requirement for an unhedged security futures position from 20% to 15% and adopt certain conforming revisions to the security futures margin offset table.

At the meeting, the Commissions also will consider whether to issue a request for comment on the portfolio margining of uncleared swaps and non-cleared security-based swaps. The request for comment would solicit comment on all aspects of the portfolio margining of uncleared swaps, non-cleared security-based swaps, and related positions, including on the merits, benefits, and risks of portfolio margining these types of positions, and on any regulatory, legal, and operational issues associated with portfolio margining them.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551–5400.

Dated: October 15, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–23245 Filed 10–16–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90177; File No. SR–NASDAQ–2020–065]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower the Enterprise License Fee for Broker-Dealers Distributing Nasdaq Basic to Internal Professional Subscribers as Set Forth in the Equity 7 Pricing Schedule, Section 147, and the Enterprise License Fee for Broker-Dealers Distributing Nasdaq Last Sale to Professional Subscribers at Equity 7, Section 139

October 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2020, 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 lower the enterprise license fee for broker-dealers distributing Nasdaq Basic to internal Professional Subscribers as set forth in the Equity 7 Pricing Schedule, Section 147, and the enterprise license fee for broker-dealers distributing Nasdaq Last Sale (''NLS'') to Professional Subscribers at Equity 7, Section 139.

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

Nasdaq proposes to lower the enterprise license fee for broker-dealers distributing Nasdaq Basic to internal Professional Subscribers [3] from a two-tiered fee of $365,000, plus $2 for any Professional Subscribers over 16,000, to a flat fee of $155,000. The license would otherwise remain unchanged.

The enterprise license fee for broker-dealers distributing NLS to internal Professional Subscribers would be changed in a similar fashion: the two-tiered fee of $365,000, plus $2 for any Professional Subscribers over 16,000, would be replaced with a flat fee of $155,000. Both fee reductions are designed to help Nasdaq compete against other exchanges selling top-of-book [4] market data products.

Nasdaq Basic and Nasdaq Last Sale

Nasdaq Basic is a real-time market data product that offers best bid and offer and last sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF''). It is a subset of the ''core'' quotation and last sale data provided by securities information processors (''SIPs'') distributing consolidated data pursuant to the CTA/CQ Plan and the UTP Plan. Nasdaq Basic is separated into three components, which may be purchased individually or in combination: (i) Nasdaq Basic for Nasdaq, which contains the best bid and offer on the Nasdaq market center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRF for Nasdaq-listed stocks; (ii) Nasdaq Basic for NYSE, which covers NYSE-listed stocks, and (iii) Nasdaq Basic for NYSE American, which provides data on stocks listed on NYSE American and other listing venues that disseminate quotes and trade reports on Tape B. The specific data elements available through Nasdaq Basic are: (i) Nasdaq Basic Quotes (''QBBO''), the best bid and offer and associated size available in the Nasdaq Market Center, as well as last sale transaction reports; (ii) Nasdaq opening and closing prices, as well as IPO and trading halt cross prices; and (iii) general exchange information, including systems status reports, trading halt information, and a stock directory.

NLS provides real-time last sale information for executions occurring within the Nasdaq market center and trades reported to the jointly-operated FINRA/Nasdaq TRF.[5] The NLS data

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Professional Subscriber'' is any Subscriber other than a Non-Professional Subscriber. A ''Non-Professional Subscriber'' is ''a natural person who is not (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or (ii) any commodities or futures contract market or association; engaged as an 'investment adviser' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.'' *See* Equity 7 Pricing Schedule, Section 147(d)(4).

[4] ''Top-of-book'' market data products provide last sale information, or both last sale and best bid and offer information to the user, without additional ''depth of book'' data. Both Nasdaq Last Sale and Nasdaq Basic are examples of top-of-book products.

[5] *See* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (proposing NLS); *see also* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (approving SR–NASDAQ–2006–060, as amended by Amendment Nos. 1 and 2, to implement NLS on a pilot basis).

feed, which provides price, volume and time of execution data for last sale transactions, includes transaction information for Nasdaq-listed stocks (''NLS for Nasdaq'') and for stocks listed on NYSE, NYSE American, and other Tape B listing venues (''NLS for NYSE/NYSE American'').[6] This is also a non-core product that provides a subset of the core last sale data distributed by the SIPs under the CTA/CQ Plan and the UTP Plan.[7]

Current Top-of-Book Enterprise Licenses for Internal Professional Subscribers

Broker-dealers may purchase Nasdaq Basic, or Derived Data[8] therefrom, for internal professional use for a monthly per-Subscriber fee of $26,[9] or, in lieu of a per-Subscriber fee, purchase an enterprise license for the internal distribution of Nasdaq Basic to Professional Subscribers for $365,000, plus $2 for any Professional Subscribers over 16,000 if an external Distributor[10] controls the display of the product.[11] The license also allows the broker-dealer to display NLS data for its own stock price and that of up to ten of its competitors or peers on its internal website. Separate licenses must be purchased if more than one external Distributor controls display of the product. The license excludes Distributor fees, which are $1,500 per month for internal distribution.[12]

Although NLS was initially designed for general distribution to individual investors,[13] a broker-dealer may elect to distribute this data to its registered representatives through an employer-provided workstation or software application. To allow for such usage, Nasdaq adopted a fee schedule for ''specialized usage'' of NLS not associated with distribution of data to the general investing public. In general, broker-dealers paying for specialized usage track either the number of Subscribers receiving data or the number of queries for the data, and pay the corresponding fee.

As an alternative to per-Subscriber or per-query fees, however, a broker-dealer may purchase an enterprise license for internal Subscribers to receive NLS, or Derived Data therefrom, through an external Distributor that controls display of the product. The fee is $365,000 per month for up to 16,000 internal Subscribers, plus $2 for each additional internal Subscriber over 16,000, the same fee structure as the enterprise license for the internal distribution of Nasdaq Basic to Professionals. A separate enterprise license must be purchased for each external Distributor that controls the display of the product. The enterprise license does not include distributor fees.

Proposed Fee Reduction for Nasdaq Basic and NLS Enterprise Licenses

Nasdaq proposes to reduce its enterprise license fees for Nasdaq Basic and NLS to bolster its ability to compete effectively against other exchanges selling top-of-book market data products. Nasdaq faces fierce competition in the multi-sided market for exchange services, including the sale of all market data products. In addition, top-of-book data products—those that provide last sale information such as NLS, or last sale and best bid and offer information like Nasdaq Basic—face vigorous direct competition from the top-of-book data products offered by other equities exchanges, which are substitutes.

