

accurate clearance and settlement of securities. NSCC further states that the proposal is consistent with the CPSS/IOSCO Recommendations for Central Counterparties (specifically Recommendation 12) in that in addition to the additional efficiencies noted above, the UTC will also provide for cost-effectively meeting the requirements of NSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (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 may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or send an e-mail to rule-comment@sec.gov. Please include File No. SR-NSCC-2010-09 on the subject line.
- Paper comments should be sent 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 No. SR-NSCC-2010-09. 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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at NSCC's principal office and NSCC's Web site (http://www.dtcc.com/legal/rule_filings/nscc/2010.php). 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 No. SR-NSCC-2010-09 and should be submitted October 12, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-23372 Filed 9-17-10; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62908; File No. SR-NASDAQ-2010-111]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish an Optional Depth Data Enterprise License Fee

September 14, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,²

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on September 7, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission (the "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

NASDAQ proposes to establish an optional Depth Data Enterprise License Fee for external distribution of depth-of-book data to non-professional users. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.³

* * * * *

7023. NASDAQ TotalView

(a) TotalView Entitlement

The TotalView entitlement allows a subscriber to see all individual NASDAQ Market Center participant orders and quotes displayed in the system as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the NASDAQ Market Center, including the NQDS feed.

(1)
(A) Except as provided in (a)(1)(B) and (C), for the TotalView entitlement there shall be a \$70 monthly charge for each controlled device.

(B) Except as provided in (a)(1)(C), a non-professional subscriber, as defined in Rule 7011(b), shall pay \$14 per month for each controlled device.

(C) As an alternative to (a)(1)(A) and (B), a broker-dealer distributor may purchase an enterprise license at a rate of \$25,000 for non-professional subscribers or \$100,000 per month for both professional and non-professional subscribers. The enterprise license entitles a distributor to provide TotalView and OpenView to an unlimited number of internal users, whether such users receive the data directly or through third-party vendors, and external users with whom the firm has a brokerage relationship. The enterprise license shall not apply to relevant Level 1 and NQDS fees.

(D) As an alternative to (a)(1)(A), (B) and (C), a market participant may purchase an enterprise license at a rate

³ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

of \$30,000 per month for internal use of non-display data. The enterprise license entitles a distributor to provide TotalView and OpenView to an unlimited number of non-display devices within its firm. The enterprise license shall not apply to relevant Level 1 fees.

(E) *As an alternative to (a)(1)(A), (B), and (C), a broker-dealer distributor may purchase an enterprise license at a rate of \$300,000 for non-professional subscribers. The enterprise license entitles a distributor to provide NQDS (as set forth in Rule 7017), TotalView and OpenView to an unlimited number of internal users, whether such users receive the data directly or through third-party vendors, and external users with whom the firm has a brokerage relationship. The enterprise license shall not apply to relevant Level 1 fees.*

(2) 30-Day Free-Trial Offer. NASDAQ shall offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the user fees for TotalView. This waiver shall not include the incremental fees assessed for the NQDS-only service, which are \$30 for professional users and \$9 for non-professional users per month. This fee waiver period shall be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to TotalView. A distributor may only provide this waiver to a specific individual subscriber once.

For the period of the offer, the TotalView fee of \$40 per professional user and \$5 per non-professional user per month shall be waived.

(b) No change.

(c) No change.

(d) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

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. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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

1. Purpose

NASDAQ disseminates market data feeds in two capacities. First, NASDAQ disseminates consolidated or "core" data in its capacity as Securities Information Processor ("SIP") for the national market system plan governing securities listed on NASDAQ as a national securities exchange ("NASDAQ UTP Plan").⁴ 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.⁵ 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 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 believes that the adoption of enterprise licenses has led to greater distribution of market data, particularly among non-professional users.

Based on input from market participants, 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 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 retail investors.

Accordingly, NASDAQ is seeking to establish the Depth Data Enterprise License Fee, an optional \$300,000 per month non-professional enterprise license for external distributors of any

NASDAQ depth-of-book data product including the National Quotation Dissemination Service or NQDS (Rule 7017) and TotalView and OpenView, (Rule 7023) (collectively, "NASDAQ Depth Data"). This Depth Data Enterprise License Fee will include non-professional usage, but will not include distributor fees.⁶ This program will be available only to broker-dealers registered under the Securities Exchange Act of 1934, and would cover all usage fees with respect to both internal usage and re-distribution to customers with whom the firm has a brokerage relationship. 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 Depth Data Enterprise License Fee will cover usage fees for NASDAQ Depth Data received directly from NASDAQ as well as data received from third-party vendors (e.g., Bloomberg, Reuters, etc.). Upon joining the program, firms may inform third-party market data vendors they utilize (through a NASDAQ-provided form) that, going forward, non-professional depth data usage by the broker-dealer may be reported to NASDAQ on a non-billable basis. Such a structure attempts to address a long-standing concern that broker-dealers are over-billed for market data consumed by one person through multiple market-data display devices. At the same time, the proposed billing structure will continue to provide NASDAQ with accurate reporting information for purposes of usage monitoring and auditing.

