sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. The Commission believes that this proposal is consistent with Exchange Act Rule 17Ad–22(b)(3) [28] because the Monthly Clearing Fund Sizing Procedure and Financial Resource Monitoring and Call Procedure should ensure that OCC can obtain sufficient financial resources in a timely manner to withstand a default of the Clearing Member or Clearing Member Group presenting it the largest exposure.

By using a peak five-day rolling average and extending the look-back period from one to three calendar months, the Monthly Clearing Fund Sizing Procedure should be more responsive than OCC's existing resizing formula to sudden increases in exposure and less sensitive to short-run reductions in exposure that could inappropriately reduce the overall size of the clearing fund. Furthermore, the prudential margin of safety, which is currently $1.8 billion, will provide an additional buffer to absorb potential future exposures that may not be observed during the look-back period. In addition, the Financial Resource Monitoring and Call Procedure will establish a process by which OCC will be able to respond to increases in exposure on an intra-month basis. In doing so, the Commission believes the Financial Resource Monitoring and Call Procedure should ensure that a balance is struck between mutualizing the burden of the additional financial resources across all Clearing Members, while also requiring the Clearing Member or Clearing Member Group causing the increased exposure to bear the burden.

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Payment, Clearing and Settlement Supervision Act,[29] that the Commission *does not object* to advance notice proposal (SR–OCC–2014–811) and that OCC is *authorized to* implement the proposal as of the date of this notice or the date of an order by the Commission approving a proposed rule change that reflects rule changes that are consistent with this advance notice proposal (SR–OCC–2015–009), whichever is later.

[28] *Id.*

[29] 12 U.S.C. 5465(e)(1)(I).

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–12293 Filed 5–20–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74972; File No. SR–NASDAQ–2015–055]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Regarding NASDAQ Last Sale Plus

May 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on May 11, 2015, 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 Rule 7039 (NASDAQ Last Sale Data Feed) with language regarding NASDAQ Last Sale (''NLS'') Plus (''NLS Plus''), a comprehensive data feed offered by NASDAQ OMX Information LLC.[3] NLS Plus allows data distributors to access the three last sale products offered by each of NASDAQ OMX's three U.S. equity markets.[4] NLS Plus also reflects cumulative consolidated volume (''consolidated volume'') of real-time trading activity across all U.S. exchanges for Tape C securities [5] and 15-minute delayed information for Tape A and Tape B securities.[6] Thus, in offering NLS Plus, NASDAQ OMX Information LLC is, as discussed below, acting as a redistributor of last sale products already offered by NASDAQ, BX, and PSX and volume information provided by the securities information processors for Tape A, B, and C. This proposal is being filed by the Exchange to explain the scope of the NLS Plus data feed offering and in light of a recent approval order on behalf of several affiliated exchanges regarding a similar data product.[7]

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.

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

[2] 17 CFR 240.19b–4.

[3] NASDAQ OMX Information LLC is a subsidiary of The NASDAQ OMX Group, Inc. (''NASDAQ OMX'').

[4] The NASDAQ OMX U.S. equity markets include The NASDAQ Stock Market (''NASDAQ''), NASDAQ OMX BX (''BX''), and NASDAQ OMX PSX (''PSX'') (together known as the ''NASDAQ OMX equity markets''). PSX and BX will shortly file companion proposals regarding NLS Plus. NASDAQ's last sale product, NASDAQ Last Sale, includes last sale information from the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). Accordingly, NASDAQ expects that FINRA will submit a proposed change to FINRA Rule 7640A with respect to NLS Plus. *See* Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (SR–FINRA–2014–002). For proposed rule changes submitted with respect to NASDAQ Last Sale, BX Last Sale, and PSX Last Sale, *see, e.g.,* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178, (June 20, 2008) (SR–NASDAQ–2006–060) (order approving NASDAQ Last Sale data feeds pilot); 61112 (December 4, 2009), 74 FR 65569, (December 10, 2009) (SR–BX–2009–077) (notice of filing and immediate effectiveness regarding BX Last Sale data feeds); and 62876 (September 9, 2010), 75 FR 56624, (September 16, 2010) (SR–Phlx–2010–120) (notice of filing and immediate effectiveness regarding PSX Last Sale data feeds).