The value of a top-of-book product depends on the quality of the data and how well it approximates the consolidated National Best Bid and Offer (''NBBO'') disseminated by the SIPs—the better the approximation, in terms of time and number of stocks, the more useful the product.[14] This usefulness is determined by the amount of order flow attracted by the exchange—the more order flow, the more quotes and trades, and the better the exchange data will be able to match the NBBO. Nasdaq faces vigorous competition for the sale of this data, including from the ''Best Quote and Trade'' (''BQT'') product sold by the NYSE-affiliated exchanges, and the Cboe One Summary Feed.[15]

Nasdaq received customer feedback requesting that it lower the price of the professional licenses for its top-of-book products. This feedback prompted a reexamination of Nasdaq's four enterprise licenses for top-of-book data: (i) The license for internal Professional distribution of Nasdaq Basic to Professionals for $365,000 per month (the subject of this proposal); (ii) the license for external distribution of Nasdaq Basic to Professionals and Non-Professionals in the context of the brokerage relationship for $100,000 per month;[16] (iii) the license for external distribution of NLS data to the General Investing Public for Display Usage for $41,500;[17] and (iv) the license for internal and external distribution of top-of-book[18] and depth-of-book[19] products for $500,000 with a twelve-month commitment, or a month-to-month fee of $600,000.[20]

Fees for three of these four licenses have been reduced in the last several years. In 2016, Nasdaq lowered the fee for external distribution of Nasdaq Basic in the context of the brokerage

[6] *See* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060).

[7] *See* Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010).

[8] ''Derived Data'' is ''pricing data or other information that is created in whole or in part from Nasdaq information; it cannot be reverse engineered to recreate Nasdaq information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information.'' *See* Equity 7, Section 147(d)(6).

[9] *See* Equity 7 Pricing Schedule, Section 147(b)(1). The $26 monthly per-Subscriber fee consists of monthly charges of $13 for Nasdaq Basic for Nasdaq, $6.50 for Nasdaq Basic for NYSE, and $6.50 for Nasdaq Basic for NYSE MKT.

[10] ''Distributor'' refers to ''any entity that receives Nasdaq Basic data directly from Nasdaq or indirectly through another entity and then distributes it to one or more Subscribers. (A) ''Internal Distributors'' are Distributors that receive Nasdaq Basic data and then distribute that data to one or more Subscribers within the Distributor's own entity. (B) ''External Distributors'' are Distributors that receive Nasdaq Basic data and then distribute that data to one or more Subscribers outside the Distributor's own entity. *See* Equity 7, Section 147(d)(1).

[11] The additional $2 fee was introduced to defray additional costs incurred by Nasdaq when distributing Nasdaq Basic through an External Distributor that controls display of the product. *See* Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–2014–011).

[12] *See* Equity 7 Pricing Schedule, Section 147(c)(1).

[13] *See* Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-Nasdaq-2018–010) (explaining that ''NLS was designed to enable market-data 'distributors to provide free access to the data contained in NLS to millions of individual investors via the internet and television' and was expected to 'increase the availability of Nasdaq proprietary market data to individual investors.' '').

[14] Nasdaq understands that many customers that purchase SIP data do not also purchase Nasdaq Basic because they are closely-related products. Where customers do buy both products, they may shift the extent to which they purchase one or the other based on price changes, by, for example, reducing the number of queries submitted for either product. The SIP constrains the price of Nasdaq Basic because no purchaser would pay an excessive price for Nasdaq Basic when similar data is also available from the SIP.

[15] Nasdaq Basic is not a substitute for the SIP in all use cases because Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') prohibits a broker-dealer from ''provid[ing], in a context in which a trading or order-routing decision can be implemented, a display of any information with respect to quotations for or transactions in an NMS stock without also providing, in an equivalent manner, a consolidated display for such stock.''

[16] *See* Equity 7 Pricing Schedule, Section 147(b)(5).

[17] *See* Equity 7 Pricing Schedule, Section 139(b)(4).

[18] The top-of-book products distributed under this license are Nasdaq Basic, NLS and NLS Plus.

[19] The depth-of-book products distributed under this license are TotalView and Level 2.

[20] *See* Equity 7 Pricing Schedule, Section 132.

relationship from $350,000 to $100,000.[21] Also in 2016, the Exchange reduced the monthly fee for the external distribution of NLS data from $50,000 to $41,500.[22] In 2018, Nasdaq introduced an enterprise license that substantially lowered the cost of purchasing top-of-book and depth-of-book data together by replacing three separate enterprise licenses—$365,000 for internal distribution of Nasdaq Basic, $100,000 for external distribution in a brokerage relationship, and $500,000 for distribution of depth-of-book products—with a single license for a monthly fee of $500,000, with a twelve-month service commitment.[23]

In light of customer feedback and Nasdaq's history of lowering fees for top-of-book products, Nasdaq determined that the proposed fee will better position it to operate in the current competitive environment. Fees for the other three enterprise licenses have been lowered over the course of the last four years, while the license fee for internal professionals has not changed since the enterprise license was introduced in 2014.[24] Nasdaq believes that this fourth fee reduction will allow it to continue to compete in the market for top-of-book products.

The new enterprise license fee will substantially lower total and per-Subscriber costs for broker-dealers with approximately 5,962 or more internal Professional Subscribers. All current enterprise license purchasers will save the difference between the current base fee of $365,000 and the proposed fee of $155,000 (which is $210,000 per month), plus $2 times the number of internal Professional Subscribers over 16,000. A broker-dealer with 17,000 internal Professional Subscribers, for example, would save a total of $212,000 per month as compared to the current license,[25] reducing average per-Subscriber monthly charges from $21.60 [26] to $9.12.[27]

In addition, a number of the mid-size broker-dealers that currently have too few professional subscribers to benefit from the license would be able to achieve substantial savings at the new, lower rate. The ''break even'' point—*i.e.,* the point at which the average per-Subscriber rate of a licensee falls below the per-Subscriber rate of $26—is currently 14,038 internal Professional Subscribers.[28] Under the new fee schedule, broker-dealers with as few as 5,962 internal Professional Subscribers would be able to save money.[29] A hypothetical broker-dealer with 10,000 internal Professional Subscribers would be able to save $105,000 per month,[30] reducing per-Subscriber fees from $26 [31] to $15.50.[32]

In addition to lowering Nasdaq's fees, the proposed rule change will allow users to lower internal administrative costs by eliminating the need to report monthly usage. Nasdaq does not have sufficient information about broker-dealer operations and costs to accurately estimate these savings, but believes that monthly savings in administrative expenditures—as well as the improved ability to project future expenditures achieved by eliminating audit liability for errors in reporting usage—to be substantial.

Staff of the Commission's Division of Trading and Markets have indicated that self-regulatory organizations (''SROs'') proposing fee changes should provide ''the projected number of purchasers (including members, as well as non-members) of any new or modified product or service . . . .'' [33] While any broker-dealer with approximately 5,962 or more internal Subscribers will be able to benefit from the proposed license, Nasdaq does not know, and is unable to ascertain with precision, the number of internal Professional Subscribers utilized by various broker-dealers, nor can it anticipate the actions of its competitors in response to the lower enterprise license fee, and therefore cannot project precisely the number of expected purchasers. Nevertheless, judging from expressions of interest and Nasdaq's experience in the financial services industry, Nasdaq estimates that between fifteen and twenty broker-dealers worldwide may elect to purchase the license.[34]

2. Statutory Basis

The Exchange believes that its Proposal is consistent with Section 6(b) of the Act,[35] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[36] 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.

