SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99879; File No. SR–NASDAQ–2024–016]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Encourage Members To Contribute Liquidity to the Exchange by Offering Those That Maintain a Particular Minimum Trading Volume Lower Fees for Specified Market Data and Connectivity Products

April 1, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2024, 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 encourage members to contribute liquidity to the Exchange by offering those that maintain a particular minimum trading volume lower fees for specified market data and connectivity products.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on September 1, 2024.

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 reward firms that meet a minimum average daily displayed volume with lower fees for Non-Display Usage and the Exchange's 40Gb and 10Gb Ultra high-speed connection to the Exchange.[3]

Non-Display Usage

Non-Display Usage is any method of accessing Nasdaq U.S. information that involves access or use by a machine or automated device without access or use of a display by a natural person. Examples of Non-Display Usage include, but are not limited to:

- Automated trading;
- Automated order/quote generation and/or order/quote pegging;
- Price referencing for use in algorithmic trading;
- Price referencing for use in smart order routing;
- Program trading and high frequency trading;
- Order verification;
- Automated surveillance programs;
- Risk management;
- Automatic order cancellation, or automatic error discovery;
- Clearing and settlement activities;
- Account maintenance (*e.g.,* controlling margin for a customer account); and
- ''Hot'' disaster recovery.

Although either top-of-book or depth-of-book data can be used for Non-Display Usage, the proposal modifies fees for depth-of-book data only.[4]

Non-Display fees are currently assessed on a per-subscriber[5] or per-firm basis. Monthly fees are $375 per Subscriber for 1–39 subscribers; $15,000 per firm for 40–99 subscribers; $30,000 per firm for 100–249 subscribers; and $75,000 per firm for 250 or more subscribers.

Under the proposed rule change, a member firm that meets the minimum ADV threshold discussed below would continue to pay those fees.

Firms that do not meet the minimum ADV threshold, however, as well as non-member firms, would pay the new monthly fees of $500 per subscriber for 1–39 subscribers; $20,000 per firm for 40–99 subscribers; $40,000 per firm for 100–249 subscribers; and $100,000 per firm for 250 or more subscribers.

Fiber Connections to the Exchange (40Gb and 10Gb Ultra)

Nasdaq offers customers the opportunity to co-locate their servers and equipment within the Nasdaq Data Center,[6] allowing participants an opportunity to reduce latency and network complexity. Nasdaq offers a variety of connectivity options to fit a firm's specific networking needs, including the high-speed 40Gb and 10Gb Ultra networks.

All of Nasdaq's colocation and connectivity options offer customers access to any or all Nasdaq exchanges through a single connection.[7] For example, a firm that is a member of all six Nasdaq exchanges that purchases services in the Nasdaq Data Center such as a 40G fiber connection, cabinet space, cooling fans, and patch cables only purchases these products or services once to use them for all six Nasdaq exchanges.

Nasdaq currently charges members an ongoing monthly fee of $21,100 for the 40Gb fiber connection and $15,825 for the 10Gb Ultra connection to the Nasdaq exchanges. Under the proposed rule change, a firm that meets the minimum ADV threshold would continue to pay those fees.

Member firms that do not meet the minimum ADV threshold discussed below, as well as non-member firms, would pay the new monthly fee of $23,700 for the 40Gb fiber connection and $17,800 for the 10Gb Ultra connection.

Minimum ADV

The proposal introduces the new term ''Minimum ADV,'' which will mean the introduction by a member of at least one million shares of added executed displayed liquidity on average per trading day in all securities through one or more of the member's market participant identifiers (''MPIDs'') on the Nasdaq Market Center. Average daily volume is calculated as the total volume of shares executed for all added

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

[2] 17 CFR 240.19b–4.

[3] This proposal was initially filed on March 6, 2024, as SR–Nasdaq–2024–011. On March 20, 2024, that filing was withdrawn and replaced with SR–Nasdaq–2024–015. On March 22, 2024, SR–Nasdaq–2024–015 was withdrawn and replaced with the instant filing due to a technical error.