[5] Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges (''UTP'') Plan.

[6] Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's (''SIAC'') Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS (''CTA'').

[7] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (SR–BATS–2014–055; SR–BYX–2014–030; SR–EDGA–2014–25; SR–EDGX–2014–25) (order approving market data product called BATS One Feed being offered by four affiliated exchanges). *See also* Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (order granting approval to establish the NYSE Best Quote & Trades (''BQT'') Data Feed).

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

1. Purpose

The purpose of this proposal is to amend Rule 7039 by adding new section (d) regarding NLS Plus. NLS Plus allows data distributors to access last sale products offered by each of NASDAQ OMX's three equity exchanges. Thus, NLS Plus includes all transactions from all of NASDAQ OMX's equity markets, as well as FINRA/NASDAQ TRF data that is included in the current NLS product. In addition, NLS Plus features total cross-market volume information at the issue level, thereby providing redistribution of consolidated volume information from the securities information processors (''SIPs'') for Tape A, B, and C securities.[8] Thus, NLS Plus covers all securities listed on NASDAQ and New York Stock Exchange (''NYSE'') (now under the Intercontinental Exchange (''ICE'') umbrella), as well as US ''regional'' exchanges such as NYSE MKT, NYSE Arca, and BATS (also known as BATS/Direct Edge).[9] The Exchange will, as discussed below, file a separate proposal regarding the NLS Plus fee structure.

NASDAQ has offered NLS Plus since 2010 via NASDAQ OMX Information LLC. NASDAQ OMX Information LLC is a subsidiary of NASDAQ OMX Group, Inc., separate and apart from The NASDAQ Stock Market LLC. As such, NASDAQ OMX Information LLC redistributes last sale data that has been the subject of a proposed rule change filed with the Commission at prices that also have been the subject of a proposed rule change filed with the Commission. As discussed below, NASDAQ OMX Information LLC distributes no data that is not equally available to all market data vendors.[10]

The primary purpose of NASDAQ OMX Information LLC is to combine publicly available data from the three filed last sale products of the NASDAQ OMX equity markets and from the network processors for the ease and convenience of market data users and vendors, and ultimately the investing public. In that role, the function of NASDAQ OMX Information LLC is analogous to that of other market data vendors, and it has no competitive advantage over other market data vendors. For example, NASDAQ OMX Information LLC receives data from the exchange that is available to other market data vendors, with the same information distributed to NASDAQ OMX Information LLC at the same time it is distributed to other vendors (that is, NASDAQ OMX Information LLC has neither a speed nor an information differential). Through this structure, NASDAQ OMX Information LLC performs precisely the same functions as Bloomberg, Thomson Reuters, and dozens of other market data vendors.

The contents of NLS Plus in large part mimic those of NLS set forth in NASDAQ Rule 7039. Currently, NLS in Rule 7039 consists of two separate data products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF; these products are available via two separate data channels. First, as described in Rule 7039, the ''NLS for NASDAQ'' data product is a real-time data channel that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the product known as ''NLS for NYSE/NYSE MKT'' provides real-time last sale information over a second data channel including execution price, volume, and time for NYSE- and NYSE MKT-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the SIPs that provide ''core'' data consolidate last sale information from all exchanges and TRFs. Thus, NLS replicates a subset of the information provided by the SIPs. NASDAQ currently maintains several pricing models, for NLS, including an enterprise license. NLS Plus also includes comparable information from BX Last Sale (BX Rule 7039) and PSX Last Sale (NASDAQ OMX PSX Fees Chapter VIII).

