proposal to incorporate FINRA and NYSE rules by reference, LTSE requested, pursuant to Rule 240.0–12,[203] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those LTSE rules that are effected solely by virtue of a change to a cross-referenced FINRA or NYSE rule.[204] LTSE proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. LTSE agrees to provide written notice to its members whenever a proposed rule change to a FINRA or NYSE rule that is incorporated by reference is proposed and whenever any such proposed change is approved by the Commission or otherwise becomes effective.[205]

Using its authority under Section 36 of the Act,[206] the Commission is hereby granting LTSE's request for an exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that LTSE proposes to incorporate by reference. [207] This exemption is conditioned upon LTSE providing written notice to its members whenever FINRA or the NYSE proposes to change a rule that LTSE has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules of more than one SRO.

H. Conclusion

It is ordered that the application of LTSE for registration as a national securities exchange be, and it hereby is, granted.

It is furthered ordered that operation of LTSE is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans.* LTSE must join the Consolidated Tape Association Plan, the Consolidated Quotation Plan, the Nasdaq UTP Plan, the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS, the Regulation NMS Plan to Address Extraordinary Market Volatility, the Plan for the Selection and Reservation of Securities Symbols, and the National Market System Plan Governing the Consolidated Audit Trail.

B. *Intermarket Surveillance Group.* LTSE must join the Intermarket Surveillance Group.

C. *Minor Rule Violation Plan.* A MRVP filed by LTSE under Rule 19d–1(c)(2) must be declared effective by the Commission.[208]

D. *Rule 17d–2 Agreement.* An agreement pursuant to Rule 17d–2 [209] that allocates regulatory responsibility for those matters specified above [210] must be approved by the Commission, or LTSE must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. *Participation in Multi-Party Rule 17d–2 Plans.* LTSE must become a party to the multi-party Rule 17d–2 agreements concerning the surveillance, investigation, and enforcement of common insider trading rules.

F. *RSA.* LTSE must finalize the provisions of the RSA with its regulatory services provider, as described above, that will specify the LTSE and Commission rules for which the regulatory services provider will provide certain regulatory functions, or LTSE must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

It is further ordered, pursuant to Section 36 of the Act,[211] that LTSE shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA and NYSE rules that LTSE proposes to incorporate by reference into LTSE's rules, subject to the conditions specified in this Order.

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–10037 Filed 5–14–19; 8:45 am]

BILLING CODE 8011–01–P

(Transactions for or by Associated Persons), 10.220 (Best Execution and Interpositioning), 10.260 (Front Running of Block Transactions), 11.420(c), (d) and (e) (Order Audit Trail System Requirements), 12.110 (Arbitration), respectively. LTSE also proposes to incorporate by reference certain definitions from NYSE Rule 7410. *See* LTSE Rule 11.420(a) (Order Audit Trail System Requirements).

[203] *See* 17 CFR 240.0–12.

[204] *See* Exemption Request Letter and Exemption Request Letter Addendum, *supra* note 201.

[205] LTSE will provide such notice through a posting on the same website location where LTSE posts its own rule filings pursuant to Rule 19b–4 under the Act, within the required time frame. The website posting will include a link to the location on the FINRA or NYSE website where FINRA's or NYSE's proposed rule change is posted. *See id.*

[206] 15 U.S.C. 78mm.

[207] The Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act. *See, e.g.,* IEX Order, *supra* note 48; ISE Mercury Order, *supra* note 50; MIAX Pearl Order, MIAX Pearl Order and BATS Order, *supra* note 35; DirectEdge Exchanges Order, *supra* note 59.

[208] 17 CFR 240.19d–1(c)(2).

[209] 17 CFR 240.17d–2.

[210] *See supra* notes 116–117 and accompanying text.

[211] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85813; File No. SR–NASDAQ–2019–033]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Equity 7 Pricing Schedule, Sections 112, 123, 135, 146, 155 and 158

May 9, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2019, 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 the Equity 7 Pricing Schedule, Sections 112, 123, 135, 146, 155, and 158 to: (i) Reduce fees for trial periods, pre-production systems development, academic use, and technical and administrative support services; and (ii) specify that the $500,000 enterprise license for the distribution of Depth-of-Book data includes Professional Subscribers. These proposed changes are described in further detail below.

The text of the proposed rule change is available on the Exchange's website 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.

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

1. Purpose

As part of an ongoing effort to increase the transparency of market data rules and lower fees and administrative costs for market data customers, the Exchange proposes to: (i) Reduce fees for trial periods, pre-production systems development, academic use, and technical and administrative support services; and (ii) specify that the $500,000 enterprise license for the distribution of Depth-of-Book data includes Professional Subscribers.[3] The proposed waivers of fees and other charges apply to the market data products and services listed in proposed Section 112(a).[4]

Nothing in this filing raises any fee charged by the Exchange. On the contrary, the Exchange anticipates that the proposal will lower fees for some customers.