As a preliminary manner, the statutory basis for the current Nasdaq Basic and NLS enterprise licenses have already been explained in prior filings.[37] The Proposal lowers fees for enterprise licenses that have already been shown to be consistent with Section 6(b) of the Act, and this analysis therefore focuses on the new, lower fees.[38]

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[21] *See* Securities Exchange Act Release No. 79456 (December 2, 2016), 81 FR 88716 (December 8, 2016) (SR–NASDAQ–2016–162) (noting that the ''price of data derived from Nasdaq Basic is constrained by the existence of multiple substitutes offered by numerous entities, including both proprietary data offered by other SROs or other entities, and non-proprietary data disseminated by Securities Information Processors ('SIPs').'').

[22] *See* Securities Exchange Act Release No. 77578 (April 11, 2016), 81 FR 22344 (April 15, 2016) (SR–NASDAQ–2016–048).

[23] *See* Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR–Nasdaq–2018–058).

[24] *See* Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–2014–011).

[25] The broker-dealer would save the difference between $365,000 and $155,000 ($210,000), plus an additional $2,000 for the 1,000 Professional Subscribers over 16,000.

[26] The hypothetical current average per-Subscriber monthly charge is estimated as the current fee of $365,000 plus $2,000 for the 1,000 Professional Subscribers over 16,000 divided by 17,000 internal Professional Subscribers.

[27] The hypothetical per-Subscriber monthly charge for the Proposal is estimated as the flat fee of $155,000 divided by 17,000 internal Professional Subscribers.

[28] *See* Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–2014–011) (explaining that the $365,000 monthly fee for all internal subscribers, divided by $26 monthly fee for each internal Subscriber, is equal to 14,038).

[29] This estimated cutoff point is calculated as the Proposed license fee of $155,000 divided by the per-Subscriber rate of $26 per month.

[30] Savings are calculated as follows: 10,000 internal Professional Subscribers multiplied by $26 per-Subscriber equals $260,000. The difference between $260,000 and $155,000 is $105,000.

[31] *See* Equity 7 Pricing Schedule, Section 147(b)(1).

[32] This figure is calculated as the proposed flat fee of $155,000 divided by 10,000 internal Professional Subscribers.

[33] *See* Division of Trading and Markets, U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Filings Related to Fees (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[34] This estimate is based on customer conversations and the experience and judgment of Nasdaq staff.

[35] *See* 15 U.S.C. 78f(b).

[36] *See* 15 U.S.C. 78f(b)(4) and (5).

[37] *See, e.g.,* Securities Exchange Act Release No. 81697 (September 25, 2017), 82 FR 45639 (September 29, 2017) (SR–NASDAQ–2017–095); Securities Exchange Act Release No. 72620 (July 16, 2014), 79 FR 42572 (July 22, 2014) (SR–NASDAQ–2014–070); Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575 (May 16, 2014) (SR–NASDAQ–2014–045); Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–2014–011); *see* Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–Nasdaq–2018–010).

[38] The statutory bases for both the Nasdaq Basic and NLS enterprise licenses are identical. Both are top-of-book products sold to broker-dealers for internal distribution to Professionals. The fee structure and use requirements are currently the same for both, and will continue to be the same under the Proposal. The discussion contained herein therefore applies to both licenses.

The Proposal Is an Equitable Allocation of Reasonable Dues, Fees and Other Charges

As the Commission and courts [39] have recognized, ''[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [40] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [41]

Nasdaq believes that competitive forces constrain the price of top-of-book products on two independent and equally-sufficient grounds: (i) Competition among exchanges and the SIP for top-of-book data; and (ii) competition among trading platforms. The proposed fee change is a direct competitive response to this intense, multi-sided competition. We shall discuss each major aspect of this competition in turn.

Competition Over Top-of-Book Data Sales

Nasdaq competes directly with other exchanges in the sale of top-of-book products, which provide best bid and offer and last sale information for U.S. exchange-listed securities.

Nasdaq Basic and NLS provide choices to broker-dealers and other data consumers by providing less than the quantum of data provided through the consolidated tape feeds, but at a lower price. Thus, these products provide broker-dealers and others with an option to use a lesser amount of data in circumstances where SEC Rule 603(c) does not require a broker-dealer to provide a consolidated display.[42] All of the top-of-book proprietary products offered by the exchanges are readily substitutable for each other and, in most cases, with the consolidated information offered by the SIPs.

All major exchange groups compete to sell top-of-book data. Nasdaq Basic provides data derived from liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq TRF. The NYSE BQT feed disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca and NYSE National exchanges.[43] The Cboe One Summary Feed provides data from the four Cboe equities exchanges: BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.[44]

Nasdaq, NYSE and Cboe compete on price and quality. Like Nasdaq, both NYSE [45] and Cboe [46] offer enterprise licenses for their top-of book feeds. Cboe touts its price in promotional literature,[47] and reduced its fee for certain top-of-book customers just this year.[48] All of these top-of-book data feeds, along with consolidated SIP data (outside of the time of execution, in which the use of consolidated SIP data is mandated by the Vendor Display Rule), are substitutes.[49]

Top-of-book data can be used for many purposes—from a retail investor casually surveying the market to sophisticated market participants using it for a variety of applications, such as investment analysis, risk management, or portfolio valuation.

The value of that data depends on its quality and how well it approximates the NBBO, which is determined by the amount of order flow attracted by the exchange—the more order flow, the more quotes and trades, and the better the exchange data will be able to match the NBBO.

The fact that top-of-book products exist at all shows that they are substitutes for SIP data—it would be far easier for any consumer who requires data from all of the exchanges to purchase SIP data alone rather than consolidate multiple exchange feeds. It has been suggested, however, that market data products are complementary products [50]—*i.e.,* that a consumer who buys one product must buy the other, like a video game and a gaming console, to obtain a more useful product. The evidence, however, shows quite the opposite.[51] If data products were complementary, all customers would be buying all direct feeds, with no substitutes or substitution. In fact, publically available data demonstrates that 45% of alternative trading systems (''ATSs'') [52] do not buy any direct feeds, but rather use the SIP—some even reject free data. The 18% of ATSs that buy some direct feeds decide not to purchase others.[53] Exchanges charge less for less valuable data, demonstrating price elasticity, to the point that some broker-dealers will not accept data from smaller exchanges with less order flow (even when that data is offered for no fee) due to the fixed developmental and systems costs incurred by firms to enable them to

[39] The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.'' *NetCoalition I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission's conclusion that ''Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'' *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74,771 (December 9, 2008) (SR–NYSEArca–2006–21)).

[40] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[41] *Id.*

[42] *See* 17 CFR 242.603(c).

