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VIA ELECTRONIC MAIL

August 14, 2024

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

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:

Nasdaq Stock Market, LLC¹ (“Nasdaq” or “the Exchange”) appreciates the opportunity to comment on the proposed rule change to reconfigure fees for the Daily List and Fundamental Data to better reflect the value of the information distributed.²

We write in response to a comment letter submitted by Bloomberg regarding the proposed changes to the Daily List.³ The Letter alleges that: (i) the Nasdaq Corporate Actions product is not constrained by competition due to supposed “preferred access” by Nasdaq; (ii) publication of exchange-specific information on Nasdaq’s website will not facilitate competition because of unidentified “restrictions” on the use of data from NasdaqTrader; and (iii) the Daily List should not be withdrawn from the Nasdaq rulebook, even though Nasdaq has proposed no such withdrawal. We respectfully submit that the Letter is mistaken on each point, and the proposed fee changes are in fact consistent with the Exchange Act and should move forward.

¹ Nasdaq Stock Market LLC is a subsidiary of Nasdaq, Inc. (“NDAQ”), a global technology company serving the capital markets and other industries. Nasdaq has been a technology leader throughout its fifty-year tenure, developing market infrastructure that today powers more than 130 of the world’s market infrastructure operators, including broker-dealers, exchanges, clearinghouses, and central securities depositories, in over 50 countries with end-to-end, mission-critical technology solutions. To learn more about the company visit www.nasdaq.com.

² See Securities Exchange Act Release No. 100416 (June 25, 2024), 89 FR 54545 (July 1, 2024) (SR-Nasdaq-2024-027).

³ See Letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., to Vanessa A. Countryman, Secretary, SEC, re File No. SR-NASDAQ-2024-027, available at <https://www.sec.gov/comments/sr-nasdaq-2024-027/srnasdaq2024027-501135-1466002.pdf> (“Babyak Letter” or “Letter”).

Competition is Real

The competition that the Letter alleges to be “hypothetical” is real—and Bloomberg is a participant in that market.⁴

A corporate action is an undertaking by an issuer that materially impacts the value of its shares. A corporate actions product is a compendium of corporate actions that is curated by a vendor and sold to market participants. In its filing, Nasdaq identified a number of vendors that sell such products, including S&P Global, Inc., London Stock Exchange Group, PLC, Quodd Financial Information Services, SIX Group Ltd., Polygon.io, Exchange Data International, Ltd., and FactSet.

The Letter alleges that there is no competitive market because Nasdaq has “preferred” access to issuer information.⁵ While the Babyak Letter does not explain what “preferred” access means, the fact is that the bulk of corporate action information is published by the issuer and made available on both the issuer’s public site and the SEC Edgar website days or weeks before the action take place, allowing market participants more than sufficient time to act on that information.

The Letter also claims that there is no competitive market because Nasdaq’s competitors “ultimately obtain the information from the Exchange itself.”⁶ This claim is misleading, given that most corporate action information comes from the issuer and not the Exchange, and is typically available on the issuer’s website and the SEC’s Edgar website. Also, there are competitors in the list above that do not use the Daily List. For those few data points, discussed below, that do originate from the Exchange, Nasdaq is making that information available to the market on a public website to facilitate competition and transparency.

Moreover, the Letter is incorrect that Nasdaq has an inherent advantage in the sale of corporate actions products. Nasdaq is the only provider of corporate actions products required to file fees for its corporate actions product with the Commission. Moreover, the Daily List is limited to Nasdaq-listed companies, while most of its competitors publish corporate actions for all U.S. listings.

Because Nasdaq’s proposed fees are subject to competition, the proposed changes provide for the equitable allocation of reasonable dues, fees and other charges as required by the Exchange Act.

Nasdaq Will Publish Exchange Information Without Restriction

The Letter claims that “[i]n [Bloomberg’s] 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

⁴ See Bloomberg’s Corporate Action Solution, available at <https://data.bloomberglp.com/professional/sites/10/Corporate-Actions-Fact-Sheet.pdf>

⁵ See Babyak Letter at 2.