Current Section 112

Proposed Section 112 will replace current Section 112, which sets forth a terminal fee for receiving Nasdaq Level 2 or Level 3 service. The Nasdaq Level 2 service referenced in this rule was a UTP Plan service managed by Nasdaq as administrator of the Plan ''that provide[d] Subscribers with query capability with respect to quotations and sizes in securities included in the Nasdaq System, best bid and asked quotations, and Transaction Reports.'' [5] Nasdaq Level 3 was a UTP Plan service ''that provide[d] Nasdaq market participants with input and query capability with respect to quotations and sizes in securities included in the Nasdaq System, best bid and asked quotations, and Transaction Reports.'' [6] These services have not been offered by the UTP Plan since Amendment 17 to the Plan, which went into effect in September 2006.[7] Removal of this section will not alter any fee or service offered by the Exchange, as this service is not currently offered by the Exchange.

Proposed Section 112

The specific changes proposed by the Exchange, and the purposes of each, are as follows:

1. Fee Waivers

The Exchange currently waives market data fees to: (i) Encourage a new or potential customer to test a product or service through trial offers; (ii) allow a new distributor time to develop its systems and procedures before disseminating Exchange information; (iii) provide data for academic research or classroom-related activity; and (iv) allow distributors to use Exchange information for technical and administrative support services not directly related to external distribution or securities trading. Some of these fee waivers are partially or fully codified in the Nasdaq rule book, while others are set forth in policies published on *NasdaqTrader.com*,[8] or are an established practice of the Exchange not explicitly described in the rule book or in published policies. The Exchange proposes to reduce fees for multiple products by codifying uniform fee waivers for trial periods, pre-production systems development, academic use, and technical and administrative support services.

1. Trial Offers

The Exchange currently extends trial offers for three products: Depth-of-Book products at Section 123, Nasdaq Trading Insights at Section 146, and QView at Section 158.[9] The Exchange proposes to reduce fees for new, prospective or returning customers by replacing these three product-specific fee waivers with a standard waiver applicable to any market data product listed at Section 112(a), and any version of a listed product identified by the Exchange as eligible for an offer on *NasdaqTrader.com*.

The three trial offers currently offered by the Exchange differ somewhat in scope and limitations. The Depth-of-Book trial offer at Section 123(e) allows for a one-time 30-day waiver of subscriber fees for all new and potential individual subscribers:

> 30-Day Free-Trial Offer: Nasdaq shall offer all new individual Subscribers and potential new individual Subscribers a 30-day waiver of the Subscriber fees for Nasdaq TotalView. 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 Nasdaq TotalView. A Distributor may only provide this waiver to a specific individual Subscriber once.

Nasdaq Trading Insights at Section 146(b)(1) provides a trial offer that is available once per firm for each version of the product, provided that it is cancelled before the end of the 30-day period to avoid monthly fees:

> 30-Day Trial Offer. Upon request, Nasdaq shall provide firms a 30-day waiver of the fees for the Nasdaq Trading Insights product, which consists of all four components listed above in (a)(1)–(a)(4). However, availability of the Liquidity Dynamics Analysis component is currently delayed. This waiver may be provided only once per firm for each version of the product, as designated by Nasdaq. A firm will be charged the monthly fee rate listed below in (b)(2) if it does not cancel by the conclusion of the trial offer.

The QView product at Section 158 contains a trial offer that is available to returning purchasers (not just new or prospective customers) for a period of time not to exceed 30 days for each version of QView or the Latency Optics add-on service:

> The Exchange shall waive fees under this Section for 30 days for any new, prospective or returning purchaser of either QView or the Latency Optics add-on service. This waiver will be available only once per customer for any version of QView or the add-on service.

The Exchange proposes to reduce fees across multiple products by replacing these three disparate offers with a single, standard offer for any product version listed as eligible on *NasdaqTrader.com* and specifically identified in subsection (a) of proposed Section 112. The proposed offer will waive fees for up to 30 days,[10] will be available to new, prospective, or returning [11] distributors, recipients and

[3] The Exchange initially filed the proposed changes on April 12, 2019, (SR–Nasdaq–2019–030). The Exchange withdrew that filing on April 25, 2019, and submitted this filing.

[4] The following sections are listed in Section 112(a): 119 (Market Data Distributor Fees), 121 (Nasdaq Report Center), 122 (Historical Research and Administrative Reports), 123 (Nasdaq Depth-of-Book Data), 126 (Distribution Models), 135 (Nasdaq Monthly Administrative Fee), 137 (Nasdaq FilterView Service), 139 (NLS and NLS Plus Data Feeds), 140 (Nasdaq Share Volume Service), 146 (Nasdaq Trading Insights), 147 (Nasdaq Basic), 152 (Nasdaq Daily Short Volume and Monthly Short Sale Transaction Files), 157 (Nasdaq MatchView Feed) and 158 (QView).

[5] Securities Exchange Act Release No. 34–53131 (January 17, 2006), 71 FR 3896 (January 24, 2006) (S7–24–89) (defining Level 2 service).