[43] *See https://www.nyse.com/market-data/real-time/nyse-bqt.*

[44] *See https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20Top%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book.* We note that Cboe recently proposed a fee reduction for top-of-book data as well. *See* Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR–CboeBYX–2019–012).

[45] *See https://www.nyse.com/market-data/real-time/nyse-bqt.*

[46] *See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.*

[47] *See https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20Top%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book* (''The Cboe One Feed is 60% less expensive per professional user and more than 85% less expensive for an enterprise license for professional users and non-professional users when compared to a similar competitor exchange product.'').

[48] *See* Securities Exchange Act Release No. 88221 (February 14, 2020), 85 FR 9904 (February 20, 2020) (SR–CboeBYX–2020–007) (stating that ''the Exchange's top of book market data products are among the most competitively priced in the industry due to modest subscriber fees, and a lower Enterprise cap . . . .''). The filing included a table comparing its pricing to Nasdaq Basic.

[49] The exchange-based top-of-book feeds are not a full substitute for the consolidated data disseminated by the Securities Information Processors because the Vendor Display Rule prohibits a broker-dealer from ''provid[ing], in a context in which a trading or order-routing decision can be implemented, a display of any information with respect to quotations for or transactions in an NMS stock without also providing, in an equivalent manner, a consolidated display for such stock.'' Nevertheless, the SIP and exchange products are substitutes for most other use cases, as the exchange products closely follow the SIP.

[50] *See* Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Counterman, Secretary, SEC at 5, n.14 (May 26, 2020), available at *https://www.sec.gov/comments/s7-03-20/s70320-7235189-217109.pdf.*

[51] *See* Phil Mackintosh, ''Dispelling the Complementary Product Theory for Market Data,'' (August 20, 2020), available at *https://www.nasdaq.com/articles/dispelling-the-complementary-product-theory-for-market-data-2020-08-20.*

[52] ATSs are venues which are not regulated as exchanges but nevertheless match buy and sell orders for customers.

[53] *See* Phil Mackintosh, ''Dispelling the Complementary Product Theory for Market Data,'' (August 20, 2020), available at *https://www.nasdaq.com/articles/dispelling-the-complementary-product-theory-for-market-data-2020-08-20.*

receive and process data.[54] Indeed, Nasdaq's own experience with sales of top-of-book feeds underscores their substitutability, as the customers whose feedback has motivated this price change inform Nasdaq that they will drop Nasdaq Basic in favor of a competing product unless a change is made. The top-of-book data feeds sold by the U.S. exchanges are therefore substitutes, and exchanges compete to sell them (as Nasdaq is attempting to do with this proposed fee reduction).

Nasdaq's experience is consistent with findings by the Department of Justice (''DOJ'') that exchanges compete with each other for the sale of market data. In 2011, the DOJ analyzed a proposed transaction that would have resulted in a combination of Nasdaq and NYSE and found that it ''would have substantially eliminated competition for . . . real-time proprietary equity data products.'' [55] Later that same year, in suing to block a possible combination between Deutsche Börse and NYSE Euronext that would have brought Direct Edge within the same exchange group as NYSE, the DOJ cited a threat to competition in the market for real-time equity market data as one of the bases for its action.[56]

Platform Competition

The evidence shows that total returns earned by the Exchange are constrained by competition from other exchanges and trading platforms. Nasdaq competes against other exchanges to attract order flow and trading activity, based on the prices, incentives, product quality, and other attributes that Nasdaq offers to traders. This competition powerfully constrains Nasdaq's competitive behavior, which is manifested through rebates to traders, innovation, and price decreases, among other things. Economic efficiency is therefore fostered by allowing Nasdaq the flexibility to determine its optimal prices across its portfolio of products, including market data, connectivity and trading services. Depending on a variety of factors, including the reasons for the change in market conditions, Nasdaq's optimal response to such changes can entail price reductions for some products or services, price increases for other products or services, and no price change for still others. Artificial regulatory constraints on Nasdaq's pricing can dampen competition and harm customers by constraining Nasdaq's ability to earn a predictable and reasonable return on its investments in products and technology, thus diminishing the incentive to invest in innovations and product enhancements that will benefit consumers.

The fact that this market is competitive has long been recognized by the courts. As the D.C. Circuit stated in *NetCoalition* v. *Securities and Exchange Commission,* ''[n]o one disputes that competition for order flow is 'fierce.' . . . 'In 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' . . . .'' [57] Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

Market data fees, including connectivity fees and other exchange fees, are constrained by competition among trading platforms. Firms like Nasdaq, NYSE, and Cboe are platform businesses that compete on a variety of interrelated dimensions, including the provision of trading services, market data, and connectivity services. Exchanges owned by these firms compete with each other to provide trading services, and with a variety of alternate trading platforms that host over-the-counter trading. Such over-the-counter trading services are provided by a large number of variegated entities, including ''dark pools,'' multilateral organizations that ''pool'' the orders of traders and match them internally without displaying quotations.

Guidance issued by Staff of the Commission's Division of Trading and Markets states that an assertion that ''an SRO's aggregate return across multiple product lines, such as transactions, market data, connectivity, and access, is constrained by competition at the platform level is insufficient unless substantiated with evidence demonstrating that the theory applies in fact to the fee at issue.'' [58] Thus, Staff appears to be asserting that even if competition between trading platforms constrains the costs incurred by market participants, it is irrelevant unless it can be shown to constrain the particular fee at issue in the filing. As detailed above, the fee at issue in this filing is directly constrained by competition to sell top-of-book products, which is the impetus behind this filing. Moreover, because exchanges compete on the basis of both price and quality, the competition to attract orders to a trading platform is another aspect of the competition to sell top-of-book products, which can exist only as a byproduct of that competition. The quality of a top-of-book product reflects the liquidity of the exchange and time on the inside—*i.e.,* order flow. The more order flow, the more quotes and trades, and the better the exchange data will be able to match the NBBO. However, because these products are substitutes, a customer can readily switch to a different exchange's product, even one of a lower quality, if fees are raised. They can also shift order flow toward a different product, and such increases in order flow in turn have the potential to boost the quality of the competing product that they select.

Nasdaq believes, however, that the narrow focus on the analysis of platform competition reflected in the Staff fee guidance misapprehends the analytical insights offered by that theory: The vast majority of market data consumers also provide the raw materials that are combined by an exchange into market data, and therefore stand on both sides of the platform. As a result, their overall cost of doing business with an exchange platform is a critical dimension on which exchanges compete with one another for those customers' trades, and imposing a governmental constraint on the revenues associated with one aspect of this competition will distort this competition by impairing the ability of exchanges to operate profitably, reducing their incentives to invest in innovations and other product improvements, among other things. Moreover, exchanges compete with one another, in part, based on the mix of products and services they offer, including the various prices and incentives they each offer to customers. Government regulations that artificially

[54] A broker-dealer may decide not to accept ''free'' data because there is a cost to accepting such data and integrating it into its trading systems.

