SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65526; File No. SR-NASDAQ-2011-130)

October 11, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and
Immediate Effectiveness of Proposed Rule Change to Re-institute Fees for NASDAQ Basic and
to Offer an Optional Nasdaq Basic Non-Professional Enterprise License Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule

19b-4 thereunder,[2] notice is hereby given that on September 30, 2011, The NASDAQ Stock

Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission")

the proposed rule change as described in Items I, II, and III below, which Items have been

prepared by NASDAQ. 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

NASDAQ proposes to re-institute the fees for "Nasdaq Basic," which is a real time data

feed combining both NASDAQ's Best Bid and Offer ("QBBO") and the "NASDAQ Last Sale,"

[3] as well as to offer an optional NASDAQ Basic Non-Professional Enterprise License Fee for

broker-dealer distribution of NASDAQ Basic data to non-professional users with which the

broker-dealer has a brokerage relationship (the "Basic Non-Professional Enterprise License" or

"Enterprise License").

The text of the proposed rule change is below. Proposed new language is in italics.

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

[2]   17 CFR 240.19b-4.

[3]   NASDAQ has also filed a companion release establish Nasdaq Basic. See SR-
        NASDAQ-2011-129. Additionally, NASDAQ is aware that the NASDAQ Basic pilot
        program has lapsed and NASDAQ intends to submit a separate filing to address the
        lapsed period shortly.

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7047. Nasdaq Basic

(a) No change.

(b) User Fees

(1) Except as provided in (b)(2) and (b)(3), for the NASDAQ Basic product there shall be a per subscriber monthly charge of $10 for NASDAQ-listed stocks, $5 for NYSE-listed stocks, and $5 for Alternext-listed stocks; or

(2) For each non-professional subscriber, as defined in Rule 7011(b), there shall be a per subscriber monthly charge of $0.50 for NASDAQ-listed stocks, $0.25 for NYSE-listed stocks, and $0.25 for Alternext-listed stocks; or

(3) There shall be a per query fee for NASDAQ Basic of $0.0025 for NASDAQ-listed stocks, $0.0015 for NYSE-listed stocks, and $0.0015 for Alternext-listed stocks.

(4) An alternative to (b)(2) a broker-dealer may purchase an enterprise license at a rate of $100,000 per month for distribution to non-professional subscribers. The enterprise license entitles a Distributor to provide Nasdaq Basic to an unlimited number of non-professional subscribers with whom the firm has a brokerage relationship. The enterprise license is in addition to the Distributor Fee listed in (c)(1).

(c) No change.

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

In its filing with the Commission, NASDAQ 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. NASDAQ 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 the Statutory Basis for, the Proposed Rule Change

1.   Purpose

NASDAQ proposes to re-institute all of the user and distributor fees for Nasdaq Basic,[4] as well as to offer an optional Enterprise License fee for broker-dealer distribution of Nasdaq Basic data to non-professional users with which the broker-dealer has a brokerage relationship. NASDAQ has also filed a companion release to establish Nasdaq Basic.[5]

Consistent with the sale of consolidated data and of NASDAQ proprietary data, NASDAQ charges a fee for professional use of Nasdaq Basic, and a reduced fee for non-professional use. Specifically, for each professional user of the Nasdaq Basic product, there is a per subscriber monthly charge of $10 for NASDAQ-listed stocks, $5 for NYSE-listed stocks, and $5 for NYSE Amex -listed stocks. For each non-professional subscriber, there is a per subscriber monthly charge of $0.50 for NASDAQ-listed stocks, $0.25 for NYSE-listed stocks, and $0.25 for NYSE Amex -listed stocks. "Non-professional" will have the same meaning in this proposed rule as it currently has in Rule 7011(b). For users that do not require a monthly subscription, there is a per query option available for Nasdaq Basic, with a fee of $0.0025 for NASDAQ-listed stocks, $0.0015 for NYSE-listed stocks, and $0.0015 for NYSE Amex -listed stocks. Vendors that report per query usage to NASDAQ are permitted to convert to monthly subscription fees when the cost of individual users' queries exceeds the cost of the monthly subscription.

As with the distribution of certain other NASDAQ proprietary products, all distributors of Nasdaq Basic are assessed a monthly Distributor Fee in addition to any applicable usage fees.