[6] *Id.* (defining Level 3 service).

[7] Securities Exchange Act Release No. 34–54426 (September 12, 2006), 71 FR 54852 (September 19, 2006) (S7–24–89) (replacing the definitions of Level 2 and Level 3 services with unrelated terms).

[8] All references to *NasdaqTrader.com* refer to the current website and any successor website, as specified at proposed Section 112(b)(1).

[9] The Exchange also allows distributors to provide trial or demonstration access to subscribers as part of the marketing process. *See http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/FEEEXEMPTIONSPOLICY.pdf.*

[10] A customer may elect to utilize less than 30 days for a trial offer if it intends to preserve the option of using whatever time remains on the offer period at a later date within the twelve month period.

[11] A new customer is a customer that has never purchased the product or service subject to the trial offer, and has decided to purchase the product. A prospective customer is a customer that has never purchased the product or service subject to the trial offer, and has not yet decided whether to purchase the product. A returning customer is a customer

users,[12] and is limited to 30 days over a twelve month period for each version of the product.[13] While the products eligible for this offer are listed in Section 112(a),[14] the specific versions of these products eligible for the waiver will be identified on *NasdaqTrader.com* to allow the Exchange an opportunity to extend such offers to new versions of a product as such versions become available, and to withdraw older versions from eligibility that the Exchange has elected to no longer promote. The Exchange will provide a 30-day notice for the withdrawal of any version of any product or service from eligibility. Distributors may extend trial offers to recipients or users for fees associated with any product or service listed in proposed Section 112(a) and version listed as eligible for a Trial Offer on *NasdaqTrader.com,*[15] subject to the usage reporting requirements,[16] and the Exchange will waive any fees owed by the distributor for the underlying customer. Distributors will administer this trial offer program for recipients and users on behalf of the Exchange, making trial offers available to new, prospective, or returning recipients and users on the same basis as the Exchange.

Proposed Section 112(b)(1) reads as follows:

Trial Offers. The Exchange shall waive any fee for up to 30 days, which may be taken in discontinuous segments, for any new, prospective, or returning distributor, recipient or user for any product or service listed in Subsection (a), for any version listed as eligible for a trial offer on *Nasdaqtrader.com* or any successor website (collectively, ''*Nasdaqtrader.com*''), provided that:

(A) The waiver is limited to 30 days for each version of the product or service over any 12 month period;

(B) The product or service is listed in Subsection (a), and the specific version of the product or service is listed as eligible for a trial offer on *NasdaqTrader.com* (the Exchange will provide a 30-day notice for the withdrawal of any version of product or service from eligibility); and

(C) The Exchange shall waive any fee to a distributor for any new, prospective or returning recipient or user for up to 30 days, which may be taken in discontinuous segments, for any product or service listed in Subsection (a) and any version listed as eligible for a trial offer on *Nasdaqtrader.com,* where the distributor is itself waiving its own fees to such new, prospective, or returning recipient or user for the same period of time, subject to usage reporting requirements set forth on *NasdaqTrader.com*.

As conforming changes, the Exchange proposes to delete the current trial offers at Sections 123(e), 146(b)(1), and 158(c) and renumber the remaining subparagraphs in Section 146.[17]

The purpose of the proposal is to reduce fees for new, prospective, or returning customers and to improve transparency and consistency in the application of trial offers. The proposed changes will not increase any fee or charge.

2. Pre-Production Waivers

The Exchange currently waives fees for new distributors for up to three months to allow them time to prepare systems and procedures for the distribution of Exchange information.[18] Distributors require data for testing and development before actually distributing such data, and the waiver reflects a long-standing industry and Exchange practice to waive fees during this period. The current policy, published on *NasdaqTrader.com,* provides that distributors may be exempt from distributor, subscriber and monthly administrative fees for up to three months ''while the Distributor is receiving a Data Feed and is in the process of development work to facilitate the intended internal or external distribution of the data.''[19] Fees commence at the end of the three month period, or when the distributor starts to distribute the data, whichever comes first.[20]

The Exchange proposes to reduce fees for distributors by introducing a pre-production waiver at Section 112(b)(2). The waiver will be available for any product or service identified in Subsection (a) and any version listed as eligible for such a waiver on *NasdaqTrader.com*. The proposed rule will specify that the Exchange shall waive distributor, subscriber and monthly administrative fees for up to 3 months[21] to allow the distributor to prepare its systems and procedures for ''production'' (*i.e.,* the distribution of Exchange information); the waiver will remain in place for the period of time required to prepare systems and procedures for production, or when production begins, whichever is earlier.[22] The version of the products eligible for the pre-production waiver will be listed on *NasdaqTrader.com*. Distributors must apply for this waiver and report to the Exchange how the information is used, providing the same categories of data as distributors in production.[23] The Exchange will approve the pre-production waiver for any distributor that successfully demonstrates through its application and reporting that it meets all of the criteria set forth in proposed Section 112(b)(2).[24] The proposed rule reads as follows:

Pre-Production Waivers. The Exchange shall waive any fees for a distributor that requires time to prepare its systems and procedures to distribute Exchange information, provided that:

(A) The waiver is only available for the period of time required to prepare systems and procedures to distribute Exchange information, or the start of production, whichever occurs first, for a period of time not to exceed 3 months;

(B) The waiver will only be available for products or services identified in Subsection (a) above and the version is listed as eligible for such a waiver on *NasdaqTrader.com;* and

(C) The waiver must be pre-approved by the Exchange based on an application and subject to usage reporting requirements set forth on *NasdaqTrader.com* that demonstrate compliance with the rules set forth herein.

---

that had purchased the product or service at one time, but cancelled that service at least six months before the trial offer is to take place.

[12] Some market data products are exclusive to distributors, recipients, or users, respectively. When announcing a product as eligible for a trial offer on *NasdaqTrader.com*, the Exchange will specify which of these three groups will be eligible for the offer in accordance with the applicable rule.

[13] The waiver may be taken in discontinuous segments, meaning, for example, that a customer may end the trial offer after a two week period, preserving the remaining time for further testing to take place at a later date within the 12 month period.

[14] For historical reports, the waiver will be for one month of data. Historical data are offered in Sections 122 (Historical Research and Administrative Reports), 140 (Nasdaq Share Volume Service), and 152 (Nasdaq Daily Short Volume and Monthly Short Sale Transaction Files), all of which may include historical data.

[15] As noted above, all references to *NasdaqTrader.com* refer to the current website and any successor website, as specified at proposed Section 112(b)(1).

[16] The usage reporting requirements for any distributor undergoing a trial offer shall be the same as distributors in full production. The trial offer proposal imposes no new reporting requirement.

[17] The Exchange also proposes to remove an outdated reference to a trial period ending March 21, 2011, at Section 155 (Short Sale Monitor).

[18] *See http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/FEEEXEMPTIONSPOLICY.pdf.*

[19] *See id.*

[20] *See id.*

[21] The pre-production waiver may be less than 3 months if the distributor requires less time to prepare its systems and procedures for production, or if production begins in less than 3 months. Distributors bear the burden of demonstrating to the Exchange that the full 3 month period is required, based on its application and reporting as set forth on *NasdaqTrader.com*.

[22] Distributors may engage in further systems development after production has begun, but the proposed waiver shall not apply to any such post-production systems development.

[23] The usage reporting requirements for any distributor in Pre-Production shall be the same as distributors in full production.

[24] Typically, distributors will only be eligible for one pre-production waiver, as eligibility for the waiver ends once production begins. Nevertheless, distributors that terminate their relationship with Nasdaq may be eligible for a second waiver to the extent that changes in technology require additional pre-production development prior to restarting production.

The purpose of the proposal is to reduce development costs for new distributors entering into production and to improve transparency and consistency in the application of pre-production waivers. The proposal does not increase any fee or charge.

3. Academic Waivers

The Exchange has implemented an academic waiver policy that allows colleges, universities, and other accredited academic institutions to obtain a fee waiver for students and professors engaged in research or teaching.[25] To obtain the waiver, academic institutions must execute all agreements required for the product or service, report the number of subscribers, devices or other applicable units of count to Nasdaq on a monthly basis, and reapply on a yearly basis for continued eligibility.[26] Academic waivers may not be used for actual (as opposed to simulated) securities trading, and the waiver does not cover the following uses of data: vocational education, university endowment programs, unaccredited academic institutions, use in support of actual securities trading, external distribution of the data, or off-site distribution of the data.[27]

The Exchange proposes to encourage the use of Exchange information by academic institutions by eliminating the enumerated fees and expanding the academic waiver policy to include certain financial literacy programs. An accredited college or university or non-profit financial literacy program would be able to apply to either a distributor or the Exchange for the academic waiver, as is currently allowed under the existing policy. All applicants that can demonstrate that all of the criteria set forth in Section 112(b)(3) are met will be approved for the waiver by the Exchange or the distributor. The proposed rule would allow non-profit financial literacy programs to apply for a waiver as well—a policy which has been followed informally in the past, but which the Exchange now proposes to formalize as part of the rule book. Beneficiaries of the academic waiver would be required to reapply on a yearly basis, sign any agreement required to obtain that product or service, and report usage, subject to the same usage reporting requirements as non-academic recipients. No information obtained under this type of waiver may be distributed externally except in support of certain non-profit financial literacy programs or to support teaching or research at an accredited college or university.[28] Information disseminated pursuant to the academic waiver may not be used for actual (as opposed to simulated) trading activity, or to support for-profit activity, including, but not limited to, any use of Exchange information by an academic institution to provide services to a for-profit entity in support of any business or trading activity. Distributors may administer the academic waiver program on behalf of the Exchange on the same basis as the Exchange. Proposed Section 112(b)(3) reads as follows:

(3) Academic Waivers. Any accredited college or university, as well as non-profit financial literacy programs dedicated to serve primary or secondary school students or other underserved populations, may apply to a distributor or the Exchange to waive any fee or charge for any product or service identified in Subsection (a) and any version listed as eligible for such a waiver on *NasdaqTrader.com,* and used by students or professors to perform academic research or classroom-related activities. All such applications for waiver shall be approved by the Exchange or the distributor based on a determination that all of the criteria set forth herein are met, specifically the following:

(A) Recipients of an academic waiver must reapply on a yearly basis, must sign any agreement required to obtain that product or service, and report usage as specified on *NasdaqTrader.com;* and

(B) No information provided under an academic waiver may be distributed externally, except in support of non-profit financial literacy programs or to support teaching or research at an accredited college or university, or used in any way for actual (rather than simulated) trading, or to support for-profit activity, including, but not limited to, any use of Exchange information by an academic institution to provide services to a for-profit entity in support of any business or trading activity.

As a conforming change, the Exchange proposes to delete the last sentence of current Section 135, which relates to an academic waiver for administrative fees,[29] as superfluous in light of the addition of proposed Section 112(b)(3).

The purpose of this proposal is to promote university-level research and teaching, as well as overall financial literacy, by lowering the cost for professors, teachers and students and certain financial literacy programs to obtain and utilize Exchange information. The proposal will not increase any fee or charge.

4. Technical and Administrative Support

The Exchange currently exempts subscribers that are used in an enumerated list of indirect support functions—but not directly involved in the distribution of Exchange information or the trading of securities—from monthly subscriber fees.[30] This internal usage policy is described on *NasdaqTrader.com,* and derives from a long-standing industry practice of exempting support functions from fees. The currently-exempted support functions are: advertising, account maintenance, authorizations and entitlements, customer service, data control, data quality, development,[31] demonstration, distributor software sales, promotion, technical operations, technical support, testing and trade shows.[32] A distributor making use of this internal usage policy must provide Nasdaq with information about, or a demonstration of, how each technical and administrative support subscriber is used, and must be prepared to identify all administrative entitlements during any onsite review.[33] This fee waiver does not apply to a subscriber supporting the news, research or trading divisions of the distributor, or used in any way to support the trading of securities.[34] Exempt subscribers may only be used by employees of the distributor and must be located on the distributor's premises (unless the subscriber is used for sales or marketing).[35]

The Exchange proposes to lower distributor's fees by codifying this policy in its rule book, and to re-designate the name of the policy from ''internal usage'' to ''technical and administrative support.'' The proposed technical and administrative support

[25] *See http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/ACADEMICWAIVERPOLICY.pdf.* Note that the waiver does not cover access or telecommunications charges. Section 135 also provides that the Exchange may waive its monthly Administrative Fee for colleges and universities for devices used by students and professors in performing university or college research or classroom-related activities.

[26] *See id.*

[27] *See id.*

[28] Non-profit financial literacy programs may distribute Nasdaq data to primary and secondary school students and other underserved groups for computer-assisted learning.

[29] Section 135 currently states: ''Nasdaq may waive the foregoing fee for colleges and universities for devices used by students and professors in performing university or college research or classroom-related activities.''

[30] *See http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/FEEEXEMPTIONSPOLICY.pdf.*

[31] ''Development'' in this context refers to post-production systems development, in contrast to pre-production systems development, discussed above.

[32] *See http://www.nasdaqtrader.com/content/AdministrationSupport/Policy/FEEEXEMPTIONSPOLICY.pdf.*

[33] *See id.*

[34] *See id.*

[35] *See id.*

waiver will exempt the same support services from fees as the current policy: Advertising, account maintenance, authorizations and entitlements, customer service, data control, data quality, development, demonstration, distributor software sales, promotion,[36] technical operations, technical support and testing. As is the case under current policy, the fee waiver would not apply to a subscriber supporting the news, research or trading divisions of the distributor. All such waivers will be approved by the Exchange if the distributor demonstrates through materials submitted with the application, and ongoing reporting, that all of the criteria set forth in the rule are met.[37] Reporting for subscribers engaged in technical and administrative support will be the same as required for fee-liable subscribers, and such usage reporting requirements will be set forth on *NasdaqTrader.com.* As required under the current policy, the distributor must be able to provide Nasdaq with information about, or a demonstration of, how each technical and administrative support subscriber is used, and must be prepared to identify all technical and administrative entitlements during any onsite review. The aforementioned subscribers must be located on the distributor's premises, unless used for sales or marketing. No Exchange information obtained under such waiver may be distributed externally or used in support of trading activities.