[55] *See* ''NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011) (available at *https://www.justice.gov/opa/pr/nasdaq-omx-group-inc-and-intercontinentalexchange-inc-abandon-their-proposed-acquisition-nyse*).

[56] *See* Complaint, *United States* v. *Deutsche Börse AG* and *NYSE Euronext* (Dec. 22, 2011) (available at *https://www.justice.gov/atr/case-document/file/494146/download).*

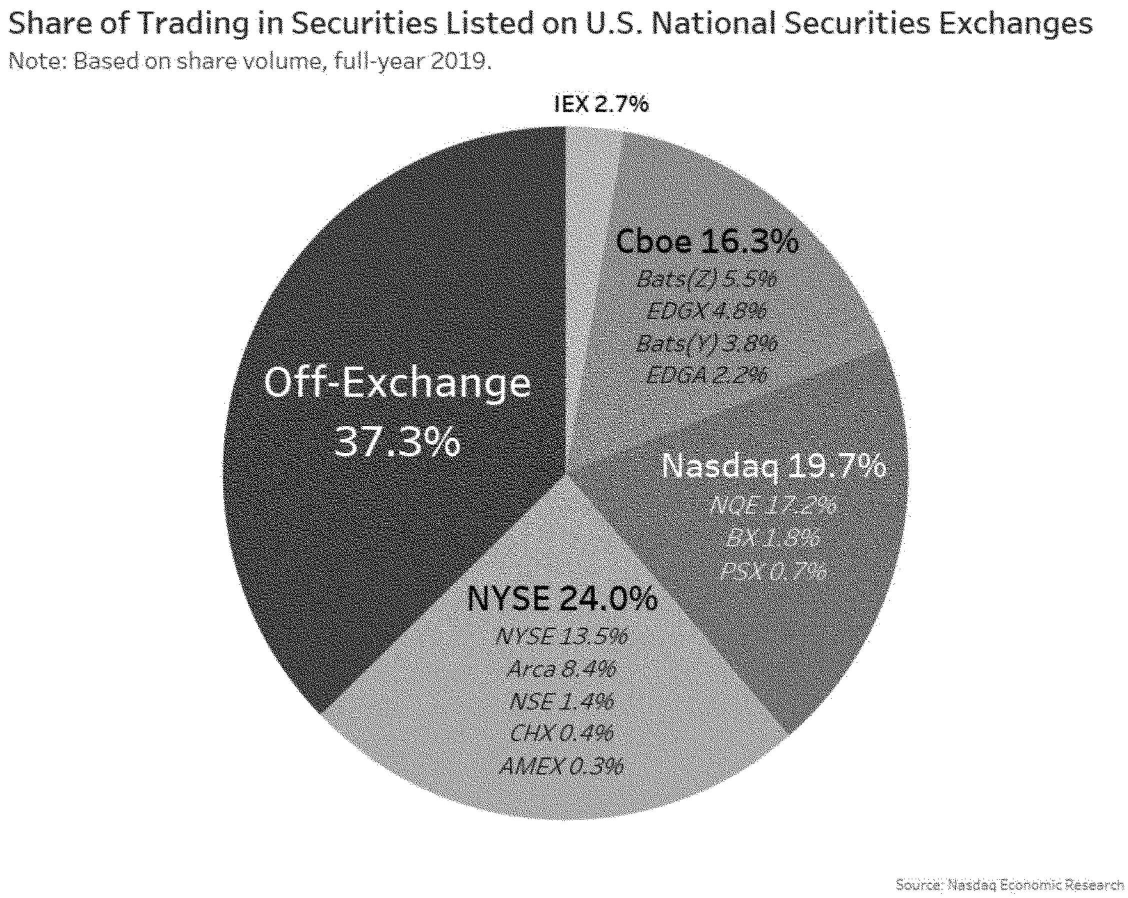
[57] *See NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[58] *See* Division of Trading and Markets, U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Filings Related to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

constrain exchanges' ability to price their services will diminish competitive variation, reduce customer choice, and lead to anticompetitive effects that harm customers. For all of these reasons, Nasdaq believes that the analysis of the all-in costs of doing business with Nasdaq is highly relevant to an appropriate competitive analysis of the exchange marketplace. That said, Nasdaq believes that evidence of constraint upon the prices of market data in general, and top-of-book products specifically, abounds, as described above and further described below.

Figure 1 presents the trading shares by platform operator at the end of 2019, and shows that no single platform or platform operator accounts for even 25 percent of trading in U.S. equities, and that over-the-counter trading accounts for a larger share of all trades than any platform operator.

Figure 1



Many customers that purchase trading and other services from an exchange are sensitive to and concerned with the all-in price of trading.[59] For such customers, what matters to their purchasing decisions is the total outlay relative to the quality of the various services obtained from an exchange, as compared to rival exchanges. Hence, a customer's willingness to interact with an exchange is sensitive to the all-in price of the various services purchased on that exchange compared to the all-in price available at other exchanges (as well as the relative quality of exchange services). Thus, the price and quality of any service, such as market data, should not be analyzed in isolation (*i.e.,* separate from the price and quality of other services that a customer purchases from the exchange).

Because many customers are sensitive to the all-in price of trading, competition among trading platforms, including dark pools, can be expected to constrain the aggregate return each platform earns from the sale of the array of its products, including market data and connectivity services.[60] Thus, for example, if an exchange increases the price of one service, thereby increasing the all-in price, competition from other platforms would be expected to force it to reduce the price (or increase the rebate) of another service (all else equal) to enable it to compete successfully with other trading platforms. Moreover, the low barriers to entry that exist in the market for trading platform services exert a further competitive constraint: This year alone, three new exchange

[59] *See* Statement of J. Ordover and G. Bamberger filed with the U.S. Securities and Exchange Commission, File No. SR–NASDAQ–2010–174, on behalf of NASDAQ Stock Market, (Dec. 30, 2010), ¶ 38 (''Even if a trading platform had some unique information that is potentially valuable to (some) consumers, the total price of trading on that platform—which includes the price of market data available from the platform that the trader elects to purchase—is constrained by the total price of trading on rival platforms.''), available at *https://www.sec.gov/rules/sro/nasdaq/2012/34-66724-ex3a.pdf.*

[60] *See* Phil Mackintosh, *Who Pays for Price Discovery?* (November 21, 2019), available at *https://www.nasdaq.com/articles/who-pays-for-price-discovery-2019-11-21* (providing an analysis of the all-in cost per trade at Chart 3).

platforms have commenced operations or are expected to do so imminently.[61]

A recent study described the inverse relationship between market data and the price of trading services, commenting that ''[e]xchanges have [an] incentive to cut their trading fees even below the perfectly competitive (*i.e.,* zero profit) level in order to win market share and increase revenues from market data and co-location [and] connectivity,'' [62] concluding that ''regular-hours trading revenues do not nearly cover exchange operating expenses.[63] The study reported that exchange trading fees for high-volume traders are often slightly negative on a per-share per-side basis, which is consistent with exchanges competing intensely with one another based on the total cost of services in order to attract order flow.[64]

The inverse relationship between market data and connectivity services and the all-in price of trading is demonstrated by an examination of trends in Nasdaq's revenue over an eight-year period. Between 2010 and 2018, Nasdaq revenue from market data (which includes both exchange data and other market non-exchange data products) increased from $85.4 million to $152.3 million, an increase of 78.4 percent in dollar terms, and 54.9 percent in inflation-adjusted terms.[65] Moreover, the growth in revenues from market data reflects the addition of revenue from the sale of new products, sales to new customers, incremental sales to existing customers, and price increases. Between 2010 and 2018, price increases accounted for only about 35 percent of the total increase in market data revenue. That is, about 65 percent of the increase in market data revenue reflects sales of new products, or increased sales to new and existing customers. Similarly, Nasdaq revenue from connectivity services increased from $103.2 million in 2010 to $167.6 million in 2018, an increase of 62.4 percent in dollar terms, and 41.0 percent in inflation-adjusted terms.