⁶ See Babyak Letter at 4.

same extent that affirmative licensing restrictions are able to condition access and limit use.” The Letter justifies this allegation using citations from NYSE’s website.⁷

Nasdaq is not NYSE, and a discussion of the restrictions on NYSE’s website is not relevant to a discussion about a Nasdaq product.

Nevertheless, for the avoidance of doubt, Nasdaq will publish a notice on its website stating that this exchange-specific event data published on NasdaqTrader, or any successor website, is available to any party, for any purpose.

Nasdaq is not proposing to withdraw the Daily List with this filing.

Lastly, the Letter contends that the Daily List should not be removed from the Nasdaq rulebook. As is clear from the filing, Nasdaq has not proposed removal, and this contention is not relevant to any analysis of its consistency with the Exchange Act.

Summary of the Proposal

A corporate action is an undertaking by an issuer that materially impacts the value of its shares. Corporate actions range from making a change to a company’s name to issuing a dividend or restructuring the company through a merger or bankruptcy. Common corporate actions include, but are not limited to, name or trading symbol change, stock splits, issuance of dividends, mergers and acquisitions, rights issue, and liquidation or dissolution.

Although corporate actions are undertaken by the issuer, certain corporate actions require activity by the Exchange to complete. One example of this is the Ex-Date for dividends. When a company declares a dividend, its board of directors establishes a record date. This is the date a person must be on the company’s record as a shareholder to receive a dividend payment. Once the record date is set, the ex-dividend date is also set. For the Nasdaq Stock Exchange, the Ex-Date for dividends is generally set on the record date, but a different date may be established under certain circumstances, such as when a date is floating.

The Daily List is a compendium of corporate actions information—including new listings, delistings, symbol name changes, dividends, and other information for the Nasdaq Stock Market. It is comprised of the following sets of information:

- **Nasdaq Equity Data:** Provides notification of corporate actions information such as new listings, delistings, corporate name changes, trading symbol changes, market tier changes and Financial Status Indicator (FSI) changes that occur on the Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market.
- **Dividends:** Provides notification of cash dividends, stock dividends and stock splits to Nasdaq securities.
- **Next Day Ex-Date:** Summarizes the securities with dividend adjustments to be applied to the previous closing price on the next business day.

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See id.

All of the information published on the Daily List is from issuers, except for information related to the execution of corporate actions by the Exchange and issuer status under Exchange rules. Nasdaq receives corporate actions information from issuers on the same basis as any other market participant, with no inherent advantage in speed or access due to its unique position as an SRO.

Nasdaq's proposal is to increase the licensing fee for the Daily List, which also includes Fundamental Data, from \$1,750 to \$3,500 per month to better reflect its market value. The current fee has not been changed since 2016.⁸

Discussion

Competition is Real

There has been a competitive market in corporate actions data for over 25 years. In its filing, Nasdaq identified S&P Global, Inc., London Stock Exchange Group PLC, QUODD Financial Information Services, SIX Group Ltd., Polygon.io, Exchange Data International Limited, and FactSet as a partial list of its competitors in its filing. To this list, we will add Bloomberg,⁹ Tick Data, LLC,¹⁰ Quant Connect Corp.,¹¹ Fidelity National Information Services, Inc.,¹² Intercontinental Exchange, Inc.,¹³ Zacks Investment Research,¹⁴ and Mergent, Inc.¹⁵

Vendors that sell corporate actions products compile corporate actions information from various sources, including the SEC's Edgar website and issuer websites; not all use Nasdaq as a direct source. As discussed in further detail below, exchange-specific information will be made available on Nasdaq's website.

The existence of many competitors is sufficient to demonstrate that Nasdaq's fees are constrained by competitive forces. Although some of our competitors may in fact use Nasdaq information as a partial input to their corporate actions product, that does not mean that Nasdaq

⁸ See Securities Exchange Act Release No. 34-79701 (December 29, 2016), 82 FR 1381 (January 5, 2017) (SR-Nasdaq-2016-175).