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[4]   See Securities Exchange Act Release No. 59582 (March 16, 2009) 74 FR 12423 (March 24, 2009) (SR-NASDAQ-2008-102).

[5]   Supra note 3.

Each Distributor of Nasdaq Basic shall pay a monthly fee of $1,500 for either internal or external distribution. Also, each Distributor may pay $1,500 monthly to distribute data derived from Nasdaq Basic to an unlimited number of non-professional subscribers. The term "Distributor" has the same meaning in this proposed rule as currently set forth in NASDAQ Rule 7019.

Basic Non-Professional Enterprise License Current Proposal. NASDAQ will begin offering a voluntary Enterprise License Fee for the Nasdaq Basic product (NASDAQ Rule 7047) for non-professional usage, which will cost $100,000 per month. The Basic Non-Professional Enterprise License is available only to broker-dealers registered under the Act and would be in lieu of non-professional usage fees only. Additionally, it is an option only for those customers with whom the broker-dealer maintains a brokerage relationship. The Enterprise License also includes an allowance to distribute data, under a certain threshold, to external professional subscribers with which the firm has a brokerage relationship.[6]

The Basic Non-Professional Enterprise License Fee would be in addition to the distributor fees in NASDAQ Rule 7047(c). Broker-dealers that choose to pay the Basic Non-Professional Enterprise License Fee of $100,000 per month would not pay for any of the non-professional user fees in NASDAQ Rule 7047(b). The broker-dealer would continue to pay user fees for those users that are not eligible under the Enterprise License. The Basic Non-Professional Enterprise License Fee does not involve the creation of a new data feed, but rather is a new pricing option for an existing data feed. The Basic Non-Professional Enterprise License Fee allows firms to use the Nasdaq Basic data for display purposes only, but does not permit its

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[6] NASDAQ relies on distributor self-reporting of usage for products associated with a data feed rather than on individual contact with each end-user customer. NASDAQ permits distributors to designate an entire user population as "non-professional" provided that the number of professional subscribers within that user population does not exceed ten percent (10%) of the total population.

redistribution in any other manner. This is not a new service or a new product. NASDAQ is merely creating a new pricing option specific for the broker-dealer non-professional user community.

Background.   NASDAQ disseminates market data feeds in two capacities. First, NASDAQ disseminates consolidated or "core" data in its capacity as Securities Information Processor for the national market system plan governing securities listed on NASDAQ as a national securities exchange.[7] Second, NASDAQ separately disseminates proprietary or "non-core" data in its capacity as a registered national securities exchange. Non-core data is any data generated by the NASDAQ Market Center Execution System that is voluntarily disseminated by NASDAQ separate and apart from the consolidated data.[8] NASDAQ has numerous proprietary data products, such as NASDAQ TotalView, NASDAQ Last Sale, and Nasdaq Basic.

NASDAQ continues to seek broader distribution of non-core data and to reduce the cost of providing non-core data to larger numbers of investors. In the past, NASDAQ has accomplished this goal in part by offering similar capped fees, flat fees or enterprise licenses for professional and non-professional usage of TotalView which contains the full depth of book data for the NASDAQ Market Center Execution System. NASDAQ has also implemented these capped/flat fees with other products, such as NASDAQ Last Sale. NASDAQ believes that the adoption of flat fee structures or enterprise licenses has led to greater distribution of market data, particularly among non-professional users.

Based on input from market participants and market data distributors, NASDAQ believes that this increase in distribution is attributable in part to the relief it provides distributors from the NASDAQ requirement that distributors count and report each non-professional user of

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[7]   See Securities Exchange Act Release No.59039 (Dec. 2, 2008) at p. 41.

[8]   Id.

NASDAQ proprietary data. In addition to increased administrative flexibility, enterprise licenses also encourage broader distribution by firms that are currently over the fee cap as well as those that are approaching the cap and wish to take advantage of the benefits of the program. Further, NASDAQ believes that capping fees in this manner creates goodwill with broker-dealers and increases transparency for non-professional users.

