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VIA ELECTRONIC MAIL

February 5, 2020

Honorable Jay Clayton, Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Application to Permit Issuer Choice to Consolidate Liquidity by Terminating Unlisted Trading Privileges

Dear Chairman Clayton:

Nasdaq, Inc. (“Nasdaq”) respectfully submits this application (the “Application”) to the Securities and Exchange Commission (“SEC” or “Commission”) for exemptive relief, pursuant to Section 12(f) of the Securities Exchange Act of 1934 (“Act”),¹ to terminate the unlisted trading privileges (“UTP”) of certain Nasdaq-listed securities issued by small and medium sized enterprises (“SMEs”) which are thinly-traded (“Thinly-Traded Securities” (further defined below)).

This Application reiterates, builds upon, and refines a similar application that Nasdaq filed with the Commission in 2018.² It is also responsive to the Commission’s recent Statement on Market Structure Innovation for Thinly Traded Securities (the “Statement”) and the associated Staff Background Paper on the Market Structure for Thinly Traded Securities (the “Background Paper”),³ in which the Commission solicited the submission of an application to suspend or terminate UTP, having recognized that market structure innovations designed to improve trading of thinly-traded securities “when applied on one given exchange, may be less likely to succeed if the securities are subject to concurrent trading on multiple exchanges with different trading models,” and that, “to be effective, these innovations may require the

¹ 15 U.S.C. 78(l)(f).

² See Ltr. from E. Knight to J. Clayton (Apr. 25, 2018), available at <https://www.sec.gov/comments/265-31/26531-3515735-162293.pdf>.

³ See Securities Exchange Act Rel. No. 34-87327 (Oct. 17, 2019), 84 FR 56856 (Oct. 24, 2019); Division of Trading and Markets: Background Paper on the Market Structure for Thinly Traded Securities, Oct. 17, 2019, available at <https://www.sec.gov/rules/policy/2019/thinly-traded-securities-tm-background-paper.pdf>.

suspension or termination of UTP.”⁴

Nasdaq believes that suspension of UTP for Nasdaq-listed Thinly-Traded Securities is appropriate, and promotes the public interest and the protection of investors. Nasdaq also believes that suspension of UTP for these securities promotes efficiency, competition, and capital formation. As is discussed in greater detail below, Nasdaq believes that the Application:

- Promotes economic and pricing efficiency by focusing the listing and trading of securities for which UTP has been terminated on one venue;
- Encourages national securities exchanges that are listing markets to compete more aggressively to list and trade the Thinly-Traded Securities for which UTP has been terminated;
- Improves market structure and market quality for Thinly-Traded Securities for which UTP has been terminated, incentivizing additional smaller companies to list on the public markets; and
- Preserves competition for listings among exchanges and competition for order flow with off-exchange trading venues and between listing venues. Additionally, Nasdaq is committing to not raise market data fees in connection with this Application. These steps, combined with the Commission’s comprehensive authority to regulate exchanges, are more than adequate to constrain the pricing power that might otherwise result from an exclusive listing.

Finally, as the Commission itself contemplates in the Statement,⁵ Nasdaq intends for termination of UTP for Nasdaq-listed Thinly-Traded Securities to be the catalyst for introducing a broad array of proposed reforms and innovations which, collectively, will provide a more inviting environment for issuers to list their Thinly-Traded Securities and a more supportive environment within which to trade them.

I. Context of Application: Nasdaq’s Vision of a Market Tier Tailored to the Particular Characteristics and Needs of Thinly-Traded Securities and their Issuers

For the past several years, Nasdaq has been in the vanguard of a broad and diverse coalition of industry participants that aims to improve and modernize the structure of the U.S. public equity markets. Today’s markets feature robust disclosure requirements and regulatory measures aimed at facilitating competitive pricing and smooth and liquid trading. Although large and established companies tend to have the wherewithal to bear these requirements and the depth of liquidity and investor interest to benefit from these measures, SMEs often do not. When faced with onerous regulatory burdens and the prospect of fragmented and volatile trading in their stocks, SMEs – which are the lifeblood of the public markets and the U.S. economy – are

⁴ See Statement, *supra*, 84 FR at 56957.