Proposed Section 112(b)(4) reads as follows:

Technical and Administrative Support Waivers. ''Technical and Administrative Support'' is defined as the following activities of the distributor: Advertising, account maintenance, authorizations and entitlements, customer service, data control, data quality, development, demonstration, distributor software sales, promotion, technical operations, technical support and testing. The Exchange shall waive any fee or charge for the Technical and Administrative Support of a distributor, provided that:

(A) The distributor provides Nasdaq with information about, or a demonstration of, how each technical and administrative support subscriber is used, is able to identify all technical and administrative entitlements during an onsite review by Nasdaq representatives, and demonstrates to the Exchange through application and reporting that all of the criteria set forth herein are met;

(B) Any distributor granted such a waiver shall report exempt usage in the same manner as non-exempt usage as set forth on *NasdaqTrader.com;*

(C) Exempt subscribers must be located on the distributor's premises, unless used for sales or marketing; and

(D) No Exchange information obtained under such waiver may be distributed externally or used in support of trading activities.

The purpose of the proposed change is to eliminate the enumerated subscriber fees for technical and administrative support activities, thereby facilitating the accurate and efficient distribution of Exchange information by lowering the cost of support services essential for such distribution, and to improve transparency and consistency in the application of such waivers. The proposed change will not increase any fee or charge.

2. Broker-Dealer Enterprise License

The Exchange currently offers an enterprise license to enable broker-dealers to distribute Nasdaq Level 2 or Nasdaq TotalView service for Display Usage to customers with whom the firm has a brokerage relationship. Section 123(c)(3) states as follows:

As an alternative to subsections (1) and (2) above, a Distributor that is also a brokerdealer may pay a monthly fee of $500,000 to provide Nasdaq Level 2 or Nasdaq TotalView for Display Usage by Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License shall not apply to relevant Level 1 or Depth Distributor fees.

The Exchange proposes to modify Section 123(c)(3) to include Professional Subscribers with whom the firm has a brokerage relationship within the scope of the enterprise license. In 2010, when the Exchange first proposed that the enterprise license be distributed to Non-Professional Subscribers with whom the firm has a brokerage relationship, the Exchange explained that the enterprise license covers not only non-professional customers, but also includes ''an allowance to distribute data to external professional subscribers with which the firm has a brokerage relationship,'' and the Exchange would ''permit[] distributors to designate an entire user population as 'non-professional' provided that the number of professional subscribers within that user population does not exceed ten percent (10%) of the total population.''[38]

As part of its effort to ease administrative burdens on its customers, the Exchange proposes to modify the text of Section 123(c)(3) to explicitly state that Nasdaq information may be distributed to both Professional and Non-Professional Subscribers in the context of a brokerage relationship. This will increase the value of the enterprise license to distributors by removing the 10 percent limitation and explicitly applying coverage to Professionals who receive the information in the context of a brokerage relationship, while also lowering the administrative burden on broker-dealers by eliminating any need to count Professional and Non-Professional Subscribers separately. The Exchange also proposes to effect a number of minor technical corrections.[39] The revised language is as follows:

As an alternative to subsections (1) and (2) above, a Distributor that is also a broker-dealer may pay a monthly fee of $500,000 to provide Nasdaq Level 2 or Nasdaq TotalView for Display Usage by Professional or Non-Professional Subscribers with whom the firm has a brokerage relationship. This Enterprise License shall not apply to relevant Level 1 or Depth Distributor fees.

The purpose of the proposal is to increase the value of the enterprise license to distributors by expanding coverage to professionals who receive the information in the context of a brokerage relationship, and to lower the administrative burden on broker-dealers by not requiring the broker-dealer to count the number of Professional Subscribers separately. The proposed change will not increase any fee or charge.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[40] in general, and Section 6(b)(4) in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and furthers the objectives of Section 6(b)(5) of the Act,[41] in particular, in that it fosters cooperation and coordination with persons engaged in processing information and facilitating transactions in securities and does not unfairly discriminate between customers, issuers, brokers or dealers.

[36] Trade shows, which are listed separately under the current policy, continue to be covered under the waiver as a type of ''promotion'' activity.

[37] All distributors currently operating under an internal usage waiver will be automatically approved for the technical and administrative support waiver for the nine months following the date of effectiveness of this proposed change, allowing the Exchange an opportunity to evaluate technical and administrative support usage.

[38] *See* Securities Exchange Act Release No. 63084 (October 13, 2010), 75 FR 64379 (October 19, 2010) (SR–NASDAQ–2010–125).

[39] The Exchange also proposes to add a hyphen to the word ''broker-dealer'' in Section 123(c)(3), and to correct an internal reference in Section 123(b)(1)(C) by replacing a reference to subsection (4) with a reference to subsection (3).

[40] 15 U.S.C. 78f(b).

[41] 15 U.S.C. 78f(b)(5).