[4] *See* Equity 7, Section 123 (Nasdaq Depth-of-Book data).

[5] ''Subscriber'' is defined as a device or computer terminal or an automated service which is entitled to receive information.

[6] *See* Nasdaq Co-Location (CoLo) Services, available at *https://www.nasdaqtrader.com/trader.aspx?id=colo;* Stock Exchange Data Center & Trading, available at *https://www.nasdaq.com/solutions/nasdaq-co-location.*

[7] *See* Securities Exchange Act Release No. 84571 (November 9, 2018), 83 FR 57758 (November 16, 2018) (SR–Nasdaq–2018–086).

displayed orders in all securities during the trading month divided by the number of trading days in that month, averaged over the six-month period preceding the billing month, or the date the firm became a member, whichever is shorter. New members will be deemed to meet the Minimum ADV for the first month of operation. Minimum ADV excludes sponsored access by a member on behalf of a third party. The minimum ADV threshold was designed to be accessible to all members to promote wide engagement with the Exchange.

Nasdaq does not expect any member to be disadvantaged by the proposal. Nasdaq is a maker-taker platform and, as such, offers rebates to members that offer displayed liquidity. With these rebates, no member should have any difficulty posting and executing sufficient displayed liquidity to meet the ADV threshold. The threshold is, moreover, set at a level that Nasdaq believes any member—even smaller members—should be able to meet without significant effort. Because the threshold applies to displayed liquidity only, the proposal should not impact the Best Execution obligations of any member. If all members were to meet this threshold, the proposal would add an incremental 60–80 million shares to Nasdaq's accessible liquidity.

Non-members that, by definition, do not post displayed liquidity to the market would pay the higher fees. This is because the non-members do not directly contribute order flow to the Exchange, but nevertheless benefit from that order flow through tighter spreads, better prices, and the other advantages of a more liquid platform, as discussed in further detail under Statutory Basis.

The Proposal Will Promote Competition Among Trading Venues

Exchanges, like all trading venues, compete as platforms. All elements of the platform—trade executions, market data, connectivity, membership, and listings—operate in concert. Trade executions increase the value of market data; market data functions as an advertisement for on-exchange trading; listings increase the value of trade executions and market data; and greater liquidity on the exchange enhances the value of ports and colocation services.

As discussed under Statutory Basis, we have attached a data-based analysis demonstrating how platform competition works entitled ''How Exchanges Compete: An Economic Analysis of Platform Competition'' as Exhibit 3. The paper explains that exchanges are multi-sided platforms, whose value is dependent on attracting users to multiple sides of the platform. Issuers need investors, and every trade requires two sides to trade. To make its platform attractive to multiple constituencies, an exchange must consider inter-side externalities, meaning demand for one set of platform services depends on the demand for other services. This proposal is designed to promote competition by providing an incentive for members to provide liquidity (therefore attracting investors and increasing the overall value of the platform) through charging lower fees for other platform services (*i.e.,* market data and connectivity). This will lead to more displayed liquidity on the Exchange, enhancing and enriching the market data distributed to the industry, which then increases the amount of interest in the platform. This will also enable the Exchange to offer investors a more robust, lower cost-trading experience through tighter spreads and more efficient trading as discussed in Exhibit 3, placing it in a better competitive position relative to other exchanges and trading venues.[8]

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.

Fees Produced in a Competitive Environment Are an Equitable Allocation of Reasonable Dues, Fees, and Other Charges

Reliance on competitive solutions is fundamental to the Act. Where significant competitive forces constrain fees, fee levels meet the Act's standard for the ''equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities,'' [11] unless there is a substantial countervailing basis to find that a fee does not meet some other requirement of the Act.[12] Evidence of platform competition demonstrates that each exchange product is sold in a competitive environment, and its fees will be an equitable allocation of reasonable dues, fees, and other charges, provided that nothing about the product or its fee structure impairs competition.[13]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [14] Following this mandate, the Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets.