The Proposal

The Exchange proposes to add NLS Plus to Rule 7039, which currently describes the NLS data feed offering, to fully reflect NLS Plus. As described more fully below, NLS Plus is a comprehensive data feed offered by NASDAQ OMX Information LLC that disseminates last sale data as well as consolidated volume of NASDAQ equity markets and the TRF in real-time, and consolidated volume for Tape A and Tape B securities on a 15-minute delayed basis. Similar to NLS, NLS Plus offers data for all U.S. equities via two separate data channels: The first data channel reflects NASDAQ, BX, and PSX trades with real-time consolidated volume for NASDAQ-listed securities; and the second data channel reflects NASDAQ, BX, and PSX trades with delayed consolidated volume for NYSE, NYSE MKT, NYSE Arca and BATS-listed securities.[11] NLS Plus, like NLS, is used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of NLS Plus. The provision of multiple options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[12] Finally, NLS Plus provides investors with options for receiving market data that parallel products currently offered by BATS and BATS Y, EDGA, and EDGX and NYSE equity exchanges.[13]

In addition to last sale information, NLS Plus also disseminates the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID (together the ''data elements''). NLS Plus also features and disseminates the following messages: Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary (together the ''messages'').[14] The

[8] This will reflect real-time trading activity for Tape C securities and 15-minute delayed information for Tape A and Tape B securities.

[9] Registered U.S. exchanges are listed at *http://www.sec.gov/divisions/marketreg/mrexchanges.shtml.*

[10] NLS Plus is and has been described online at *http://nasdaqtrader.com/Trader.aspx?id=DPUSdata#ls. See also http://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification.pdf,* which provides detail about how NLS Plus functions.

[11] These NLS Plus channels are each made up of a series of sequenced messages so that each message is variable in length based on the message type and is typically delivered using a higher level protocol. NLS Plus Channel 1 contains NASDAQ trades with real time consolidated volume for NASDAQ listed (Tape C) securities. NLS Plus Channel 2 contains NASDAQ trades with delayed (15 minutes) consolidated volume for NYSE, NYSE Market, NYSE Arca, and BATS listed (Tape A and Tape B) securities.

[12] However, the Exchange notes that under Rule 603 of Regulation NMS, *see* 17 CFR 242.603(c), NLS Plus cannot be substituted for consolidated data in all instances in which consolidated data is used and certain subscribers are still required to purchase consolidated data for trading and order-routing purposes. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[13] *See* supra note 7.

[14] The Reg SHO Short Sale Price Test Restricted Indicator message is disseminated intra-day when a security has a price drop of 10% or more from the adjusted prior day's NASDAQ Official Closing Price. Trading Action indicates the current trading status of a security to the trading community, and indicates when a security is halted, paused,

Continued

overwhelming majority of these data elements and messages are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale. Only two data elements (consolidated volume and Bloomberg ID) are, as discussed below, sourced from other publicly accessible or obtainable resources.

Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed (''UTDF'') and delayed trades reported via CTA. NASDAQ OMX calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ OMX) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC's Consolidated Tape System (''CTS'') for the issue symbol. The Exchange calculates the real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ OMX) trading venues as reported via the CTS data feed.[15] The second data point that is not sourced from NLS, BX Last Sale, and PSX Last Sale is Bloomberg ID. This composite ID is a component of Bloomberg's Open Symbology and acts as a global security identifier that Bloomberg assigns to securities, and is available free of charge.[16]

NLS Plus may be received by itself or in combination with NASDAQ Basic.[17] In the latter case, the subscriber receives all of the elements contained in NLS Plus as well as the best bid and best offer information provided by NASDAQ Basic.

The Exchange believes that market data distributors may use the NLS Plus data feed to feed stock tickers, portfolio trackers, trade alert programs, time and sale graphs, and other display systems.

The Exchange also proposes two housekeeping changes. In the Rule 7039 title, the Exchange adds the phrase ''and NASDAQ Last Sale Plus'' to make it clear that the rule refers to NLS and NLS Plus. And in section (a), the Exchange adds the phrase ''NASDAQ Last Sale'' to make it clear that section (a) ([*sic*] like sections (b) and (c) refers to NLS. These changes are non-substantive.

