The limited and temporary exemptions extended by this Order are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–11966 Filed 6–8–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80856; File No. SR–NASDAQ–2017–051]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fees at Rule 7046

June 5, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 23, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's fees at Rule 7046 to: (i) Introduce a new fee structure that would allow members to sponsor their customers to receive Nasdaq Trading Insights for a $1,000 per month sponsorship fee to be paid by the member, and fees based on the number of ports to be paid by the sponsored firm; and (ii) extend a free trial offer period from 14 to 30 days. The changes are described in further detail below.

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

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

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

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

1. Purpose

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

Nasdaq Trading Insights

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

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

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

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

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

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

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

Proposed Changes

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

a. Sponsorship Fee

The Exchange proposes to introduce a new fee structure that would allow members to sponsor an unlimited number of their customers to obtain access to Trading Insights' analytics for a $1,000 per month sponsorship fee to

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[9] 17 CFR 200.30–3(a)(83).

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

[2] 17 CFR 240.19b–4.

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

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

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

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

be paid by the member, as well as standard fees based on the number of ports to be paid by the sponsored firm(s) set forth in Rule 7046(b)(2). Standard fees for both members and sponsored firms will be at the current rates: $1,500 for 1–5 ports; $2,000 for 6–15 ports; $2,500 for 16–25 ports; and $3,500 for 26 ports or more. A sponsoring member may receive data from the same port as a sponsored firm, but only the sponsored firm would be charged a fee for that data. The sponsoring member will be charged a Standard Fee for Trading Insights on all ports transmitting the proprietary data of that member, but the sponsoring member will not be charged for any data on ports subscribed by a sponsored firm.[7]

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

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

b. Trial Offers

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

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

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

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

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

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

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

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[12]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In *NetCoalition* v. *Securities and Exchange Commission*[13] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based

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

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

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

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

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

[12] *Id.*

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

approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[14] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [15] ''No one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [16]

Data products such as Nasdaq Trading Insights are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they provide. The need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.[17]

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

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Nasdaq Trading Insights product enhances competition by providing new options for analyzing market data.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[18] In Nasdaq's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products. The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, and the BATS exchanges.

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

In this instance, the proposed rule change enhances competition by creating a fee structure that encourages the dissemination of Nasdaq Trading Insights to non-members and expanding free trial offers to allow members and non-members to become more familiar with the product. If Nasdaq Trading Insights were to become unattractive to members and sponsored firms, those

[14] *See NetCoalition,* at 534–535.

[15] *Id.* at 537.

[16] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] *See* Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

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

firms would opt not to purchase the product

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

No written comments were either solicited or received.

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

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

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–051, and should be submitted on or before June 30, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2017–11961 Filed 6–8–17; 8:45 am]

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[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[[Release No. 34–80860; File No. SR–NYSEArca–2013–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS In Connection With the Exchange's Retail Liquidity Program Until December 31, 2017

June 5, 2017.

On December 23, 2013, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule'') [1] that granted NYSE Arca, Inc. (''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program (''Program'').[2] The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.[3] The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on June 30, 2017.[4]

The Exchange now seeks to extend the exemption until June 30, 2017.[5] The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.[6] In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze more robust data concerning the Program, which the Exchange committed to provide to the Commission.[7] For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001,

[1] 17 CFR 242.612(c).

[2] *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107) (''Order'').

[3] *See id.*

[4] The pilot term of the Program was originally scheduled to end on April 14, 2015, but the Exchange initially extended the term through September 30, 2015, *see* Securities Exchange Act Release No. 74572 (March 24, 2015), 80 FR 16705 (March 30, 2015) (NYSEArca–2015–22), and then subsequently extended the term again through June 30, 2017, *see* Securities Exchange Act Release Nos. 75994 (September 28, 2015), 80 FR 59834 (October 2, 2015) (SR–NYSEArca–2015–84), 77236 (Feb. 25, 2016), 81 FR 10943 (March 2, 2016) (SR–NYSEArca–2016–30), 77425 (March 23, 2016), 81 FR 17523 (March 29, 2016) (SR–NYSEArca–2016–47), 78601 (August 17, 2016), 81 FR 57632 (August 23, 2016) (SR–NYSEArca–2016–113), and 79495 (December 7, 2016), 81 FR 90033 (December 13, 2016) (SR–NYSEArca–2016–157). Each time the pilot term of the Program was extended, the Commission granted the Exchange's request to also extend the Sub-Penny exemption through September 30, 2015, *see* Securities Exchange Act Release No. 74609 (March 30, 2015), 80 FR 18272 (April 3, 2015), March 31, 2016, *see* Securities Exchange Act Release No. 76021 (September 29, 2015), 80 FR 60207 (October 5, 2015), August 31, 2016, *see* Securities Exchange Act Release No. 77437 (March 24, 2016), 81 FR 17752 (March 30, 2016), December 31, 2016, *see* Securities Exchange Act Release No. 78677 (August 25, 2016), 81 FR 60037 (August 31, 2016), and June 30, 2017, *see* Securities Exchange Act Release No. 79586 (December 16, 2016), 81 FR 93719 (December 21, 2016).

[5] *See* Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 23, 2017.

[6] *See* Securities Exchange Act Release No. 80851 (June 2, 2017) (SR–NYSEArca–2017–63).

[7] *See* Order, *supra* note 2, 78 FR at 79529.