Accordingly, NASDAQ is establishing the Basic Non-Professional Enterprise License Fee for Nasdaq Basic under NASDAQ Rule 7047(b)(4), an optional non-professional enterprise license for distributors of Nasdaq Basic. This Enterprise License Fee includes non-professional usage fees, but does not include distributor fees.[9] The Enterprise License is available only to broker-dealers registered under the Act, and would cover all non-professional usage fees to customers with whom the firm has a brokerage relationship with an allowance to distribute data to external professional subscribers with which the firm has a brokerage relationship.[10] Non-broker-dealer vendors and application service providers would not be eligible for the Enterprise License; such firms typically pass through the cost of market data user fees to their customers. The proposed Basic Non-Professional Enterprise License still requires firms to continue to report usage in accordance to the current reporting policy. This information provides NASDAQ with accurate information for monitoring and auditing purposes.

The proposed Basic Non-Professional Enterprise License Fee is completely optional and does not replace existing enterprise license fee alternatives set forth in Rule 7047. Additionally, the proposal does not impact individual usage fees for any product or in any way raise the costs of any user of any NASDAQ data product. To the contrary, the Enterprise License provides

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[9] Distributors who utilize the enterprise license would still be liable for the applicable distributor fees.

[10] Supra note 6.

broker-dealers with an additional approach to providing more NASDAQ data at a lower cost.

2.   Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of

Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that it

provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations 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.

The Commission concluded that Regulation NMS—by deregulating the market in

proprietary data—would itself 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.[13]

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. If the free market should determine whether proprietary data is sold to broker-dealers at

all, it follows that the price at which such data is sold should be set by the market as well.

Nasdaq Basic is precisely the sort of market data product that the Commission envisioned when

it adopted Regulation NMS.

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[11]   15 U.S.C. 78f.

[12]   15 U.S.C. 78f(b)(4).

[13]   Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29,
2005).

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd- Frank

Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which amended

Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended

paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or

not the person is a member of the self-regulatory organization" after "due, fee or other charge

imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or

changing dues, fees, or other charges are immediately effective upon filing regardless of whether

such dues, fees, or other charges are imposed on members of the SRO, non-members, or both.

Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in

pertinent part, "At any time within the 60-day period beginning on the date of filing of such a

proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the

Commission summarily may temporarily suspend the change in the rules of the self-regulatory

organization made thereby, if it appears to the Commission that such action is necessary or

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

the purposes of this title. If the Commission takes such action, the Commission shall institute

proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule

should be approved or disapproved."

The decision of the United States Court of Appeals for the District of Columbia Circuit in

NetCoalition v. SEC, No. 09-1042 (D.C. Cir. 2010), although reviewing a Commission decision

made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon

competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the

legislative history indicates that the Congress intended that the market system 'evolve through

the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that

the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' " NetCoalition, at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

NASDAQ believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of Nasdaq Basic. The dissemination is designed to increase not only transparency for non-professional users, but also to reduce burdensome administrative costs in addition to actual per user costs. NASDAQ notes also that Nasdaq Basic data is already distributed and that this filing proposes to distribute no additional data elements. Nasdaq Basic is distributed and purchased on a voluntary basis, in that neither NASDAQ nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoalition court found that the

Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. 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 the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. 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, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or

those of its customers). The choice of data products is, in turn, a product of the value of the

products in making profitable trading decisions. If the cost of the product exceeds its expected

value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct

fewer orders to a particular exchange, the value of the product to that broker-dealer decreases,

for two reasons. First, the product will contain less information, because executions of the

broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the

product will be less valuable to that broker-dealer because it does not provide information about

the venue to which it is directing its orders. Data from the competing venue to which the broker-

dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has

the potential to impair revenues from both products. "No one disputes that competition for order

flow is 'fierce'." NetCoalition at 24. However, the existence of fierce competition for order

flow implies a high degree of price sensitivity on the part of broker-dealers with order flow,

since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A

broker-dealer that shifted its order flow from one platform to another in response to order

execution price differentials would both reduce the value of that platform's market data and

reduce its own need to consume data from the disfavored platform. Similarly, if a platform

increases its market data fees, the change will affect the overall cost of doing business with the

platform, and affected broker-dealers will assess whether they can lower their trading costs by

directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the

inputs supporting the creation of market data will inevitably underestimate the cost of the data.