⁵ See *id.*

increasingly determining to remain private, to delay going public, or to abandon their place in the public markets in favor of private ownership and funding. Although many SMEs that determine to tap the public equity markets thrive in it, others find it increasingly difficult to do so.⁶

Through its well-received public policy initiatives, Project Revitalize⁷ and TotalMarkets,⁸ which comprise a suite of regulatory and legislative proposals, Nasdaq seeks to reverse these ominous trends, which threaten to drain the public equity markets of their vigor and deprive investors of the opportunity to share in the maturation and growth of SMEs.

Among other things, Nasdaq proposes to establish a tier nestled within the U.S. public equity markets that is better tailored and far more hospitable to Thinly-Traded Securities than is the all-purpose, undifferentiated market environment in which they suffer today. Drawing from the successes of Nasdaq's First North Growth Market in the Nordic States⁹ as well as input and suggestions from hundreds of conversations over many years with issuers, investors, market makers, exchange members, and other industry participants, Nasdaq envisions the establishment of a market tier for Thinly-Traded Securities that would feature the following market structure reforms and market experience innovations, all of which would be available to issuers that choose to terminate UTP for their Thinly-Traded Securities. The Exchange notes that the Commission discussed many of these proposed reforms and innovations in its Statement.¹⁰

⁶ See SEC IPO Task Force, *Rebuilding the IPO On-Ramp* (Oct. 20, 2011), available at https://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf.

⁷ See Nasdaq, *The Promise of Market Reform: Reigniting America's Economic Engine* (May 4, 2017) available at https://business.nasdaq.com/media/Nasdaq_Blueprint_to_Revitalize_Capital_Markets_April_2018_tcm5044-43175.pdf.

⁸ See Nasdaq, *TotalMarkets: A Blueprint for a Better Tomorrow* (April 10, 2019) available at https://business.nasdaq.com/media/Nasdaq_TotalMarkets_2019_tcm5044-69828.pdf.

⁹ Nasdaq First North Growth Market is a venture exchange that is tailored to the needs of and designed to facilitate the growth of SMEs listed in the Nordics. Among other things, the Nasdaq First North Growth Market employs relaxed listing requirements for its companies, employs flexible trading rules (e.g., no order protection rule and a smart tick-size regime), relaxed disclosure rules (e.g., semi-annual reporting), concentrates liquidity for listed companies' securities on a single exchange, and permits issuers to pay liquidity providers to improve markets for their securities. Data shows that the Nasdaq First North Growth Market has succeeded in growing its listed companies more rapidly than other markets, graduating many of these companies to the main Nordic Market, and achieving narrower spreads for its companies than those on the U.S. Nasdaq Capital Market.

Although many of these features are not unique to Nasdaq First North or limited in availability to its growth companies, Nasdaq believes that the bundling of these features into a single market provides a useful example to the Commission of how to encourage market innovations and experimentation within the United States.

¹⁰ See Statement, *supra*, 84 FR at 56957 (discussing market maker incentive programs and periodic intraday auctions for Thinly-Traded Securities).

- Market Model Flexibility – Nasdaq agrees with the Commission that Thinly-Traded Securities could benefit from a grant of exemptive relief to trade outside of the constraints of the “Order Protection Rule,” Rule 611 of Regulation National Market System (“Regulation NMS”).¹¹ Such an exemption would afford Nasdaq flexibility to innovate in ways that would complement the particular manner in which Thinly-Traded Securities trade – innovations that are otherwise impossible now. For example, Nasdaq could propose alternatives to the price/time priority model for trading Thinly-Traded Securities, such as request-for-quote, pro rata, and parity models. Moreover, as noted in the Background Paper, Nasdaq could trade Thinly-Traded Securities in periodic batch auctions, rather than on a continuous basis, to help further concentrate liquidity in such Securities when they trade on a single exchange.¹² To the same end, Nasdaq could offer pre- and post-market trading sessions on an auction on-demand basis only, rather than as a matter of course.
- Intelligent Tick Sizes and Rebates – Nasdaq proposes to modernize the existing “one-size-fits-all” minimum quoting requirements and fee regimes to reflect the unique liquidity characteristics of Thinly-Traded Securities. The existing uniformly-applicable \$0.01 minimum tick size¹³ renders many Thinly-Traded Securities difficult to trade, as they are subject to larger spreads and higher volatility than other stocks. Nasdaq joins others¹⁴ in supporting a more flexible tick size regime that considers key variables in setting a minimum tick size, such as the average daily volume and the price of a stock. If implemented properly, an intelligent, optimizable tick size has the potential to increase liquidity, promote quote competition, and reduce trading costs for Thinly-Traded Securities – all of which will serve to protect investors by improving market quality. A smarter

¹¹ See 17 CFR 242.611. The Order Protection Rule provides intermarket protection against “trade-throughs” for certain protected automated quotations, meaning the purchase or sale of securities at prices that are inferior to protected quotations. See *id.* 242.600(b)(81). Despite the benefits of Rule 611 and Regulation NMS, more broadly, in supporting competitive and transparent price formation, it is widely-criticized as promoting market fragmentation, difficulty in executing large-sized orders, and competition based on speed in the lit markets.