In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that regulation of the national market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

As a result, the Commission has long relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. In 2008, the Commission explained that ''[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [16] In 2019, Commission Staff reaffirmed that ''[i]f significant competitive forces constrain the fee at issue, fee levels will be presumed to be fair and reasonable . . . .'' [17]

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

[8] To the degree that the additional liquidity is moved from off-exchange venues to on-exchange platforms, overall market transparency will improve as well.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* 15 U.S.C. 78f(b)(4).

[12] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (''Fee Guidance'') (''If significant competitive forces constrain the fee at issue, fee levels will be presumed to be fair and reasonable, and the inquiry is whether there is a substantial countervailing basis to find that the fee terms nevertheless fail to meet an applicable requirement of the Exchange Act (*e.g.,* that fees are equitably allocated, not unfairly discriminatory, and not an undue burden on competition).'').

[13] Nothing in the Act requires proof of product-by-product competition.

[14] *NetCoalition* v. *SEC,* 715 F.3d 342, 534–35 (D.C. Cir. 2013); *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

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

[17] *See* Fee Guidance, *supra* n.10.

unreasonably or unfairly discriminatory.'' [18] Consistent with the Commission's longstanding focus on competition, Commission Staff have indicated that they would only look at factors outside of the competitive market if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [19]

Nothing in the Act Requires an Examination of Fees in Isolation

The Act mandates the ''equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.'' [20] This provision refers generally to ''reasonable dues, fees, and other charges'' as a whole, not individual fees. Nothing in the Act requires the individual examination of specific product fees in isolation. Provided that a proposed rule change does not in and of itself undermine competition, evidence of platform competition is sufficient to show that the product operates in a competitive environment.

A determination of whether a proposal permits unfair discrimination between customers, issuers, brokers, or dealers remains a separate product-specific inquiry.

The Commission Has Recognized That Exchanges Are Subject to Significant Competitive Forces in the Market for Order Flow

The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o 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.' '' [21]

All Exchange Products Are Subject to Competition—Not Just Those Directly Related to Order Flow

As discussed more fully in our analysis, ''How Exchanges Compete: An Economic Analysis of Platform Competition'' (Exhibit 3), competition is not limited to order flow. Data shows that the combination of explicit all-in costs to trade and other implicit costs has largely equalized the cost to trade across venues.[22] This is a function of the fact that, if the all-in cost to the user of interacting with an exchange exceeds market price, customers can and do shift their purchases and trading activity to other exchanges, and therefore the exchange must adjust one or more of its fees to attract customers.

This conclusion is particularly striking given that different exchanges engage in a variety of business models and offer an array of pricing options to appeal to different customer types. The largest exchanges operate maker-taker platforms, offering rebates to attract trading liquidity, which allows them to maintain actionable quotes with high liquidity and offer high-quality market data. The negative price charged to liquidity providers through rebates is part of the platform because it serves to create features attractive to other participants, including oftentimes tight spreads, actionable and lit quotes, and more valuable market data.

Inverted venues, in contrast, have the opposite price structure—liquidity providers pay to add liquidity, while liquidity takers earn a rebate. These platforms offer less liquidity, but better queue priority, faster fills, and lower effective spreads for investors. There are a wide range of other pricing models and product offerings among the dozens of lit and unlit trading venues that compete in the marketplace in addition to these examples.

The different strategies among exchanges also manifest in the pricing of other services, such as market data and connectivity. Some exchanges charge for such services, while others charge little or nothing (typically because the exchange is new or has little liquidity), just as some exchanges charge a fee per trade, while others pay rebates.

In assessing competition for exchange services, we must consider not only explicit costs, such as fees for trading, market data, and connectivity, but also the *implicit* costs of trading on an exchange. The realized spread, or markout, captures the implicit cost to trade on a platform.