As described above, the Exchange proposes to: (i) Codify fee waivers for trial offers, pre-production systems development, academic use, and technical and administrative support services; and (ii) modify the $500,000 enterprise license for the external distribution of Depth-of-Book data to allow distribution to all customers with whom the distributor has a brokerage relationship, including both Professional and Non-Professional Subscribers. For the reasons set forth below, each provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, fosters cooperation and coordination with persons engaged in processing information and facilitating transactions in securities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

Fee Waivers

The Exchange proposes to codify fee waivers for trial offers, pre-production systems development, academic use, and technical and administrative support. Each is an equitable allocation of reasonable dues, fees and other charges, and fosters cooperation and coordination with persons engaged in processing information and facilitating transactions in securities. Codifying these waivers will, among other things: (i) Allow new, prospective or returning customers an opportunity to test Exchange data free of charge, thereby lowering the cost of distributing Exchange information; (ii) reduce the cost of systems development for new distributors, thereby lowering their barriers to entry; (iii) lower the cost of academic research, teaching, and financial literacy programs, thereby promoting overall financial education; (iv) and lower the cost of data distribution by lowering the cost of technical and administrative support for distributors, thereby facilitating the accurate and efficient distribution of Exchange information by lowering the cost of support services essential for such distribution.

The proposed fee waivers do not unfairly discriminate between customers, issuers, brokers or dealers because: (i) Providing new, prospective or returning customers an opportunity to test Exchange data free of charge encourages the entry of new distributors and promotes the dissemination of Exchange information; (ii) reducing the cost of systems development for new distributors also encourages the entry of new distributors and promotes the dissemination of Exchange information; (iii) encouraging academic research by lowering the cost of research and teaching, and spreading financial literacy by facilitating financial education for underserved populations, promotes education in, and the understanding of, financial markets; and (iv) lowering the cost of data distribution by reducing the cost of technical and administrative support for distributors facilitates the accurate and efficient distribution of Exchange information by lowering the cost of support services essential for such distribution.

Trial Offers: Establishing a uniform standard for trial offers is an equitable allocation of reasonable dues, fees and other charges and fosters cooperation and coordination with persons engaged in processing information and facilitating transactions in securities by providing new, prospective or returning customers an opportunity to test Exchange data free of charge before purchasing the service. This will encourage the entry of new distributors and thereby promote the dissemination of Exchange information. The proposed section will also establish a framework for the consistent administration of trial offers across products, thereby avoiding potential disputes related to administering trials for different products that have slightly different terms. Publication of products and services on *NasdaqTrader.com* will, moreover, provide all current and potential customers the latest information identifying which products and services are eligible for trial offers. The proposed changes for trial offers do not unfairly discriminate between customers, issuers, brokers or dealers because providing new, prospective or returning customers an opportunity to test Exchange data free of charge will encourage the entry of new distributors and promote the dissemination of Exchange information. The Exchange will allow all eligible customers to take advantage of the same trial offers on the same terms.

Systems Development: Establishing a uniform waiver policy with regard to pre-production systems development is an equitable allocation of reasonable dues, fees and other charges, and fosters cooperation and coordination with persons engaged in processing information and facilitating transactions, by reducing the cost of systems development for new distributors, thereby lowering barriers to entry and encouraging broader dissemination of information. All new distributors will have the opportunity to prepare their systems using the proposed waiver, and current distributors have already had the benefit of this long-standing policy.

These waivers do not unfairly discriminate between customers, issuers, brokers or dealers because reducing costs for new distributors encourages the entry of new distributors and promotes the dissemination of Exchange information, and all new distributors will be able to benefit from the policy.

Academic Waivers: Establishing a uniform policy for academic waivers for research or classroom-related activity is an equitable allocation of reasonable dues, fees and other charges, and fosters cooperation and coordination with persons engaged in processing information and facilitating transactions in securities, because lowering the cost of research, teaching, and financial education will improve market operations by encouraging the dissemination of financial information. A fee waiver is, moreover, appropriate where the information obtained cannot be used to sell financial services or engage in any other for-profit activity, but rather to encourage research, teaching and financial literacy.

Academic waivers do not unfairly discriminate between customers, issuers, brokers or dealers because lowering the cost of research, teaching and financial education promotes the ability of the general investing public to effectively participate in financial markets. Academic institutions and financial literacy programs are, moreover, not profit-making entities and it is reasonable to waive fees for entities not engaged in for-profit activities.

Technical and Administrative Support: Allowing distributors to use Exchange information for administrative and technical support services is an equitable allocation of reasonable dues, fees and other charges, and fosters cooperation and coordination with persons engaged in processing information and facilitating transactions in securities, because the proposal will facilitate the accurate and efficient distribution of Exchange information by lowering the cost of support services essential for such distribution. All distributors will be eligible for the same waiver for the same administrative and support functions.

Technical and administrative support waivers do not unfairly discriminate between customers, issuers, brokers or dealers because the proposal will facilitate the accurate and efficient distribution of Exchange information by lowering the cost of support services essential for such distribution. These waivers also will be available to all distributors on the same terms.