With respect to latency, the path for distribution by the Exchange of NLS Plus is not faster than the path for distribution that would be used by a market data vendor to distribute an independently created NLS Plus-like product. As such, the proposed NLS Plus data feed is a data product that a competing market data vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and with BX and PSX being equity markets owned by NASDAQ OMX, the Exchange represents that the source of the market data it would use to create proposed NLS Plus is available to other vendors. In fact, the overwhelming majority of the data elements and messages[18] in NLS Plus are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale, each of which is available to other market data vendors.[19] The Exchange, BX, and PSX will continue to make available these individual underlying data elements, and thus, the source of the market data that the Exchange would use to create the proposed NLS Plus is the same as what is available to other market data vendors.

In order to create NLS Plus, the system creating and supporting NLS Plus receives the individual data feeds from each of the NASDAQ OMX equity markets and, in turn, aggregates and summarizes that data to create NLS Plus and then distribute it to end users. This is the same process that a competing market data vendor would undergo should it want to create a market data product similar to NLS Plus to distribute to its end users. A competing market data vendor could receive the individual data feeds from each of the NASDAQ OMX equity markets at the same time the system creating and supporting NLS Plus would for it to create NLS Plus. Therefore, a competing market data vendor could, as discussed, obtain the underlying data elements from the NASDAQ OMX equity markets on the same latency basis as the system that would be performing the aggregation and consolidation of proposed NLS Plus, and provide a similar product to its customers with the same latency they could achieve by purchasing NLS Plus from the Exchange. As such, the Exchange would not have any unfair advantage over competing market data vendors with respect to NLS Plus. Moreover, in terms of NLS itself, the Exchange would access the underlying feed from the same point as would a market data vendor; as discussed, the Exchange would not have a speed advantage. Likewise, NLS Plus would not have any speed advantage vis-à-vis competing market data vendors with respect to access to end user customers.

With regard to cost, upon approval of this NLS Plus proposal the Exchange will file a separate proposal with the Commission regarding fees, which would be designed to ensure that vendors could compete with the Exchange by creating a similar product as NLS Plus. The Exchange expects that the pricing will reflect the incremental cost of the aggregation and consolidation function for NLS Plus, and would not be lower than the cost to a vendor creating a competing product, including the cost of receiving the underlying data feeds. The pricing the Exchange would charge clients for NLS Plus would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. For these reasons, the Exchange believes that vendors could readily offer a product similar to NLS Plus on a competitive basis at a similar cost.

As described in more detail below, the Exchange believes that the NLS Plus data offering benefits the public and investors and that the proposal is consistent with the Act.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[20] in general, and with Section 6(b)(5) of the

released for quotation, and released for trading. Symbol Directory is disseminated at the start of each trading day for all active NASDAQ and non-NASDAQ-listed security symbols. Adjusted Closing Price is disseminated at the start of each trading day for all active symbols in the NASDAQ system, and reflects the previous trading day's official closing price adjusted for any applicable corporate actions; if there were no corporate actions, however, the previous day's official closing price is used. End of Day Trade Summary is disseminated at the close of each trading day, as a summary for all active NASDAQ- and non-NASDAQ-listed securities. IPO Information reflects IPO general administrative messages from the UTP and CTA Level 1 feeds for Initial Public Offerings for all NASDAQ- and non-NASDAQ-listed securities.

[15] In order to distribute data derived from UTDF and CTA, NASDAQ OMX must pay monthly redistributor fees. However, because these fees are paid on an enterprise-wide basis and NASDAQ OMX includes such derived data in other data products, the use of the data in NLS Plus does not result in an additional incremental cost.

[16] *See http://bsym.bloomberg.com/sym/pages/bbgid-fact-sheet.pdf; http://bsym.bloomberg.com/sym/pages/NASDAQ_Adopts_BSYM.pdf.*

[17] As provided in Rule 7047, NASDAQ Basic provides the information contained in NLS, together with NASDAQ's best bid and best offer.

[18] *See* text related to note 14 supra.

[19] Only two data elements are, as discussed above, sourced from other publicly accessible or obtainable resources.

[20] 15 U.S.C. 78f.

Act,[21] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The purpose of the proposed rule change is to add section (d) to Rule 7039 regarding the NLS Plus data offering. NASDAQ believes that the proposal facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by making permanent the availability of an additional means by which investors may access information about securities transactions, thereby providing investors with additional options for accessing information that may help to inform their trading decisions. Given that Section 11A the Act[22] requires the dissemination of last sale reports in core data, NASDAQ believes that the inclusion of the same data in NLS Plus is also consistent with the Act.