The concept of markout was created by market makers trying to capture the spread while providing a two-sided (bid and offer) market. For market makers, being filled on the bid or the offer can cause a loss if the fill changes market prices. For example, a fill on a market maker's bid just as the stock price falls results in a ''virtual loss,'' because the market maker has a long position with a new bid lower than the fill.

Negative markouts can be beneficial. For example, if an institutional investor is working a large buy order, negative markouts represent fills as the market

[18] *See id.*

[19] *See id.* In the Fee Guidance, the Staff indicated that ''[w]hen reviewing rule filing proposals . . . [it] is mindful of recent opinions by the D.C. Circuit,'' including *Susquehanna International Group, LLP* v. *SEC,* 866 F.3d 442 (D.C. Cir. 2017). However, the D.C. Circuit's decision in *Susquehanna* is irrelevant to the Commission's review of immediately effective SRO fee filings. *Susquehanna* involved the Commission's approval of a rule proposed under Section 19(b)(2) of the Act, not its evaluation of whether to temporarily suspend an SRO's immediately effective fee filing under Section 19(b)(3). A comparison of Sections 19(b)(2) and 19(b)(3) of the Act makes clear that the Commission is not required to undertake the same independent review, and make the same findings and determinations, for Section 19(b)(3) filings that it must for Section 19(b)(2) filings. In particular, Section 19(b)(2) requires the Commission to ''find[ ] that [a] proposed rule change is consistent with the'' Act before approving the rule. 15 U.S.C. 78s(b)(2)(C)(i). Section 19(b)(3), by contrast, imbues the Commission with discretion, stating that it ''may temporarily suspend'' an immediately effective rule filing where ''it appears to the Commission that such action is necessary or appropriate.'' As the Supreme Court has explained, statutes stating that an agency ''may''—but need not—take certain action are ''written in the language of permission and discretion.'' *S. Ry. Co.* v. *Seaboard Allied Milling,* 442 U.S. 444, 455 (1979); *see also Crooker* v. *SEC,* 161 F.2d 944, 949 (1st Cir. 1947) (per curiam). The ''contrast'' between Sections 19(b)(2) and 19(b)(3), the Commission itself has explained, ''reflects the fundamental difference in the way Congress intended for different types of rules to be treated.'' Brief of Respondent SEC, *NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (Nos. 10–1421 et al.); *see also id.* at 42–43 (''[W]hile the Commission's authority to suspend a fee under Subsection (3)(C) is permissive, its duties under Subsection (2) are stated in mandatory terms.''). Thus, neither *Susquehanna,* nor Section 19(b)(3) of the Act, requires the Commission to make independent findings that an immediately effective SRO fee filing such as this one is consistent with the Act. To the degree that the *Susquehanna* decision is applicable to any Commission action, however, the court held that the Commission is required to ''itself find or determine'' that a proposal meets statutory requirements, explaining that the Commission is ''obligated to make an independent review'' of an SRO's proposal, and not rely solely on the work of the SRO. *See* 866 F.3d at 446.

[20] *See* 15 U.S.C. 78f(b)(4).

[21] *See NetCoalition,* 615 F.3d at 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)).

[22] Competition across platforms constrains platform fees and results in ''all-in'' costs becoming equal across platforms. The Staff Guidance on SRO Rule Filings Relating to Fees, however, states that platform competition requires that the ''overall *return* of the platform, rather than the *return* of any particular fees charged to a type of customer, . . . be used to assess the competitiveness of the platform's market,'' and that ''[a]n SRO that wishes to rely on total platform theory must provide evidence demonstrating that competitive forces are sufficient to constrain the SRO's aggregate return across the platform.'' See Fee Guidance, supra n.10 (emphasis added). We do not know, and cannot determine, whether returns (as opposed to fees) are equalized across platforms, because we do not have detailed cost information from other exchanges. An analysis of returns, however, is unnecessary to show that competition constrains fees given that, as we demonstrate below, platform competition can be demonstrated solely by examining costs to users.

falls, allowing later orders to be placed sooner, and likely at a better price, reducing the opportunity costs as well as explicit cost of building the position.