As revenue from market data and connectivity services increased, the all-in price of trading on Nasdaq fell. In inflation-adjusted terms, the increase in Nasdaq's market data and connectivity revenues almost exactly offset the decline in its trading revenues, which fell from $251.1 million in 2010 to $189.6 million in 2018, a decline of 24.5 percent in dollar terms; adjusting for inflation, trading revenues fell by 34.4 percent. Nasdaq's total inflation-adjusted revenues from market data, connectivity, and trading services were $506.4 million in 2010 and $509.5 million in 2018 (in 2018 dollars), an increase of less than one-tenth of one percent per year. Over the same period, trading dollar volume on Nasdaq's equity exchanges increased by over 50 percent—from about $30.6 trillion in 2010 to $47.3 trillion in 2018. As a result, the average all-in cost of trading—that is, total Nasdaq revenues divided by total Nasdaq trading volume—fell by 24.9 percent between 2010 and 2018.[66] In particular, the all-in cost per $100,000 of trading volume fell from $1.44 in 2010 to $1.08 in 2018.[67] As shown in Figure 2, despite the growth of market data and connectivity revenue between 2010 and 2018, the all-in cost of trading on Nasdaq's exchanges (measured per $100,000 of trading volume) declined substantially between 2010 and 2018.

[61] The three new exchanges are the Long Term Stock Exchange (LTSE), the Members Exchange (MEMX) and the MIAX Pearl Equities exchange.

[62] *See* Eric Budish, et al., *Will the Market Fix the Market? A Theory of Stock Exchange Competition and Innovation,* University of Chicago, Becker Friedman Institute for Economics Working Paper No. 2019–72, at 31 (May 2019), available at *https://ssrn.com/abstract=3391461* (''Budish et al.'').

[63] *Id.* at 32.

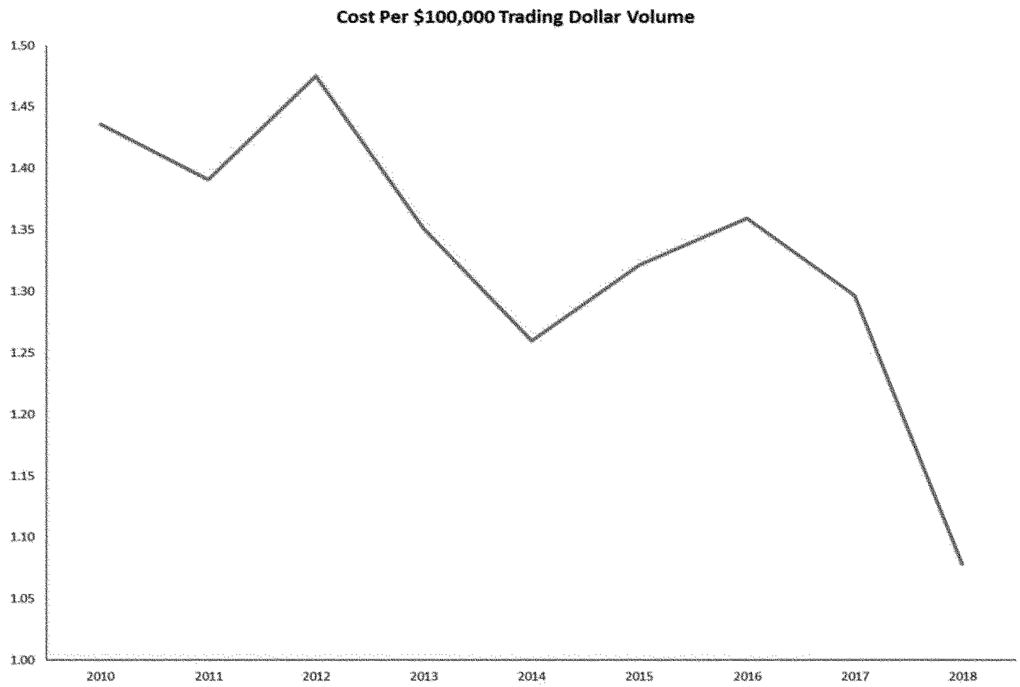
[64] *Id.* at 34.

[65] Based on internal Nasdaq data (inflation adjustment based on the All-Items Consumer Price Index).

[66] The all-in cost of trading relative to trading volume is the relevant metric because, in general, stock purchasers are indifferent to the number of shares they purchase, and thus the all-in cost per share traded is not a relevant ''price.'' For example, an investor who wants to purchase $100,000 in stock will generally be indifferent as to whether the purchase represents 1,000 shares at $100 or 2,000 shares at $50.

[67] In 2010, Nasdaq revenue equaled 0.00144 percent of trading volume on the Nasdaq equity exchanges; in 2018, Nasdaq revenue equaled 0.00108 percent of trading volume on the Nasdaq equity exchanges (*i.e.,* a decline of 24.9 percent). To make the figures easier to read, they are reported as cost per $100,000 of trading volume.

