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July 30, 2024

Ms. Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Submitted via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: The Nasdaq Stock Market LLC – Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reconfigure Fees for the Daily List and Fundamental Data to Better Reflect the Value of the Information Distributed  
Release No. 34-100416; File No. SR-NASDAQ-2024-027**

Dear Ms. Countryman:

Bloomberg L.P.<sup>1</sup> (“Bloomberg”) respectfully submits this letter in response to the above-referenced proposal by the Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the U.S. Securities and Exchange Commission (“SEC” or the “Commission”) to increase and reconfigure fees for the Daily List and Fundamental Data product (“Proposal”).<sup>2</sup> Specifically, Nasdaq seeks to: (1) increase the licensing fee for the Daily List from \$1,750 to \$3,500 per month and (2) publish a subset of the Daily List information, on its website.<sup>3</sup>

The Proposal does not provide sufficient detail or justification to demonstrate that the proposed fee increases are consistent with the Exchange Act and the Commission’s rules thereunder.

### **Background**

The Daily List is a compendium of corporate actions information, which includes information about the corporate actions of issuers, execution of corporate actions by the Exchange, and

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<sup>1</sup> Bloomberg L.P. is a global leader in business and financial information, delivering trusted data, news, and insights that bring transparency, efficiency, and fairness to the markets. The company helps connect influential communities across the global financial system via reliable technology solutions that enable our customers to make more informed decisions and foster better collaboration.

<sup>2</sup> Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reconfigure Fees for the Daily List and Fundamental Data to Better Reflect the Value of the Information Distributed, Release No. 34-100416 (June 25, 2024), available at <https://www.sec.gov/files/rules/sro/nasdaq/2024/34-100416.pdf> (“Proposal”)

<sup>3</sup> *Id.*

information about issuer status.<sup>4</sup> In essence, the Daily List consists of two types of corporate actions data: (1) data provided to the Exchange by issuers, to which Nasdaq has preferred but not exclusive access, and (2) data generated by and exclusively held by Nasdaq. For this latter category of data, Nasdaq is the sole source of the data, and there is no market competition that can be relied upon to set prices.

Nasdaq proposes to increase the licensing fee for its Daily List product twofold, from \$1,750 per month to \$3,500 per month. In support of the proposed fee increase, Nasdaq has provided no cost or other data to justify the increase. Instead of providing cost data to support the new fee levels, Nasdaq is proposing to make the portion of the Daily List information that is generated by Nasdaq available on its website. Nasdaq contends that this will allow others to develop comparable products without having to purchase the Daily List product from Nasdaq. Nasdaq further contends it will allow these other comparable products to compete with Nasdaq and therefore constrain pricing through this hypothetical competition.

There are two problems with this approach. First, the fees for the Daily List product are not currently constrained by this hypothetical competition. The market for this information, specifically the information generated by the exchange, is not now subject to competition. Thus, the Exchange's contention that competition in this space constrains fees, does not justify the fee increase. In the absence of an actual existing competitive market, the Commission should evaluate the reasonableness of a proposed fee increase on a cost-based standard.

Second, the Proposal, even with publication of the exchange-generated data on a website, is very unlikely to ever allow a competitive market to develop. In our experience with exchanges releasing exchange data via a website, there are frequently terms of use restrictions or other hurdles that effectively function as barriers for market participants to engage in any type of commercial use with the published data.

In short, we believe Nasdaq has not met their burden of showing that the proposed fees are fair, reasonable, non-discriminatory, or reasonably related to cost, and Nasdaq has not demonstrated that the proposed arrangement and publication on the website of the exchange-generated portions of the Nasdaq Daily List information would create a market that is subject to competitive forces.

**The Proposal does not provide sufficient detail or justification to demonstrate that the proposed fee increases are consistent with the Exchange Act and the Commission's rules thereunder.**

The fees for the Daily List product are subject to the fee filing requirements that apply to Self-Regulatory Organizations ("SROs"). A proposed rule of the Exchange, including one to establish or change a fee, must be filed with the Commission along with a statement of the purpose and statutory basis for the proposed rule that is sufficiently detailed and specific to support a finding

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<sup>4</sup> Proposal at 2, FN 3.

that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder.<sup>5</sup>

For a proposed rule change that involves fees, the Exchange Act requires that a proposed rule change must: provide for the equitable allocation of reasonable dues, fees, and other charges;<sup>6</sup> not be designed to permit unfair discrimination;<sup>7</sup> not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act;<sup>8</sup> and be designed to protect investors and the public interest.<sup>9</sup>

Under Commission rules, the Exchange has the burden to demonstrate that its proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder.<sup>10</sup> As set forth in *Susquehanna*, an exchange fee filing must provide sufficient information to enable the agency to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”<sup>11</sup>

For a fee filing that lacks evidence that the proposed fee is constrained by significant competitive forces, such as this Proposal, the Exchange must demonstrate that the proposed fees are consistent with the Exchange Act through the production of cost data.

Nasdaq has not offered any information regarding its underlying costs or projected revenues, and thus has not provided the Commission with any information that would enable the Commission to determine that the proposed fees comport with the Exchange Act. There is simply no information providing any indication of how the proposed fees are reasonable in relation to the costs of providing the data.