Data suggests that market participants employ sophisticated analytic tools to weigh the cost of immediate liquidity and lower opportunity costs against better spread capture (lower markouts) and explicit trading costs. As discussed in greater detail in Exhibit 3, the venues with the highest explicit costs—typically inverted and fee-fee venues—have the lowest implicit costs from markouts and vice versa. Higher positive markouts mean more spread capture, but those venues also tend to have the highest explicit costs, and provide the least liquidity, and positive externalities, to the market.

Considering both the explicit costs charged by exchanges for their various joint products and the implicit costs incurred by traders to trade on various exchanges, the data show that all-in trading costs across exchanges are largely equalized, regardless of different trading strategies offered by each platform for each individual service.

As such, platform competition has resulted in a competitive environment in the market for exchange services, in which trading platforms are constrained by other platforms' offerings, taking into consideration the all-in cost of interacting with the platform. This constraint is a natural consequence of competition and demonstrates that no exchange platform can charge excessive fees and expect to remain competitive, thereby constraining fees on all products sold as part of the platform. The existence of platform-level competition also explains why some consumers route orders to the exchange with the highest explicit trading costs even though other exchanges offer free or a net rebate for trading.[23]

Exchanges Compete at Both the Platform and Product Level

Exchange customers are differentiated in the value they place on the different products offered by exchanges and in their willingness to pay for those products. This occurs both on a firm-wide and a transaction basis; for example, individual customers ''multi-home'' on various platforms, and are thus able to route different trades to different platforms to take advantage of favorable economics offered on a trade-to-trade basis.

Exchanges compete by offering differentiated packages of pricing and products to attract different categories of customer. As in any competitive market, consumers will ''vote with their feet,'' incentivizing platforms to supply an array of pricing and product offerings that suit diverse consumer needs far more effectively than a uniform, one-size-fits-some rigid product offering. If an exchange's pricing for a particular product gets out of line, such that its total return is boosted above competitive levels, market forces will discipline that approach because competing exchanges will quickly attract customer volume through more attractive all-in trading costs.

In addition, if a particular package of pricing and products is not attractive to a sufficient volume of customers in a particular category, those customers may elect not to purchase the service. This is why exchanges compete at a product level, as well as based on all-in trading costs.

Exchanges Compete With Off-Exchange Trading Platforms in Addition to Other Exchanges

As the SEC recently noted in its market infrastructure proposal,[24] the number of transactions completed on non-exchange venues has been growing. Allowing exchanges to compete as platforms will help exchanges compete against non-exchange venues, and, to the degree order flow is shifted from non-exchange to exchange venues, overall market transparency will improve.[25]

Exchanges have a unique role to play in market transparency because they publish an array of pre- and post-trade data that non-exchange venues, almost entirely, do not. Greater transparency benefits non-exchange venues by enabling them to provide more accurate pricing to their customers, and by helping such venues set their own prices, benchmark, analyze the total cost of ownership, and assess their own trading strategies.

Allowing exchanges to compete effectively as platforms has other positive network effects. Larger trading platforms offer lower average trading costs. As trading platforms attract more liquidity, bid-ask spreads tighten, search costs fall (by limiting the number of venues that a customer needs to check to assess the market), and connection costs decrease, as customers have no need to connect to all venues.[26] The whole is therefore greater (in the sense that it is more efficient) than the sum of the parts.

This is not to say that smaller established trading platforms do not have a role to play. They provide specialized services that cater to individual customer needs. These specialized services help the smaller exchanges grow by driving liquidity to their platforms, and, if they are successful, achieve the economies of scale that benefit the larger enterprises. Because the total costs of interacting with an exchange are roughly equal, smaller exchanges offset higher trading costs with lower connectivity, market data, or other fees. While the mix of fees will change as exchanges grow, the all-in cost of interacting with the exchange remains roughly the same.