Enterprise License

Expanding the availability of the enterprise license at Section 123(c)(3) to Professional Subscribers with whom the firm has a brokerage relationship is an equitable allocation of reasonable dues, fees and other charges and fosters cooperation and coordination with persons engaged in processing information and facilitating transactions in securities because the proposal will lower the administrative burden on broker-dealers by not requiring the broker-dealer to count the number of Professional Subscribers separately. All broker-dealers purchasing the license will be treated the same, without regard to whether the customer is Professional or a Non-Professional.

The proposal does not unfairly discriminate between customers, issuers, brokers or dealers for the same reasons. The proposal will lower the administrative burden on broker-dealers by not requiring the broker-dealer to count the number of Professional Subscribers separately. Removing the distinction between Professional and Non-Professional customers in a brokerage relationship lessens current distinctions among broker-dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') 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.[42]

The Commission was speaking to the question of whether broker-dealers should be subject to a regulatory requirement to purchase data, such as depth-of-book data, that is *in excess of* the data provided through the consolidated tape feeds, and the Commission concluded that the choice should be left to them. Accordingly, Regulation NMS removed unnecessary regulatory restrictions on the ability of exchanges to sell their own data, thereby advancing 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.

The market data products affected by this proposal are all voluntary products for which market participants can readily find substitutes. Accordingly, Nasdaq is constrained from pricing these products in a manner that would be inequitable or unfairly discriminatory. Moreover, the fees for these products, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow.

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

The Exchange does not believe that the proposals will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All of the proposed changes—to codify fee waivers and expand the application of an enterprise license—do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, but rather enhance competition by providing both current and potential customers better, more precise information in making purchasing decisions.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. 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.

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, the cost of implementing cybersecurity to protect the data from external threats 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).[43]

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 each are 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,[44] and maintaining a trade reporting system, costs that must be covered through the fees charged for use

[42] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[43] *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).

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

of the facility and sales of associated data.

An exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will disfavor a particular exchange if the expected revenues from executing trades on the exchange do not 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 trading activity 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 more orders will become correspondingly more valuable.

Similarly, 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 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 impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers offer their retail 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, 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 market data products 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.[45]

Moreover, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, internalizing broker-dealers and various forms of ATSs, including dark pools and ECNs. Each SRO market competes to produce transaction reports via trade executions, and the FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for broker-dealers to further 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, broker-dealers, 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 broker-dealer is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE American, NYSE Arca, IEX, and CBOE.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[46]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–033 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.

[45] *Cf. Ohio* v. *American Express,* 138 S. Ct. 2274 (2018) (recognizing the need to analyze both sides of a two sided platform market in order to determine its competitiveness).

[46] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR–NASDAQ–2019–033. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–033 and should be submitted on or before June 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09964 Filed 5–14–19; 8:45 am]

BILLING CODE 8011–01–P

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85812; File No. SR–NYSE–2019–14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Section 703.18 of the Listed Company Manual To Permit the Listing of Event-Based Contingent Value Rights and Make Other Changes to the Listing Standards for Contingent Value Rights

May 9, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 25, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Section 703.18 of the Listed Company Manual (the ''Manual'') to expand the circumstances under which a Contingent Value Right may be listed on the Exchange. The proposed rule change is available on the Exchange's website at *www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

Contingent Value Rights (''CVRs'') are unsecured obligations of the issuer providing for a possible cash payment either (i) at maturity based upon the price performance of an affiliate's equity security (a ''Price-Based CVR'') or (ii) within a specified time period, upon the occurrence of a specified event relating to the business of the issuer of the CVR or an affiliate of such issuer (an ''Event-Based CVR''). Section 703.18 of the Manual currently provides only for the listing of Price-Based CVRs. The Exchange proposes the following changes to its listing rules for CVRs:

- To permit the listing of Event-Based CVRs;
- To update the issuer listing standards in Section 703.18 to reflect changes to the initial listing requirements for operating companies referenced in that rule; and
- To modify the delisting provisions to reflect that a CVR will be delisted if its issuer's common stock ceases to be listed on a national securities exchange.

The Exchange proposes to amend Section 703.18 to also provide for the listing of Event-Based CVRs. With the exception of the payment triggering event, Event-Based CVRs are identical in structure to Price-Based CVRs, the listing of which has been permitted under Section 703.18 for many years.

Event-Based CVRs would qualify for listing under the Exchange's current listing standards for ''Other Securities.'' However, the Exchange is filing this proposed rule change because in the 1998 release adopting amendments to Exchange Act Rule 19b–4, which among other things added a definition of ''new derivative securities product,'' the Commission stated that ''[u]nder the amendment, if an SRO does not have listing standards, trading rules and procedures for CVRs approved by the Commission, such SRO must submit a proposed rule change for Commission approval, under Section 19(b), to establish listing standards, trading rules and procedures for the CVR product class, prior to listing CVRs.''[4]

Price-Based CVRs are generally distributed to shareholders of an acquired company who are receiving shares of the acquirer as acquisition consideration. The Price-Based CVRs provide the acquiree's shareholders

[4] Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952, at 70956–57 (December 22, 1998).