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<sup>5</sup> See Exchange Act Section 19(b) and Exchange Act Rule 19b-4. See also SEC Staff Guidance on SRO Rule Filings Relating to Fees at Section III (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees> (“SEC Guidance on SRO Fee Filings”).

<sup>6</sup> Exchange Act Sections 6(b)(4).

<sup>7</sup> Exchange Act Section 6(b)(5).

<sup>8</sup> Exchange Act Section 6(b)(8).

<sup>9</sup> Exchange Act Section 6(b)(5).

<sup>10</sup> See SEC Rules of Practice, Rule 700(b)(3) (17 CFR 201.700(b)(3)).

<sup>11</sup> See *Susquehanna Int’l Grp., LLP v. SEC*, 866 F.3d 442 (D.C. Cir. 2017) (“The SEC “shall approve” a self-regulatory organization’s proposed rule change only “if it finds that such proposed rule change is consistent with” provisions of the Exchange Act.”). Accord, Remarks of Brett Redfearn, SEC, before the SEC Roundtable and Market Access and Market Data, Oct. 26, 2018, available at <https://www.sec.gov/news/public-statement/statement-redfearn-102518> (declaring that in order for the Commission to “meet our obligations under the Exchange Act, we also need to ensure that the fees that are being charged for such important market services are fair and reasonable, not unreasonably discriminatory, and do not impose an undue or inappropriate burden on competition”).

In the absence of any cost data, the Exchange attempts to hide the ball on the standard for review. Nasdaq suggests that the proposed fees are subject to competitive forces, and thus the Commission has no need for cost data. These arguments regarding competition ignore the reality.

The exchange-generated data contained in the Daily List is generated by the Exchange itself and is therefore not subject to competitive forces - as it is the sole source of that information. There are no substitutes for this data, as the Exchange contends. One cannot assemble the exchange-generated data from other websites, issuers, or other vendors without ultimately obtaining the information from Nasdaq. Market participants seeking this information must either obtain it from Nasdaq directly or obtain it from a vendor or other third-party that ultimately obtains it from Nasdaq. It is clear that competitive forces do not constrain pricing here.

The Exchange points to the existence of “competitors” in the market and notes that the proposed fees are set to align within the prevailing market prices for “comparable corporate actions products” offered by those “competitors.”<sup>12</sup> But those alleged competitors do not actually compete with Nasdaq, as they either do not offer a comparable product or they ultimately obtain the information from the Exchange itself. To the extent the Exchange is referring to its customers who purchase the exchange-generated information as competitors in this context, these customers have no ability to constrain pricing in this arrangement through competition – as Nasdaq is the sole source of the information.

**Publication of the Exchange-generated data on the website is very unlikely to ever allow a competitive market to develop.**

The Exchange notes that “exchange-specific information” will be made available on its public website, and the Exchange will employ the same distribution structure currently employed by NYSE.<sup>13</sup> The Proposal argues that publication of the exchange-generated information on its website along with the information that may be obtained through other sources will provide the opportunity for a market participant to assemble “its own set of corporate actions information,” with the implication that this would constitute a substitute for the Daily List product and allow other hypothetical market participants to someday compete in the market.

In our experience, a website’s terms of use may, and often do, condition access to and regulate the use of data that is published on the website to the same extent that affirmative licensing restrictions are able to condition access and limit use. For example, depending on the specific terms and conditions, a user may be prohibited from making any meaningful use of the data making it impossible to use as a substitute or to replicate.

Nasdaq has failed to discuss in the Proposal the fact that NYSE – whose corporate actions data structure it intends to follow – currently severely restricts the use of the corporate actions data

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<sup>12</sup> According to Nasdaq, the following vendors offer corporate actions products: S&P Global, LSEG, Quodd, Barchart, Six Financial, Polygon.io, EDI, and FactSet. *See* Proposal at 7, 9, 13.

<sup>13</sup> Proposal at 15.

published on its website. As a condition to accessing and using the NYSE corporate actions data, users must agree to:

... not sell, license, rent, modify, print, collect, copy, reproduce, download, upload, transmit, disclose, distribute, disseminate, publicly display, publicly perform, publish, edit, adapt, electronically extract or scrub, compile or create derivative works from any content or materials (including, without limitation, through framing or systematic retrieval to create collections, compilations, databases or directories) or otherwise transfer any of the content to any third person (including, without limitation, others in your company or organization). You agree not to decompile, reverse-engineer or disassemble any materials, information or other content available through this Website and not to insert any code or product to manipulate the content in any way that affects the user's experience. Unless we give you prior written permission, use of any Web browsers (other than generally available third-party browsers), engines, software, spiders, robots, avatars, agents, tools or other devices or mechanisms to navigate, search or determine this Website is strictly prohibited.<sup>14</sup>

In fact, Nasdaq also currently requires users of Nasdaqtrader.com to agree to its own set of usage terms, including those pertaining to third-party data licensing,<sup>15</sup> copyright, trademarks, and disclaimers.<sup>16</sup> It is also subject to a U.S. services agreement.<sup>17</sup> Beyond that, we have seen certain exchanges publish data in a format that is designed to inhibit a user from making meaningful use of the data, or add further delay on top of already significant latency. These hurdles are designed to compel market participants to subscribe to the exchange product.