⁹ See "Bloomberg's Corporate Actions solution," available at <https://data.bloomberglp.com/professional/sites/10/Corporate-Actions-Fact-Sheet.pdf>

¹⁰ See Tick Data, LLC, "Reference Data," available at https://www.tickdata.com/corporate-actions/?_gl=1*12g96t4*_up*MQ..&gclid=EAIaIQobChMIv7C3xPDvhwMVrVhHAR11Bw-EAAYASAAEgIFmfD_BwE.

¹¹ See Quant Connect Corp., "US Equity Corporate Actions," available at <https://www.quantconnect.com/docs/v2/writing-algorithms/securities/asset-classes/us-equity/corporate-actions>.

¹² Fidelity National Information Services, Inc., "FIS Corporate Actions Suite," available at <https://www.fisglobal.com/products/fis-corporate-actions-suite>

¹³ Intercontinental Exchange, Inc., "Corporate Actions," available at <https://www.ice.com/fixed-income-data-services/data-and-analytics/pricing-and-analytics/reference-data/corporate-actions>

¹⁴ Zacks Investment Research, "Zacks Splits, Dividends and Corporate Actions Data," available at <http://www.zacksdata.com/data/splits-dividends-corp-actions/>

¹⁵ Mergent, Inc., "About Mergent EventsData," available at <https://www.eventsdata.com/index.php?action=about>

is free to charge any amount for its product without competitive constraint. Customers of corporate actions products have a number of choices in where to obtain such information: (i) issuers (both on their own website and via financial news services), (ii) the SEC's Edgar website, (iii) the listing exchanges, and (iv) vendors such as Bloomberg. The existence of this choice means that Nasdaq is constrained in the fees it may charge for the Daily List, and customers may choose not to purchase the Daily List for any reason, including the fee charged.

Moreover, vendors are at no disadvantage relative to Nasdaq and other listing markets with respect to timing of this information because there is no material delay in the dissemination of data from vendors relative to listing markets. For many corporate actions, issuers are expected to notify Nasdaq and the public of the action at about the same time.¹⁶

In addition, corporate action information is not time sensitive in the same way as real time market data. The Nasdaq Daily List product updates at 15 minute or daily intervals. Because corporate actions are announced days or weeks prior to the event, any delay by the vendor up to a day is immaterial for most market participants because the effective date of the corporate action will not take place until days or weeks in the future. As such, vendors are at no material disadvantage relative to listings markets.

The proof that Nasdaq is in competition with vendors lies in the number of firms buying the Daily List product. If Nasdaq were in a preferred position relative to vendors, one would expect Nasdaq to be supplying its corporate actions product to a significant portion of the market. In fact, Nasdaq sells the Daily List to less than 100 customers, whereas Nasdaq estimates the overall size of the market to be at least—and likely more than—five times that size.¹⁷

Nasdaq Will Publish Exchange Information Without Restriction

In response to Nasdaq's pledge to publish exchange-specific data on its website, the Letter comments that "[i]n 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."¹⁸

Although the criticism is vague, Nasdaq will take steps to ensure that there is open access to this Nasdaq-specific information.

¹⁶ See, e.g., The Nasdaq Stock Market, Rule 5250(e)(6) (requiring that an issuer notify Nasdaq as well as the public of a dividend action or stock distribution no later than ten calendar days prior to the record date of such event).

¹⁷ The public information from the UTP Plan identified 369 internal vendors and 251 external vendors, for a total of 620 vendors for Q2 2024. See UTP Plan, "US Equities Securities Information Processor Key Quarterly Operating Metrics of TAP," available at https://www.utpplan.com/DOC/UTP_2024_Q2_Stats_with_Processor_Stats.pdf. Nasdaq believes that this presents a reasonable proxy for the total number of customers for corporate actions data.

