, including Hidden Orders and Number of Hidden Trades; (iv) Mean/Median Trade Size; (v) Mean/Median Size of Hidden Orders; (vi) Number of Buy/Sell Orders Received; (vii) Number of Aggressive Orders, Mean Size of Aggressive Buy/Sell Orders; (viii) Number of Passive Orders, Mean Size of Displayed Passive Order, Hidden Passive for Buy and Sell Orders; (ix) Number of Orders at Best Bid/Ask Level; (x) Mean Cost to Execute for Buy and Sell for 1,000, 5,000, 10,000 Shares; (xi) Number of Modified/Cancelled Buy/Sell Orders; (xii) Mean Buy/Sell Price Range; (xiii) Total Number of Buy/Sell Price; (xiv) Number, Mean—Resting Buy/Sell Price Points; (xv) Missed Opportunities—Liquidity, Latency; (xvi) Mean Share Volume Against Hidden, Mean Quote Rotation Time.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

has found, however, that members are able to use messaging received on their order acknowledgments, coupled with internal software, to obtain the same insights into trading activity that certain components of Trading Insights was designed to convey.<sup>7</sup> Because the product is no longer needed in the industry, Nasdaq has decided to withdraw it and its associated fees from the market.

The withdrawal of Trading Insights will not materially impact either Nasdaq's members or the market as a whole. Currently, less than ten customers purchase Trading Insights. Nasdaq has discussed the proposed withdrawal with each, and none indicated that withdrawal would materially impact their operations. Nasdaq also publicly announced its intent to withdraw Trading Insights in a Data News publication issued on October 1, 2021,<sup>8</sup> and received no feedback indicating that withdrawal would be problematic.

Withdrawal of Trading Insights will not have a different impact on different types of market participants. Members that currently purchase the product have not indicated that they would be materially disadvantaged by its withdrawal, and members that do not currently purchase the product would remain unaffected.

In light of the small number of customers currently using the product, the ability of members to analyze their own order activity using in-house software, and the lack of any negative feedback after discussing the proposed withdrawal with Trading Insights customers and announcing it publicly, Nasdaq proposes to withdraw Trading Insights from sale as of December 31, 2021.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect

investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

Withdrawing a product that is no longer needed in the industry is the quintessence of competition. The Proposal promotes competition because Nasdaq, like all of its competitors, has limited resources with which to attract customers, and, to remain competitive, Nasdaq must use its resources effectively. Withdrawal will allow Nasdaq to redirect its internal resources into developing other products that more effectively meet customer demand.

The Proposal will not permit unfair discrimination between customers, issuers, brokers, or dealers. Members that currently purchase the product have not indicated that they would be materially disadvantaged by its withdrawal, and members that do not currently purchase the product will remain unaffected. The Proposal therefore does not permit unfair discrimination.

For all of these reasons, the proposed withdrawal of Trading Insights promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest, and does not permit unfair discrimination.

### *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.

#### Intermarket Competition

The withdrawal of Trading Insights will have no impact on intermarket competition (the competition among SROs). As explained above, the Proposal would allow Nasdaq to redirect its internal resources into developing other products that more effectively meet customer demand. Other platforms may use the opportunity of this withdrawal to introduce their own versions of Trading Insights, although, as is evident from Nasdaq's experience, such a product may not elicit high customer demand.

#### Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition (competition among exchange customers). As explained in our discussion of unfair discrimination above, members that currently purchase the product have not

indicated that they would be materially disadvantaged by its withdrawal, and members that do not currently purchase the product will remain unaffected. The Proposal therefore will not cause any unnecessary or inappropriate burden on intramarket competition.

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

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that it can withdraw Trading Insights on December 31, 2021. According to the Exchange, it has publicly announced its intent to withdraw Trading Insights in October 2021 and received no feedback indicating that withdrawal would be problematic, and it has discussed the withdrawal with each of the customers currently purchasing the product and no customer indicated that withdrawal would materially impact their operations. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> Nasdaq had noted previously that some market participants may be able to derive some of the data provided by Nasdaq Trading Insights based on executions and internal algorithms created by customers. See Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR-Nasdaq-2016-101).

<sup>8</sup> See Nasdaq Data News No. 2021-8 (October 1, 2021), available at <http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2021-8>.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

proposed rule change operative upon filing.<sup>15</sup>

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-102 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2021-102. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-102 and should be submitted on or before January 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Vanessa A. Countryman,**  
*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-017, OMB Control No. 3235-0017]

#### Proposed Collection; Comment Request; Extension: Rules 6a-1 and 6a-2, Form 1

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 6a-1 (17 CFR 240.6a-1), Rule 6a-2 (17 CFR 240.6a-2), and Form 1 (17 CFR 249.1) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

The Exchange Act sets forth a regulatory scheme for national securities exchanges. Rule 6a-1 under the Exchange Act generally requires an applicant for initial registration as a national securities exchange to file an application with the Commission on Form 1. An exchange that seeks an exemption from registration based on limited trading volume also must apply for such exemption on Form 1. Rule 6a-2 under the Exchange Act requires

<sup>16</sup> 17 CFR 200.30-3(a)(12).

registered and exempt exchanges: (1) To amend the Form 1 if there are any material changes to the information provided in the initial Form 1; and (2) to submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not. The information required pursuant to Rules 6a-1 and 6a-2 is necessary to enable the Commission to maintain accurate files regarding the exchange and to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a-1 on Form 1, the Commission would not be able to determine whether the respondent has met the criteria for registration (or an exemption from registration) set forth in Section 6 of the Exchange Act. The amendments and periodic updates of information submitted pursuant to Rule 6a-2 are necessary to assist the Commission in determining whether a national securities exchange or exempt exchange is continuing to operate in compliance with the Exchange Act.

Initial filings on Form 1 by prospective exchanges are made on a one-time basis. The Commission estimates that it will receive approximately one initial Form 1 filing per year and that each respondent would incur an average burden of 880 hours to file an initial Form 1 at an average internal compliance cost per response of approximately \$340,886. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 880 hours (one response/respondent × one respondent × 880 hours/response) and an internal compliance cost of \$340,886 (one response/respondent × one respondent × \$340,886/response).

There currently are 24 entities registered as national securities exchanges. The Commission estimates that each registered or exempt exchange files eleven amendments or periodic updates to Form 1 per year, incurring an average burden of 25 hours per amendment to comply with Rule 6a-2. The Commission estimates that the average internal compliance cost for a national securities exchange per response would be approximately \$8,480. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a-2 would be 6,600 hours (24 respondents × 25 hours/response × 11 responses/respondent per year) and an internal compliance cost of \$2,238,720 (24 respondents × \$8,480/response × 11 responses/respondent per year).