Given the NYSE restrictions embraced by Nasdaq, the Proposal would certainly **not** provide a reasonable method “for a market participant to assemble its own set of corporate actions information” in a manner such that the Exchange “will have no material advantage in the sale of its corporate actions product” as the Proposal claims.<sup>18</sup>

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<sup>14</sup> <https://www.ice.com/terms-of-use>

<sup>15</sup> Nasdaqtrader.com Third-Party Data License Terms and Conditions:  
<https://www.nasdaqtrader.com/content/AdministrationSupport/Policy/ThirdPartyDataLicenseTermsandConditions.pdf>

<sup>16</sup> Nasdaqtrader.com Copyright, Trademarks, and Disclaimers:  
<https://www.nasdaqtrader.com/trader.aspx?id=copydisclaimmain#:~:text=NEITHER%20NASDAQ%20NOR%20THE%20INFORMATION%20PROVIDERS%20SHALL%20BE%20LIABLE%20IN,SPECIAL%2C%20CONSEQUENTIAL%20OR%20INCIDENTAL%20DAMAGES.>

<sup>17</sup> Nasdaqtrader.com U.S. Services Agreement:  
[https://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsTrading/nasdaq\\_access\\_2016agreement.pdf](https://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsTrading/nasdaq_access_2016agreement.pdf)

<sup>18</sup> Proposal at 15.

**Publishing the corporate actions data via a website, as proposed, does not absolve an exchange of its obligations under the Exchange Act and the Commission’s rules. The Exchange should continue to include the Daily List and the attendant fees in the Exchange’s rulebook and any amendments related to the Daily List should continue to be subject to Commission review.**

The Proposal also notes that the Exchange is considering a subsequent submission to withdraw the Daily List from the Nasdaq rulebook entirely.<sup>19</sup> The Proposal points to a similar posture taken by NYSE, which sells a similar product related to its corporate actions and publishes certain exchange-specific information on its website, but it does not include the product in the NYSE rulebook and does not file amendments and fees with respect to the product with the Commission.

We do not believe that making the data available via a website absolves an exchange of any present or future obligations under the Exchange Act and the Commission’s rules with regard to its rule filing requirements.

As an initial matter, it is not clear why NYSE does not include the NYSE corporate actions product in its rulebook. In 2020, following a significant increase in the fees associated with the NYSE corporate actions product, SIFMA wrote to the Commission to bring this very issue to the Commission’s attention.<sup>20</sup> As SIFMA noted, “NYSE’s Corporate Actions feed falls within the definition of an exchange facility, and therefore NYSE should submit a rule filing to the Commission.”<sup>21</sup>

The subtext of this Proposal appears to be that because NYSE’s corporate actions product is not included in the NYSE rulebook, and NYSE does not file the fees for corporate actions product with the Commission, it is only fair that Nasdaq be permitted to adopt the same model. However, one SRO’s circumvention of responsibilities should not be a model for another to follow.

As a general matter, publication of corporate actions data on a website does not relieve an exchange of any statutory responsibilities. These activities fall squarely within an exchange’s regulated functions and should be reviewed by the Commission as such. If Nasdaq chooses to move forward with making this information available on its website, or any other dedicated website, it should continue to file amendments and fees with the Commission as it currently does.

Without Commission oversight, even an exchange that had proposed reasonable terms of use – which is, of course, not the case here – would be free to downgrade the terms of use, restrict access, restrict use, prohibit distribution of information or decide to charge unreasonable fees for

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<sup>19</sup> Proposal at 15, FN 44.

<sup>20</sup> Cite to SIFMA letter. Available at <https://www.sifma.org/wp-content/uploads/2020/04/SIFMA-Comment-Letter-on-NYSE-Corporate-Actions-Fee-and-Exchange-Derived-Data-Policies.pdf>.

<sup>21</sup> SIFMA Letter at 2.

website use. And it would be able to do all this without notifying the Commission or seeking the Commission's approval. In sum, removal of the Daily List from the Nasdaq rulebook would eliminate the Commission's authority to oversee the Exchange's activities with respect to this product, and the potential effect on market participants could be significant.

We believe the Exchange should continue to include the Daily List and the attendant fees in the Exchange's rulebook, and any future amendments related to the Daily List should continue to be subject to Commission review.

### **Conclusion**

As we have discussed above, Nasdaq has not sufficiently justified its proposed fee increase for the Daily List. In the absence of a competitive market, we believe the Exchange should provide meaningful cost data to justify the proposed increase, and none has been provided. We also believe that careful consideration should be given to the form and manner of publication on the website, and the impact that will likely have on whether meaningful competition would be able to develop.

We appreciate the Commission's willingness to consider our comments and would be pleased to discuss any question that the Commission may have with respect to this letter.

Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Gregory R. Babyak". The signature is written in a cursive, slightly slanted style.

Gregory Babyak  
Global Head of Regulatory Affairs, Bloomberg L.P.