The proposed Depth Data Enterprise License Fee is completely optional and does not replace existing enterprise license fee alternatives set forth in Rule 7023. 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, it provides 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,⁷ in general, and with Section 6(b)(4) of the Act,⁸ in particular, in that it provides an equitable allocation of reasonable fees

⁶ Distributors who utilize the enterprise license would still be liable for the applicable distributor fees.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁴ See Securities Exchange Act Release No. 59039 (Dec. 2, 2008) at p. 41.

⁵ *Id.*

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.⁹

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. NQDS, TotalView and OpenView are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barak 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.”

NASDAQ believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a “due, fee or other charge imposed by the self-regulatory organization,” the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. NASDAQ believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an

appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, No. 09–1042 (DC 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.

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. For the reasons discussed above, NASDAQ believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption

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

that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, 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, 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 an enterprise license, is evidence of market forces at work. In fact, the instant proposal creates a second enterprise license for non-professional usage of depth data to complement the existing enterprise license set forth at NASDAQ Rule 7023(a)(1)(C).

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. 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 Enterprise License options that 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.

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.¹⁰ 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2010-111 in the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(a)(ii).

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-2010-111. 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 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, on official business days between the hours of 10 a.m. and 3 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-2010-111 and should be submitted on or before October 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-23386 Filed 9-17-10; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 7160]

Request for Comments and Suggestions for Environmental Cooperation Pursuant to the United States-Oman Memorandum of Understanding on Environmental Cooperation

ACTION: Notice of preparation of the 2011-2014 U.S.-Oman Environmental

Cooperation Plan of Action and request for comments.

SUMMARY: The Department of State invites the public, including NGOs, educational institutions, private sector enterprises and other interested persons, to submit written comments or suggestions regarding items for inclusion in a new Plan of Action for implementing the United States-Oman Memorandum of Understanding on Environmental Cooperation (MOU) signed on February 20, 2006. We encourage submitters to refer to: (1) The U.S.-Oman MOU, (2) the U.S.-Oman 2006-2008 Environmental Cooperation Work Program, (3) the Environment Chapter (17) of the U.S.-Oman Free Trade Agreement, and (4) the Environmental Review of the U.S.-Oman Free Trade Agreement.

(Documents are available at: <http://www.state.gov/g/oes/env/trade/oman/index.htm>).

DATES: To be assured of timely consideration, all written comments or suggestions are requested no later than October 20, 2010.

ADDRESSES: Written comments or suggestions should be e-mailed (LindsayA@state.gov) or faxed to Abby Lindsay at (202) 647-5947, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, with the subject line "U.S.-Oman Environmental Cooperation 2011-2014 Plan of Action." If you have access to the Internet and wish to view and make comment on this Public Notice, you may do so by going to: <http://www.regulations.gov/search/Regs/home.html#home>.

FOR FURTHER INFORMATION, CONTACT: Abby Lindsay, telephone (202) 647-8772. Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State.

SUPPLEMENTARY INFORMATION: In the U.S.-Oman Memorandum of Understanding on Environmental Cooperation, the Governments (1) recognize "the importance of strengthening capacity to protect the environment while promoting sustainable development in concert with the expanded bilateral trade relationship that will accompany the United States-Oman Free Trade Agreement (FTA)" and (2) indicate their intent "to cooperate in the field of environmental and natural resource protection and sustainable development." In the Environment Chapter of the U.S.-Oman Free Trade Agreement (Chapter 17), the

Governments likewise "recognize the importance of strengthening their capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations." The Governments commit to "undertaking cooperative environmental activities pursuant to" the MOU.

In Section 2 of the MOU, the Governments set forth plans to establish the Joint Forum on Environmental Cooperation (JFEC) to coordinate and review environmental cooperation activities. As envisioned in the MOU, the JFEC will "develop a Plan of Action; review and assess cooperative environmental activities undertaken pursuant to the Plan of Action; recommend ways to improve cooperation; and undertake such other activities as the Governments may deem to be appropriate." The Plan of Action is a tool to identify and establish goals, objectives and areas for cooperation, including short-, medium- and long-term bilateral and/or regional projects and activities. Through this notice, the United States seeks to "solicit, and take into account as appropriate, the views of its public with respect to the Plan of Action."

In March 2007, the Governments agreed to the 2006-2008 U.S.-Oman Work Program on environmental cooperation. The main areas of cooperation under the 2006-2008 Work Program were: (1) Environmental Laws and Regulations; (2) Environmental Impact Assessments; (3) Environmental Incentives; (4) Public Participation in Environmental Protection; (5) Integrated Water Resources Management and Protection; (6) Coastal Protection and Preservation of Marine Resources; (7) Protected Area Management and Conservation of Flora and Fauna; (8) Improved Environmental Performance in the Productive Sector; and (9) Chemical and Hazardous Waste Management and Disposal.

The United States anticipates building upon the cooperative work initiated in the 2006-2008 Work Program. We are requesting ideas and suggestions that may be considered for inclusion in the next Plan of Action.

For additional information: <http://www.state.gov/g/oes/env/trade/oman/index.htm>.

Disclaimer: This Public Notice is a request for comments and suggestions and is not a request for applications. No granting or money is directly associated with this request for suggestions for the Plan of Action. There is no expectation of resources or funding associated with any comments or suggestions provided for the 2011-2014 Plan of Action.

¹¹ 17 CFR 200.30-3(a)(12).