Acknowledging that exchanges compete as platforms and approving fees expeditiously on that basis will improve the ability of exchanges to compete against non-exchange venues, and, to the degree order flow is shifted to exchanges, both transparency and efficiency will improve.

The Proposed Fees Are Equitable and Reasonable Because They Will Be Subject to Competition

This proposal offers member firms an incentive to display liquidity through lower non-display and connectivity fees. The intent is to generate a ''virtuous cycle,'' in which the proposed fee structure will attract more liquidity to the Exchange, making it a more attractive trading venue, and thereby attracting more liquidity.

Incentive programs have been widely adopted by exchanges, and are reasonable, equitable, and non-discriminatory because they are open on an equal basis to similarly situated members and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality and activity.[27]

[23] Empirical evidence also shows that market data is more valuable from exchanges with more liquidity. Many customers decide not to take data from smaller markets, even though they are free or much lower cost than larger markets.

[24] *See* Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Price Orders, Securities Exchange Act Release No. 96494 (File No. S7–30–22), available at *https://www.sec.gov/rules/proposed/2022/34-96494.pdf.*

[25] Non-exchange venues rely on market data distributed by exchanges to set prices. Greater transparency allows both exchange and non-exchange venues to operate more effectively and efficiently.

[26] In addition, Nasdaq's experience shows that fewer customers connect with smaller trading venues than with larger venues.

[27] *See, e.g.,* Securities Exchange Act Release No. 92493 (July 26, 2021), 86 FR 41129 (July 30, 2021) (SR–CboeEDGX–2021–034) (proposal to provide discount to new members that meet certain volume thresholds, noting that ''relative volume-based incentives and discounts have been widely adopted by exchanges . . . and are reasonable, equitable and non-discriminatory because they are open on an equal basis to similarly situated members and provide additional benefits or discounts that are

Continued

The proposal will contribute to market quality because it will help bring new order flow to the Exchange. Greater displayed liquidity on the Exchange offers investors deeper, more liquid markets and execution opportunities.

Increased order flow benefits investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency, and lowering spreads between bids and offers and thereby lowering investor costs. To the degree that liquidity is attracted from dark venues, that liquidity also increases transparency for the market overall, providing investors with more information about market trends.

The proposal will help members that meet the minimum ADV threshold maintain lower costs and will benefit them through the many positive externalities associated with a more liquid exchange.

The competition among exchanges as trading platforms, as well as the competition between exchanges and alternative trading venues, constrain exchanges from charging excessive fees for any exchange products, including trading, listings, ports, and market data. Indeed, the fees that arise from the competition among trading platforms may be too low because they fail to reflect the benefits to the market as a whole of exchange products and services, allowing other venues to free-ride on these investments by the exchange platforms, increasing fragmentation and search costs.

As long as total returns are constrained by competitive forces—as demonstrated in detail by the report provided as Exhibit 3—there is no regulatory basis to be concerned with pricing of particular elements offered on a platform. Indeed, regulatory constraints in this environment are likely to *reduce* consumer welfare by constraining certain exchanges from offering packages of pricing and products that would be attractive to certain sets of consumers, thus impeding competition with venues that are not subject to the same regulatory limitations and reducing the benefits of competition to customers.

The Proposal Is Not Unfairly Discriminatory

The proposal is not unfairly discriminatory. Non-Display Usage and the Exchange's 40Gb and 10Gb Ultra high-speed connections will be offered to all members and non-members on like terms. It is also not unfair to charge more to firms that do not directly contribute order flow to the Exchange, but nevertheless benefit from that order flow through tighter spreads, better prices, and the other advantages of a more liquid platform.

Specifically, the proposal is not unfairly discriminatory with respect to either members or non-members.