¹² See Background Paper, *supra*, at 8.

¹³ See 17 CFR 242.612.

¹⁴ In its 2017 report on capital markets, the U.S. Treasury Department (“Treasury”) also endorsed an intelligent tick size regime, whereby more-liquid stocks would likely have lower tick sizes, and less-liquid stocks would likely have higher tick sizes. See U.S. Department of the Treasury, Report to President Donald J. Trump, “A Financial System That Creates Economic Opportunities • Capital Markets,” dated October 2017, at 61 (“Treasury Report”).

minimum tick size regime will also enable a better path forward for assessing the right level for fees and rebates for these stocks.¹⁵

- Market Maker Incentive Program for Thinly-Traded Securities – As the Commission observed in the Statement, one of the main impediments to the trading of Thinly-Traded Securities is the “lack [of] adequate incentives to quote, especially with significant order interest, at or inside the displayed best bid or offer in thinly traded securities, particularly during periods of increased volatility.”¹⁶ Nasdaq agrees with the Commission that “[i]ncreased incentives to be in – and stay in – the markets for these [thinly-traded] securities could encourage market makers to quote more frequently and in greater size, which in turn could lead to narrower spreads and increased display order interest.”¹⁷ Accordingly, Nasdaq proposes to solicit Commission approval to establish a market maker incentive program for Thinly-Traded Securities. As part of this program, Nasdaq envisions seeking Commission approval for an exemption from the general prohibition in the Exchange’s and FINRA’s respective rules against issuers paying members to act as market makers in their securities,¹⁸ much as the Commission did within the context of a similar market maker incentive program for exchange-traded products.¹⁹ Nasdaq believes that such an exemption is needed in this case to provide members with incentives, in the form of credits or fee reductions, which they otherwise lack to act as market makers for Thinly-Traded Securities. Under the program, market makers would qualify for such incentives to the extent that they satisfy voluntary commitments to quote Thinly-Traded Securities at the inside of the NBBO for a certain period of time during the trading day and at a certain size and at a maximum spread. Market makers would also assume responsibilities for helping to ensure orderly market opening and closings for Thinly-Traded Securities, as well as a balanced ratio of taking and adding liquidity. The Exchange is confident that, based upon its experiences providing similar market maker incentives in its First North Market,²⁰ it can do so

¹⁵ Nasdaq notes that on December 5, 2019, it published a white paper on intelligent ticks, which details its views on this issue. See Nasdaq, Inc., Intelligent Ticks: A Blueprint for a Better Tomorrow,” at <https://www.nasdaq.com/docs/2019/12/16/Intelligent-Ticks.pdf>.

¹⁶ Statement, *supra*, at 56957.

¹⁷ Id.

¹⁸ See Exchange Rule 2460 (stating that, with certain exceptions, “[n]o member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.”); FINRA Rule 5250 (same).

¹⁹ See Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013).

²⁰ In the Nasdaq First North Growth Market, issuers may provide direct incentives to liquidity providers to improve the markets for their securities, including by ensuring a

in a manner that is not only effective, but which also mitigates the anti-manipulation concerns that underlie Exchange Rule 2460 and FINRA Rule 5250.

- Proxy Reforms –Nasdaq applauds the Commission’s recent actions and proposals to reform the proxy process.²¹ Nasdaq concurs with the Commission that such reforms are generally necessary to lower costs, reduce unnecessary burdens, and improve the quality of investor engagement with public companies. Nasdaq believes that if enacted, the positive effects of these reforms will be felt most acutely by issuers of Thinly-Traded Securities, for which the costs and burdens of the existing process tend to be the highest.²² In particular, Nasdaq supports the Commission’s proposal to amend SEC Rule 14a-8²³ to raise the minimum ownership and holding period thresholds for the inclusion of shareholder proposals on proxy statements. This proposal will limit the extent to which those who lack a meaningful percentage of a company’s shares and hold only-short-term investments in a company can hijack the company’s proxy process, to distracting if not damaging ends. Moreover, to reduce the incidence of nuisance proposals, Nasdaq supports the Commission’s bid to increase significantly the existing threshold levels of shareholder support that proxy proposals must receive before such proposals may be reintroduced at subsequent shareholder meetings.²⁴ Finally, Nasdaq supports the Commission’s proposal, which is responsive to industry pleas,²⁵ to subject proxy advisory services to increased regulatory oversight and transparency as a means of ensuring that the methodologies,

maximum percentage spread and minimum volumes of shares on the buy or sell sides of the order book.