Figure 2

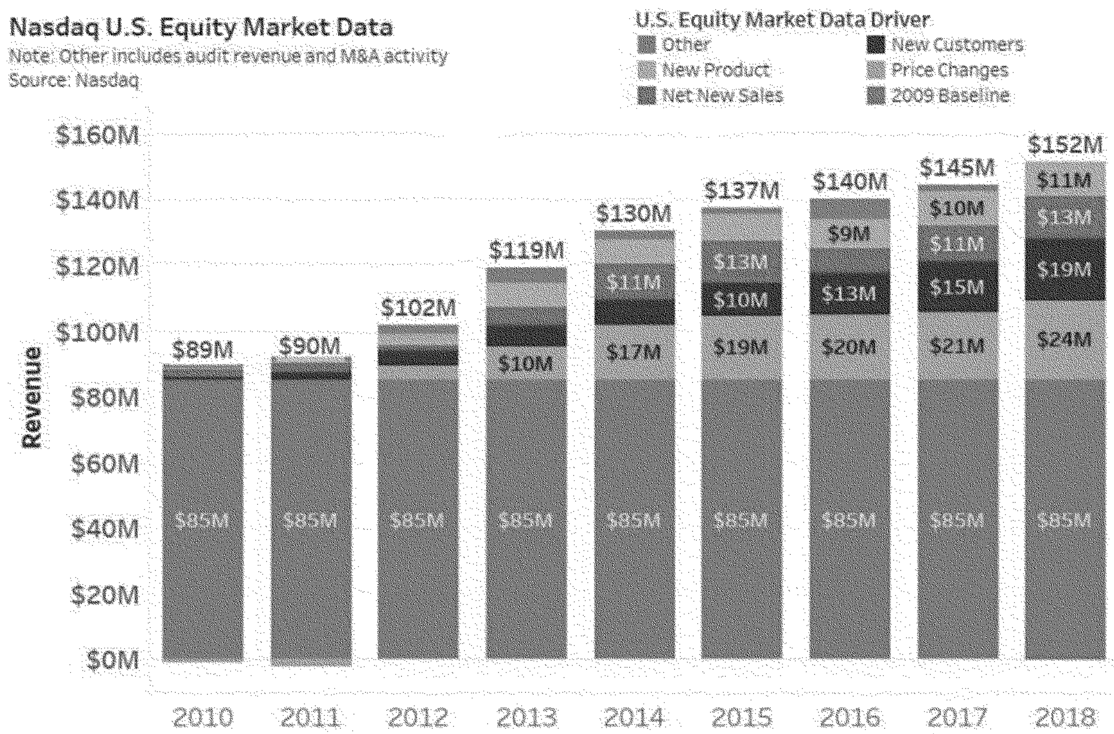


This demonstrates that Nasdaq's revenues are constrained by competition from a variety of exchanges and other trading platforms, and that this competition reduced Nasdaq's all-in cost of trading between 2010 and 2018.

The constraint on price increases imposed by platform competition is also shown through an examination of revenue growth in U.S. equity market data. As shown in Figure 3, approximately two-thirds of this revenue growth reflects new customers, new products, and new sales to previous customers, not fee increases. Customers who had not purchased additional products or expanded existing services had seen costs increase by a compound annual growth rate (''CAGR'') of only 2.4%, not much more than the rate of inflation. Over that same time period, the capacity of Nasdaq's matching engine more than doubled, and latency fell drastically. A greater portion of Nasdaq's success in increasing revenue is therefore attributable to selling better products to more customers—the cornerstones of competition—rather than increasing fees. Thus, the portion of market data revenues associated with price increases shows an increase in the cost per $100,000 of trading volume of only 0.631% per year, powerful evidence that platform competition exerts a restraint not only of all-in prices, but also of this specific element of prices.[68]

[68] We noted above that Nasdaq's total inflation-adjusted revenues from market data, connectivity, and trading services together increased by less than one-tenth of one percent per year. The increase of 0.632% per year pertains only to that portion of market data revenues associated with price increases.

Figure 3



The evidence therefore shows that the trading platforms operated by the securities exchanges compete on the basis of price (as well as innovation and quality of service), and that competition constrains the ability of any platform to charge excessive fees across its platform offerings, including their market data products.

* * * * *

Competition—both competition among trading platforms and in the sale of top-of-book market data products—constrains the price of top-of-book market data, and provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. Competition among platforms constrains the price of market data through the interrelated competition for order flow. The price of top-of-book data is further constrained by direct competition among exchanges to sell top-of-book data, as illustrated by proposals to reduce fees for three of the four top-of-book enterprise licenses in the past several years: (i) The enterprise license for external distribution of Nasdaq Basic;[69] (ii) the enterprise license for the external distribution of NLS;[70] and (iii) the combined enterprise license for distribution of top-of-book and depth-of-book data.[71] Nasdaq is not alone in lowering fees to compete against the other exchanges. Just this year, Cboe proposed a fee reduction for its top-of-book data.[72] Competition among platforms and competition in the sale of specific market data products provide independent and equally-sufficient grounds for a finding that the price of top-of-book data products are constrained by competition.

The Proposal Does Not Permit Unfair Discrimination

The Proposal is not unfairly discriminatory. As previously noted, the Nasdaq Basic enterprise license subject to this Proposal was shown to be non-discriminatory and otherwise consistent with the Act over six years ago.[73] The only difference between that initial proposal and the change under consideration today is that the new license costs less and more broker-dealers will be able to benefit from the lower prices. Enterprise licenses in general have been widely recognized as an effective and not unfairly discriminatory method of distributing market data. This applies to Nasdaq's enterprise licenses as well as those offered by the NYSE and Cboe exchanges.[74]

The Act does not prohibit all distinctions among customers; only discrimination that is unfair. It is not unfair discrimination to charge those Distributors that are able to reach the largest audiences of retail investors a lower fee for incremental investors in order to encourage the widespread distribution of market data. The instant Proposal, like other enterprise licenses, will cause top-of-book data to become more widely available to investors. It

[69] *See* Securities Exchange Act Release No. 79456 (December 2, 2016), 81 FR 88716 (December 8, 2016) (SR–NASDAQ–2016–162) (noting that the ''price of data derived from Nasdaq Basic is constrained by the existence of multiple substitutes offered by numerous entities, including both proprietary data offered by other SROs or other entities, and non-proprietary data disseminated by Securities Information Processors ('SIPs').'').

[70] *See* Securities Exchange Act Release No. 77578 (April 11, 2016), 81 FR 22344 (April 15, 2016) (SR–NASDAQ–2016–048).

[71] *See* Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR–Nasdaq–2018–058).

[72] *See* Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR–CboeBYX–2019–012).

[73] *See* Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–2014–011) (initially adopting the current enterprise license).

[74] *See, e.g.,* Sections 123(c) and 147(b); Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR–NYSE–2017–60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

will save current enterprise license purchasers the $210,000 per month difference between the current base fee of $365,000 and $155,000, plus $2 times the number of internal Professional Subscribers over 16,000. Broker-dealers that do not currently purchase the license will nevertheless benefit because the ''break even'' point—*i.e.,* the point where the average per-Subscriber rate of a licensee falls below per-Subscriber rate of $26—will fall from 14,038 to 5,962 internal Professional Subscribers.[75] All purchasers of the proposed license will also be able to save in administrative expenditures by eliminating monthly reporting requirements and periodic review of such reports by compliance staff.

It is of particular importance now to expand the availability of top-of-book data. In recent months, retail investors have become increasingly interested in equities markets. Many of these retail investors will require advice and assistance from equity market professionals, and this license will enable broker-dealers that serve such clients to do so at a lower cost.

Moreover, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each Distributor will be able to accept or reject the license depending on whether it will or will not lower costs for that particular Distributor, and, if the license is not sufficiently competitive, the Exchange may lose market share.

For all of these reasons, the Proposal is not unreasonably discriminatory.