¹⁸ Babyak Letter at 2.

First, Nasdaq will publish a notice on its website stating that this exchange-specific events information originating from the Exchange— Nasdaq Security Status Updates,¹⁹ Nasdaq Ex-Date,²⁰ When Distributed/When Issued,²¹ and Nasdaq Listed²²—will be freely available to any party, for any purpose. We believe that such a notice will alleviate concerns with use restrictions.²³ Specifically, Nasdaq will publish the following notice for these pages:

The data related to Nasdaq Security Status Updates, Nasdaq Ex-Date, When Distributed/When Issued, and Nasdaq Listed has been created, collected, validated, processed, generated and/or recorded by Nasdaq. The data made available herein is provided as it exists in Nasdaq's records without restriction or any further licensing requirement, notwithstanding Nasdaq Terms of Services (<https://www.nasdaq.com/legal>).

Second, Nasdaq will continue to work with its customers—including Bloomberg—to ensure that the information is available in a format that is readily accessible. Nasdaq is not aware of any problems with a vendor accessing and using its exchange-specific corporate actions information, but will work with vendors to ensure that such information is available in an accessible format.²⁴

Nasdaq believes that such measures should be sufficient to ensure a competitive marketplace continues. The exchange specific information to be provided on NasdaqTrader or successor website is not data intensive. In July 2024, Nasdaq published on average 31 records per trading day via these webpages, in addition to the data already publicly available. In light of the small amount of data to be published, Nasdaq believes that vendors will have no problem incorporating such information into their corporate actions products.

Nasdaq is not proposing to withdraw the Daily List with this filing.

In its final point, the Letter expressed concern that the Daily List should not be removed from the Nasdaq rulebook. To be clear, Nasdaq is not proposing to remove the Daily List from

¹⁹ Nasdaq, "Nasdaq Security Status Updates," available at <https://www.nasdaqtrader.com/Trader.aspx?id=nasdaq-security-status-updates>

²⁰ Nasdaq, "Nasdaq Ex-Date," available at <https://www.nasdaqtrader.com/Trader.aspx?id=nasdaq-ex-date>

²¹ Nasdaq, "When Distributed/When Issued," available at <https://www.nasdaqtrader.com/dynamic/SymDir/NasdaqWhenIssueWhenDistributed.txt>

²² Nasdaq, "Nasdaq Listed," available at <https://www.nasdaqtrader.com/dynamic/SymDir/nasdaqlisted.txt>

²³ Nasdaq notes that the specific use restrictions identified in the Letter related to Third Party information (Nasdaq, "Third-Party Data License Terms and Conditions," available at <https://www.nasdaqtrader.com/content/AdministrationSupport/Policy/ThirdPartyDataLicenseTermsandConditions.pdf>), Access Agreement (Nasdaq, "U.S. Services Agreement," available at <https://www.nasdaqtrader.com/content/AdministrationSupport/Policy/ThirdPartyDataLicenseTermsandConditions.pdf>) and Copyright and Trademark (Nasdaq, "Copyright, Trademarks and Disclaimers," available at <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>) are not relevant to the exchange-specific corporate action information being distributed.

²⁴ Nasdaq also makes corporate actions information through an RSS feed. See NasdaqTrader.com, "News Alerts RSS Feed," available at <https://www.nasdaqtrader.com/Trader.aspx?id=NewsRSS>

its rulebook in this filing. Nasdaq does, however, support fair and equitable treatment by the SEC for all similarly situated Self-Regulatory Organizations.

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Nasdaq appreciates the opportunity to comment on the proposed rule change to adjust fees for the Daily List and Fundamental Data to better reflect the value of the information distributed.

As explained above, Nasdaq operates in a competitive market, and will publish exchange-specific information on its website in a format and manner that can be readily accessed by market participants to ensure continuation of competition into the future.

Thank you for your consideration of our comments. Please feel free to contact me with any questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'John M. Yetter', with a long horizontal flourish extending to the right.

John M. Yetter