²¹ See Release No. 34-87457 (Nov. 5, 2019), available at <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>; Release No. 34-87458 (Nov. 5, 2019), available at <https://www.sec.gov/rules/proposed/2019/34-87458.pdf>; Release Nos. IA-5325 & IC-33605 (August 21, 2019), available at <https://www.sec.gov/rules/interp/2019/ia-5325.pdf>; Release No. 34-86721 (August 21, 2019), available at <https://www.sec.gov/rules/interp/2019/34-86721.pdf>.

²² For this reason, adoption of these proposals is a key element to improve the overall environment for Thinly-Traded Securities, along with Nasdaq’s proposal contained in this Application to improve their trading environment through termination of UTP.

²³ See 17 CFR 240.14a-8(b).

²⁴ See *id.* at 240.14a-8(i)(12) (permitting exclusion of shareholder proposals that receive (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years; (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years).

²⁵ See Letter from Nasdaq, Inc. *et al.*, to J. Clayton, dated February 4, 2019, available at <https://www.sec.gov/comments/4-725/4725-4872519-177389.pdf>.

processes, and conflicts of interests of proxy advisors are fully transparent, so that investors can make informed decisions about whether to trust proxy advisors' judgments and recommendations.

- Streamlined Disclosure Obligations – Nasdaq envisions streamlining the periodic disclosure requirements for Thinly-Traded Securities to make life in the public markets less onerous, expensive, and hazardous for the issuers of such stocks – without compromising the investor protections that periodic disclosures provide. Nasdaq's vision for streamlined disclosures is consistent with that which the SEC itself is considering, including with respect to quarterly reporting obligations.²⁶ That is, Nasdaq believes that SME issuers, in particular, would benefit from having flexibility to report financial information on a semi-annual basis, rather than on a quarterly basis, and to provide quarterly updates, if they so choose, through earnings press releases.²⁷ Such flexibility would enable SMEs to better focus their attention and resources towards achieving long-term growth, while ameliorating pressures to satisfy short-term investor expectations. It would also save issuers of Thinly-Traded Securities from having to expend precious time and resources on generating quarterly reports on Form 10-K that largely duplicate their earnings releases and provide few independent benefits to justify their costs.

As an additional means of lessening administrative costs and burdens for SMEs, Nasdaq proposes that the SEC make it optional for such issuers to disclose their financial information using eXtensible Business Reporting Language (“XBRL”) format. Although reporting financial information in XBRL can help to improve the accessibility of such information, Nasdaq observes that in practice, XBRL data is rarely utilized, while the process of producing it is disproportionately burdensome and expensive for many SMEs.²⁸

Finally, while Nasdaq generally supports eliminating disclosures that exist to promote socio-political accountability rather than financial transparency, like the conflict minerals and executive pay ratio disclosures, Nasdaq believes that SMEs are particularly worthy of regulatory relief as they bear the greatest relative burdens of producing such disclosures, and they suffer the greatest competitive disadvantages from doing so, while their investors often reap little or no

²⁶ See Request for Comment on Earnings Releases and Quarterly Reports, Securities Exchange Act Release No. 34-84842 (December 18, 2018), 83 FR 65601 (December 21, 2018) available at <https://www.sec.gov/rules/other/2018/33-10588.pdf>.

²⁷ See Letter from J. Zecca to V. Countryman, dated July 18, 2019, available at <https://www.sec.gov/comments/s7-26-18/s72618-5825362-187511.pdf>.

²⁸ A recent Nasdaq survey of 151 issuers found that they spend, on average, over \$370,000 per firm per quarter to outside vendors, lawyers, and other advisors to address the requirement of quarterly reporting, including \$20,000 per firm per quarter in XBRL costs alone. Meanwhile, only eight percent of issuers reported observing active analyst or investor use of XBRL data.

accompanying benefits from the companies' efforts. Nasdaq envisions that such disclosures would be optional for issuers of Thinly-Traded Securities; that is, issuers should be permitted to choose whether to provide the disclosures based upon a cost-benefit analysis of doing so.