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. With respect to inter-market competition—the competition among SROs—the Exchange's ability to price market data products is constrained by (i) competition among exchanges for top-of-book data; and (ii) platform competition. With respect to intra-market competition—the competition among consumers of exchange data—the Exchange expects the Proposal to promote competition through lower-cost data.

Intermarket Competition

As discussed in detail under Statutory Basis, Nasdaq competes with other exchanges in the sale of top-of-book products. Because top-of-book products provide less than the quantum of data provided through the consolidated tape feeds at a lower price, consumers have the option to use a lesser amount of data when SEC Rule 603(c) does not require a broker-dealer to provide a consolidated display.[76]

Market data fees are also constrained by competition among trading platforms, which compete on a variety of dimensions, including the provision of trading services, market data, and connectivity services, and also with a variety of alternate trading platforms that host over-the-counter trading. Because many customers are sensitive to the all-in price of trading, competition among trading platforms, including dark pools, can be expected to constrain the aggregate return each platform earns from the sale of the array of its products, including market data and connectivity services. This can be shown empirically by the inverse relationship between revenue from market data and connectivity services, the fall in the all-in cost of trading over an eight-year period, and other evidence discussed under Statutory Basis.

In order to better compete for this segment of the market, the Exchange is proposing to reduce the cost of top-of-book data by lowering the enterprise license fee for internal Professional Subscribers. The proposed price reduction will not cause any unnecessary or inappropriate burden on intermarket competition, as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Nasdaq's main competitors, in particular, offer directly competing enterprise licenses for their top-of-book products, and are readily able to lower enterprise license fees in response to Nasdaq. Indeed, the Exchange's decision to lower its enterprise license fee was itself generated by the need to compete with other exchanges. The Proposal may in turn generate competitive responses from other exchanges, enhancing overall competition.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition. In fact, it will foster competition among broker-dealers by lowering costs for current licensees, while at the same time increasing the number of broker-dealers able to purchase that license. The current enterprise license, just like all of the enterprise licenses offered by Nasdaq's competitors, does not itself impose an unnecessary or inappropriate burden on intramarket competition. Relatively smaller broker-dealers have fewer internal Professional Subscribers and therefore operate with lower fixed costs, helping them compete with the larger broker-dealers. Moreover, the underlying fee of $26 per Professional Subscriber fee has itself been shown not to place an undue burden on competition, and, if that fee proves to be excessive, broker-dealers would be able to purchase top-of-book data from one of the Exchange's competitors offering a substitute product. For all of these reasons, the Proposal will not place 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[77]

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
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2020–065 on the subject line.

[75] *See* Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–2014–011) (explaining that the $365,000 monthly fee for all internal subscribers, divided by $26 monthly fee for each internal Subscriber, is equal to 14,038).

[76] *See* 17 CFR 242.603(c).

[77] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2020–065. 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 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–2020–065 and should be submitted on or before November 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[78]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–23148 Filed 10–19–20; 8:45 am]

BILLING CODE 8011–01–P

[78] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90182; File No. SR–FICC–2020–009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Introduce the Margin Liquidity Adjustment Charge and Include a Bid-Ask Charge in the VaR Charges

October 14, 2020.

On July 30, 2020, Fixed Income Clearing Corporation (''FICC'') 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,[2] proposed rule change SR–FICC–2020–009 to add two new charges to FICC's margin methodologies.[3] On August 13, 2020, FICC filed Amendment No. 1 to the proposed rule change, to make clarifications and corrections to the proposed rule change.[4] The proposed rule change, as modified by Amendment No. 1, was published for public comment in the **Federal Register** on August 20, 2020,[5] and the Commission received no comments.

On August 27, 2020, FICC filed Amendment No. 2 to the proposed rule change to provide additional data for the Commission to consider in analyzing the proposed rule change.[6] The proposed rule change, as modified by Amendment Nos. 1 and 2, is hereinafter referred to as the ''Proposed Rule Change.'' On October 2, 2020, pursuant to Section 19(b)(2) of the Act,[7] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[8] The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and, for the reasons discussed below, to approve the Proposed Rule Change on an accelerated basis.

I. Description of the Proposed Rule Change

First, the Proposed Rule Change would revise the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules'') and FICC Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules,'' and together with the GSD Rules, the ''Rules'') [9] to introduce the Margin Liquidity Adjustment Charge (''MLA Charge'') as an additional margin component. Second, the Proposed Rule Change would revise the Rules, GSD Methodology Document—GSD Initial Market Risk Margin Model (''GSD QRM Methodology Document''), and MBSD Methodology and Model Operations Document—MBSD Quantitative Risk Model (''MBSD QRM Methodology Document,'' and together with the GSD QRM Methodology Document, the ''QRM Methodology Documents'') [10] to add a bid-ask spread risk charge (''Bid-Ask Spread Charge'') to the margin calculations of GSD and MBSD.

A. Background

FICC serves as a central counterparty (''CCP'') and provider of significant clearance and settlement services for cash-settled U.S. Treasury and agency securities and the non-private label

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FICC also filed the proposals contained in the proposed rule change as advance notice SR–FICC–2020–802 with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''), 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i).

[4] Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibits 3 and 5 of the filing. On August 13, 2020, FICC filed Amendment No. 1 to the advance notice to make similar clarifications and corrections to the advance notice.

[5] Securities Exchange Act Release No. 89560 (August 14, 2020), 85 FR 51503 (August 20, 2020) (''Notice''). The advance notice, as modified by Amendment No. 1, was published for public comment in the **Federal Register** on September 4, 2020. Securities Exchange Act Release No. 89718 (September 1, 2020), 85 FR 55341 (September 4, 2020) (File No. SR–FICC–2020–802). The comment period for the advance notice, as modified by Amendment No. 1 closed on September 21, 2020, and the Commission received no comments.

[6] In Amendment No. 2, FICC updated Exhibit 3 to the proposed rule change to include impact analysis data with respect to the proposed rule change. FICC filed Exhibit 3 as a confidential exhibit to the proposed rule change pursuant to 17 CFR 240.24b–2. On August 27, 2020, FICC filed Amendment No. 2 to the advance notice to provide similar additional data for the Commission's consideration. The advance notice, as amended by Amendment Nos. 1 and 2, is hereinafter referred to as the ''Advance Notice.'' On October 2, 2020, the Commission published notice of filing of Amendment No. 2 and notice of no objection to the Advance Notice. Securities Exchange Act Release No. 90033 (September 28, 2020), 85 FR 62348 (October 2, 2020) (File No. SR–FICC–2020–802).

[7] 15 U.S.C. 78s(b)(2).

[8] Securities Exchange Act Release No. 90083 (October 2, 2020), 85 FR 63610 (October 8, 2020).

[9] Capitalized terms not defined herein are defined in the Rules, *available at https://www.dtcc.com/legal/rules-and-procedures.aspx.*

[10] FICC filed the proposed changes to the QRM Methodology Documents as confidential exhibits to the Advance Notice pursuant to 17 CFR 240.24b–2.