NASDAQ notes that the Commission has recently approved a data product on several exchanges that is similar to NLS Plus, and specifically determined that the approved data product was consistent with the Act.[23] NLS Plus simply provides market participants with an additional option for receiving market data that has already been the subject of a proposed rule change and that is available from myriad market data vendors.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers (''BDs'') 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 its NLS Plus market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. 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.[24]

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

NASDAQ will file a separate proposal regarding NLS Plus fees.[25] The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''), 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 I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[26]

The Court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[27] Moreover, NASDAQ further notes that the product at issue in this filing—a last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSE Arca depth-of-book data product at issue in *NetCoalition I.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

Moreover, data products such as NLS Plus 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 are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

The Exchange believes that, for the reasons given, the proposal is consistent with the Act.

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. As is true of all NASDAQ's non-core data products, NASDAQ's ability to offer and price NLS Plus is constrained by: (1) Competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1.

[23] *See* supra note 7.

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

[25] The Exchange expects that the fee structure for NLS Plus will reflect an amount that is no less than the cost to a market data vendor to obtain all the underlying feeds, plus an amount to be determined that would reflect the value of the aggregation and consolidation function.

[26] *NetCoalition I,* at 535.

[27] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. *See also NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (''*NetCoalition II*'') (finding no jurisdiction to review Commission's non-suspension of immediately effective fee changes).

inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

In addition, as described in detail above, NLS Plus competes directly with a myriad of similar products and potential products of market data vendors. NASDAQ OMX Information LLC was constructed specifically to establish a level playing field with market data vendors and to preserve fair competition between them. Therefore, NASDAQ OMX Information LLC receives NLS, BX Last Sale, and PSX Last Sale from each NASDAQ-operated exchange in the same manner, at the same speed, and reflecting the same fees as for all market data vendors. Therefore, NASDAQ Information LLC has no competitive advantage with respect to these last sale products and NASDAQ commits to maintaining this level playing field in the future. In other words, NASDAQ will continue to disseminate separately the underlying last sale products to avoid creating a latency differential between NASDAQ OMX Information LLC and other market data vendors, and to avoid creating a pricing advantage for NASDAQ OMX Information LLC.

NLS Plus joins the existing market for proprietary last sale data products that is currently 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. Similarly, with respect to the FINRA/NASDAQ TRF data that is a component of NLS and NLS Plus, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of the market. This revenue opportunity has also resulted in fierce competition between the two current TRF operators, with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

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 and 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).[28] 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. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,[29] and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD 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 BD 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 BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS Plus that are distributed through market data vendors, the vendors provide 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 Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, 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. Exchanges,

[28] *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).

[29] It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

TRFs, 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. Moreover, NASDAQ believes that products such as NLS Plus can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

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. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

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. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven 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 BATS/Direct Edge.

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 BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

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 NYSE 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 a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS Plus, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, (ii) free SIP data products with a 15-minute time delay, and (iii) individual exchange data products, and finds a close substitute in last-sale products of competing venues.

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 BATS/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 BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs 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. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[30]

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.[31] Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATSs and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other[32] and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products

[30] *See http://www.cinnober.com/boat-trade-reporting.*

[31] The low cost exit of two TRFs from the market is also evidence of a contestable market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

[32] It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for almost 10% of all over-the-counter volume in NMS stocks.

that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS Plus is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSE Arca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while Yahoo! and Google now both disseminate NASDAQ's product, several other major content providers, including MSN and Morningstar, use the BATS product. Moreover, further evidence of competition can be observed in the recently-developed BATS One Feed and BQT feed.[33]

In this environment, 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 I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD 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. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS Plus would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS Plus data revenues, the value of NLS Plus as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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–2015–055 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2015–055. 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 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–2015–055 and should be submitted on or before June 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

[33] *See* supra note 7.

[34] 17 CFR 200.30–3(a)(12).