- Shareholder Identification Reforms – Nasdaq envisions an environment in which issuers of Thinly-Traded Securities would have greater transparency about the identity and posture of their shareholders. As described in Nasdaq's submissions in connection with the SEC's Roundtables on the Short-Term/Long-Term Management of Public Companies,²⁹ In accordance with statutory imperatives,³⁰ Nasdaq supports a Commission rulemaking that would require investment managers to publicly report short interest positions where such positions reach or exceed five percent of the outstanding shares of a security. Currently, the lack of transparency in short-selling positions deprives investors and the market of important information, can cause speculation regarding the motives of short selling activities and may limit a company's ability to engage with investors. In some cases, it may also foster abusive trading behavior. Although short selling, when used appropriately, can contribute to price discovery, enhance liquidity and, in some cases, help to identify fraud, disclosure of short-selling positions would improve investors' ability to evaluate claims made by short-sellers who stand to profit from their activity. Moreover, for issuers of Thinly-Traded Securities, which are especially vulnerable to short-selling activity, such transparency would place them in a better position to address investor concerns or allegations before they taint the market for such Securities.

Nasdaq expects that implementation of each of these reforms and innovations will effectively terraform what is now a harsh and unforgiving market environment for Thinly-Traded Securities into one in which issuers of Thinly-Traded Securities can breathe easier and thrive. To be certain, the Commission's approval of Nasdaq's Application to terminate UTP privileges will be a key element in the creation of this new environment, but as the Commission itself recognized in its Statement, the Commission must consider the Application "in conjunction with" proposals for market structure innovations and exemptive relief from Regulation NMS and other rules under the Exchange Act.³¹ Nasdaq believes that adoption of each of its proposals will be needed to ensure that it can offer a climate that is temperate enough to attract, incubate, and ultimately sustain Nasdaq-listed Thinly-Traded Securities over time.

Nasdaq intends to launch its proposed Thinly-Traded Securities market tier only if it determines that it is able to offer in it a mix of features that will provide meaningful benefits and

²⁹ See Letter from J. Zecca to V. Countryman, dated July 18, 2019, available at <https://www.sec.gov/comments/s7-26-18/s72618-5825362-187511.pdf>.

³⁰ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, Section 929X (July 21, 2010) (requiring the Commission to prescribe rules providing for a minimum monthly public disclosure of information about short sales).

³¹ See Statement, *supra*, 84 FR at 56957.

attract a critical mass of issuers. Nasdaq reserves discretion to determine whether and when to launch Thinly-Traded Securities tier based upon its own assessment of the extent to which the Commission approves the associated reform initiatives discussed above.

The Application below focuses exclusively on Nasdaq's request for the Commission to allow issuers of Thinly-Traded Securities to terminate UTP. Separately, Nasdaq plans to discuss in further detail and formally submit to the Commission its other proposed reforms and innovations, to the extent that it has not done so already. Nasdaq also notes that its proposals are subject to change depending upon the Commission's willingness to engage on them and its timing in doing so.

Nasdaq furthermore notes that, as it advocates for the Commission to enact its proposals, it is also working in parallel with its coalition partners to urge similar legislative action in Congress. For example, Nasdaq is advocating for passage of the Main Street Growth Act, which would provide for the creation and registration of venture exchanges in which the listed securities of early-stage growth companies, or other less-liquid securities, would trade without UTP privileges to also trade on other markets.³²

II. Overview of Unlisted Trading Privileges

Section 12(f) of the Act provides that any national securities exchange may extend UTP to (1) any security that is listed and registered on a national securities exchange, or (2) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration relating to (i) any security issued by an investment company registered pursuant to the Investment Company Act of 1940; or (ii) certain securities issued by an insurance company.³³ The concept of UTP was originally adopted in 1936, and has been subsequently amended. For example, the UTP Act of 1994³⁴ amended Section 12(f) to remove the application, notice, and Commission approval process from Section

³² See H.R. 2899 (introduced by Re. Tom Emmer (R-MN) on May 22, 2019) at <https://www.congress.gov/bill/116th-congress/house-bill/2899/text>; S.2306 (introduced by Sen. John Kennedy (R-LA) on July 29, 2019), at <https://www.congress.gov/bill/116th-congress/senate-bill/2306/text>.