With respect to members, all members that meet the ADV threshold will be charged lower fees. With respect to smaller members, Nasdaq offers rebates to members that offer displayed liquidity. With these rebates, any member—even smaller members—should have the ability to post sufficient displayed liquidity to meet the ADV threshold.

The proposal is not unfairly discriminatory with respect to non-members broker-dealers, which include brokers routing trades through members and off-exchange trading platforms that use exchange data to execute trades, because they have the option of becoming members to obtain lower fees under the proposal, and because they realize the benefits of higher liquidity—including tighter spreads and better prices—and it is not unfair discrimination to charge a higher fee for that benefit.

The proposal is not unfairly discriminatory with respect to non-member firms that are not broker-dealers, such as market data vendors and index providers, because they also benefit from the value that the additional liquidity generated by this proposal will provide to the trading platform. As noted above, incentivizing higher levels of liquidity enhances and enriches the market data distributed to the industry, and increases the overall value of platform. It is not unfair for such parties to pay a higher fee to reflect the greater value of the platform.

Discounts for specific categories of market participants are well-established; examples include non-professional fees, broker-dealer enterprise licenses, and a media enterprise license.[28]

For all of the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,[29] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Rather, as discussed above, the Exchange believes that the proposed changes would increase competition by attracting additional liquidity to the Exchange, which the Exchange believes will enhance market quality, thereby promoting market depth, price discovery, and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [30]

Intra-market Competition. Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data) because the proposed fee structure would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on different market participants.

Intermarket Competition. Nothing in the proposal burdens intermarket competition (the competition among self-regulatory organizations) because competitors are free to modify their own fees in response.

As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow to, including other equities exchanges, off-exchange venues, and alternative trading systems. Participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those

reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity . . . .") (not suspended by Commission); *see also* Securities Exchange Act Release No. 53790 (May 11, 2006), 71 FR 28738 (May 17, 2006) (SR–Phlx–2006–04) ("The Commission recognizes that volume-based discounts of fees are not uncommon, and where the discount can be applied objectively, it is consistent with Rule 603. For the same reasons noted above, the Commission believes that the fee structure meets the standard in section 6(b)(4) of the Act in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities.").

[28] *See, e.g.,* The Nasdaq Stock Market, Price List—U.S. Equities, available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPUSData* (providing discounts for Non-Professional subscribers for Nasdaq TotalView and other market data products, enterprise licenses for broker-dealers for multiple market data products, and a digital media enterprise license for Nasdaq Basic).

[29] 15 U.S.C. 78f(b)(8).

[30] Securities Exchange Act Release No. 51808, 70 FR 37496, 37498–99 (June 29, 2005) (Regulation NMS).

other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues.

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.[31]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2024–016 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–2024–016. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–016 and should be submitted on or before April 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–07227 Filed 4–4–24; 8:45 am]

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[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99881; File No. SR–NYSEARCA–2024–30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.4–E

April 1, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2024, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 7.4–E (Ex-Dividend or Ex-Right Dates) to conform to amendments to Rule 15c6–1(a) of the Act to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"). The proposed rule change is available on the Exchange's website at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

On March 6, 2023, the Commission adopted amendments to Rule 15c6–1(a) of the Act to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.[3] Accordingly, the Exchange proposes to amend Rule 7.4–E to conform with the amendments to Rule 15c6–1(a) and reflect a standard settlement cycle of T+1.

Rule 7.4–E currently provides that transactions in stocks traded "regular way" are generally "ex-dividend" or "ex-rights" on the business day preceding the record date fixed by the company or the date of the closing of transfer books. The rule further provides that, if the record date or closing of transfer books occur on a day other than a business day, transactions would be "ex-dividend" or "ex-rights" on the second preceding business day.

The Exchange proposes to amend Rule 7.4–E to provide, in conformity

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96930, 88 FR 13872 (March 6, 2023) ("T+1 Adopting Release").