Thus, because it is impossible to create data without a fast, technologically robust, and well-

regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. 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. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("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 Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. 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 Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by

publishing proprietary book data on the Internet. Second, because a single order or transaction

report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the

data available in proprietary products is exponentially greater than the actual number of orders

and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data

products because they control the primary means of access to end users. Vendors impose price

restraints based upon their business models. For example, vendors such as Bloomberg and

Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end

users will not purchase in sufficient numbers. Internet portals, such as Yahoo and Google,

impose a discipline by providing only data that will enable them to attract "eyeballs" that

contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer

their customers proprietary data only if it promotes trading and generates sufficient commission

revenue. Although the business models may differ, these vendors' pricing discipline is the same:

they can simply refuse to purchase any proprietary data product that fails to provide sufficient

value. NASDAQ and other producers of proprietary data products must understand and respond

to these varying business models and pricing disciplines in order to market proprietary data

products successfully.

In addition to the competition and price discipline described above, the market for

proprietary data products is also highly contestable because market entry is rapid, inexpensive,

and profitable. The history of electronic trading is replete with examples of entrants that swiftly

grew into some of the largest electronic trading platforms and proprietary data producers:

Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and

Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson-Reuters.

The court in NetCoalition concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's NetCoalition order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. NASDAQ believes, however, that evidence not before the court clearly demonstrates that availability of depth data attracts order flow. For example, NASDAQ submits that in and of itself, NASDAQ's decision voluntarily to cap fees on existing products, as is the effect of a flat fee or an enterprise license, is evidence of market forces at work.

The court in NetCoalition did cite favorably an economic study by Ordover and Bamberger which concluded that "[a]lthough an exchange may price its trade execution fees higher and its market data fees lower (or vice versa), because of "platform" competition the exchange nonetheless receives the same return from the two "joint products" in the aggregate."[14] Ordover and Bamberger also provided additional comments expanding upon the impact of

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[14]   See NetCoalition at fn. 16.

platform competition.[15] Among the conclusions that Ordover and Bamberger reach are:

NASDAQ is subject to significant competitive forces in setting the prices and other terms of

execution services and proprietary data products.

Competitive forces constrain the prices that platforms can charge for non-core market

information. A trading platform cannot generate market information unless it receives trade

orders. For this reason, a platform can be expected to use its market data product as a tool for

attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained

elsewhere, this does not enable the owner of such information to exercise monopoly power over

that information vis-à-vis firms with the need for such information. Even though market

information from one platform may not be a perfect substitute for market information from one

or more other platforms, the existence of alternative sources of information can be expected to

constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of

supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere,

which lowers the activity on the exchange and so in the long run reduces the quality of the

information generated by the exchange.

Competition among platforms has driven NASDAQ continually to improve its platform

data offerings and to cater to customers' data needs. For example, NASDAQ has developed and

maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable

customers to receive data in the form and manner they prefer and at the lowest cost to them.

NASDAQ offers front end applications such as its "Bookviewer" to help customers utilize data.

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[15]   See Securities Exchange Act Release No. 63745 (Jan. 20, 2011); 76 FR 4970 (Jan. 27,
        2011) (SR-NASDAQ-2011-010) (attached to original filing as Exhibit 3).

NASDAQ has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its flat fee or enterprise license options to reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for depth-of-book data have remained flat. In fact, as a percent of total customer costs, NASDAQ data fees have fallen relative to other data usage costs -- including bandwidth, programming, and infrastructure -- that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for non-core data information is significant and the Exchange believes that this proposal clearly evidences such competition. NASDAQ is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of

data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data information is highly competitive and continually evolves as products develop and change.

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

Written comments were neither solicited nor 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.[16] 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 necessary or appropriate in the public interest, for the protection of investors, or 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

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[16]   15 U.S.C. 78s(b)(3)(a)(ii) [sic].

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2011-130 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-130. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-2011-130 and should be submitted on or before [insert date

21 days from publication in the <u>Federal</u> <u>Register</u>].

      For the Commission, by the Division of Trading and Markets, pursuant to delegated

authority.[17]

                                                Elizabeth M. Murphy
                                                Secretary

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[17]   17 CFR 200.30-3(a)(12).