³³ See 15 U.S.C 78(l)(f)(1)(A).

As set forth in Section 12(f), no extension of UTP to securities described in category (2) may occur except pursuant to an SEC rule or order approving such extension or extensions. In promulgating such rule or order, the Commission shall consider various factors, including whether such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title; the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

³⁴ Pub. L. No. 103-389, 108 Stat. 4081 (1994).

12(f), except in cases of Commission suspension of UTP in a particular security on an exchange.³⁵

Section 12 also sets forth provisions pursuant to which the Commission may suspend or terminate the UTP trading of securities. Specifically, Section 12(f)(3) provides that the Commission shall suspend, by rules and regulations, UTP in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this title.³⁶

Similarly, Section 12(f)(4) provides that the Commission shall by order terminate, or suspend for a period not exceeding twelve months, UTP on its own motion, or on the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges. The Commission must find, after appropriate notice and opportunity for hearing, that “such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.”³⁷

Nasdaq now applies to the Commission to terminate the UTP trading of certain Nasdaq-listed securities, pursuant to either Section 12(f)(3) or Section 12(f)(4) of the Act. As the listing exchange for the securities for which it seeks termination of UTP trading, Nasdaq believes that it has a bona fide interest in, and is uniquely positioned to seek termination of UTP trading for those securities.

III. Scope of Application

Nasdaq proposes that the Commission permit issuers of “Thinly-Traded Securities” listed on Nasdaq – a term which it further defines below – to opt to terminate UTP for their Securities so that they will trade only on Nasdaq.

A. Definition of Thinly-Traded Securities

For purposes of this Application, Nasdaq proposes to define the term “Thinly-Traded Securities” to mean equity securities (including all classes of such securities, including common

³⁵ See Securities Exchange Act Release No. 43217 (August 29, 2000), 65 FR 53560 (September 5, 2000) (S7-29-99).

³⁶ See 15 U.S.C. 78(l)(f)(3).

³⁷ See 15 U.S.C. 78(l)(f)(4). See also SEC Rule 12f-3, 17 CFR 240.12f-3 (setting forth procedures for seeking termination or suspension of unlisted trading privileges under Section 12(f)(4)). Sections 12(f)(3) and (4) were added by the Securities Exchange Act Amendments of 1936. See Pub. L. 74-621, 49 Stat. 1375 (1936).

stock, preferred shares, and warrants)³⁸ that: (1) are or will become, at the time of designation as Thinly-Traded Securities, listed on one of the existing Nasdaq listing tiers (i.e., the Nasdaq Capital Market, the Nasdaq Global Market, or the Nasdaq Global Select Market), and meet the applicable Nasdaq listing standards for doing so³⁹; (2) are issued by an operating company; and (3) have an Average Daily Volume (“ADV”) of 100,000 shares or less.⁴⁰

Nasdaq believes that it is appropriate to require Thinly-Traded Securities to be otherwise listed on Nasdaq and meet the requirements of one of the existing Nasdaq listing market tiers because Nasdaq intends for its proposals to improve the trading environment for securities that are otherwise fit to be listed on Nasdaq, not to establish a new tier for lesser-quality securities.

Furthermore, Nasdaq believes that it is appropriate to measure Thinly-Traded Securities by ADV and to require them to have an ADV of 100,000 shares or less. ADV is a simple metric and it reflects the Commission’s own analysis of thinly-traded securities⁴¹ as well as that of the Treasury Department in its Capital Markets Report.⁴²

Moreover, the role of ADV as a useful differentiator between types of stocks has been established by internal research conducted at Nasdaq.⁴³ It is clearly evident, for instance, that high-ADV, active stocks tend to have much tighter bid/ask spreads and quotations that frequently change. Inactive stocks, by contrast, have wide spreads and quotes that may remain stationary for long periods of time. This difference has important implications for the likelihood of execution of public limit orders. Nasdaq found that a limit order placed at the prevailing NBBO of an active stock is likely to be filled by virtue of market-wide price movements alone. For

³⁸ Nasdaq proposes to exclude from its Application thinly-traded exchange-traded products (“ETPs”). However, Nasdaq is cognizant of the fact that many of the same maladies that afflict Thinly-Traded Securities also afflict thinly-traded ETPs. Nasdaq supports efforts to separately improve the trading environment for thinly-traded ETPs.

³⁹ See Nasdaq Rule 5500 Series.

⁴⁰ Currently, there are approximately 1,500 Nasdaq-listed companies with an ADV of 100,000 shares or less, which comprises approximately 47 percent of all Nasdaq-listed equity securities. These securities account for approximately 0.9 percent of total notional value of trading and 2.6 percent of total market capitalization of Nasdaq-listed securities issued by an operating company.

⁴¹ See Background Paper, *supra*, at 1-2 (discussing 2018 study by the Division of Trading and Markets’ Office of Analytics and Research (“OAR”) in which OAR analyzed the characteristics of securities with an ADV of 100,000 shares or less); see Division of Trading and Markets Data Paper, Empirical Analysis of Liquidity Demographics and Market Quality, April 10, 2018, [available at https://www.sec.gov/files/thinly_traded_eqs_data_summary.pdf](https://www.sec.gov/files/thinly_traded_eqs_data_summary.pdf).

⁴² See Treasury Report, *supra*, at 60 (“While definitions of and metrics used to measure liquidity differ, one simple approach would be to use average daily volume as the metric to differentiate between liquid and illiquid stocks for these purposes.”) (citation omitted).

⁴³ See Background Paper, *supra*, at 13-14.

example, an order priced at the Best Bid would be filled if the Best Offer subsequently fell to a level at or below that bid value. In such a situation, the particular venue in which the Order was placed is irrelevant to the likelihood of an execution. The extent of fragmentation of the exchange marketplace is not a central concern.

By contrast, a limit order placed in an inactive stock is very unlikely to be executed by market-wide price movement. Its execution will be triggered only by the arrival of an opposing marketable order. In this case, the level of fragmentation may matter substantially. With order book fragmentation, the first order to set a better price will not necessarily be the first to execute. That is, there is no global time priority. Fragmentation may create, therefore, a disincentive for the submission of public limit orders.

The following chart is based on a simulation analysis of hypothetical limit orders placed in Nasdaq-listed corporate securities at the NBBO and allowed to wait one-half hour. For this simulation, a limit order executes only when it becomes marketable by virtue of market-wide price movements during the half-hour. Average fill rates are shown as a function of the ADV of the stock.



The results show a remarkably strong relationship with ADV. For stocks with ADV greater than 100,000, orders are more likely than not to be filled by price movement alone. With ADV below 100,000, orders are unlikely to be filled in that way. The design of market structure—particularly the level of fragmentation—is therefore of much greater importance to inactive stocks with ADV less than 100,000.⁴⁴

⁴⁴ Nasdaq notes that in its comment on the Statement, Cboe proposes to define thinly-traded securities as corporate equity securities that have a market capitalization of \$2 billion or less, and have an ADV of 50,000 shares or less. Letter from A. Griffiths, Assistant General Counsel, Cboe Global Markets, Inc. to V. Countryman, dated December 20, 2019, at <https://www.sec.gov/rules/policy/2019/34-87327.pdf> (the “Cboe Letter”). However, Cboe provides no substantive analysis in support of this proposed definition.

B. Opt-In/Opt-Out Rights for Issuers of Thinly-Traded Securities

Rather than automatically terminate UTP for all Nasdaq-listed securities that qualify as Thinly-Traded Securities, Nasdaq proposes instead to allow issuers of such securities to affirmatively opt-into and out of such treatment.⁴⁵ Although the Commission expressed concern in its Statement that permitting issuers to opt-into/opt-out of UTP revocation would introduce an added element of operational complexity into a proposal to terminate UTP, Nasdaq believes that such additional complexity is warranted. Issuers have communicated to Nasdaq that their inability to control how their securities will trade once they go public is a significant sacrifice; forcing issuers into a one-size-fits-all model - irrespective of how one's securities may or may not trade - is an obstacle to choosing the public company model. Nasdaq believes that it is appropriate to reform UTP in a manner that renders the public markets more attractive to issuers. Moreover, Nasdaq believes that boards of directors of its listed companies have the capacity and judgment to assess for themselves whether the termination of UTP trading would promote market quality, foster increased innovation in market structure, reduce market complexity and promote efficiency in their securities. Nasdaq also believes that the interests of investors would be served by allowing issuers to choose the listing and trading environments for their Thinly-Traded Securities; to the extent that issuers are free to select an environment that optimizes the listing and trading of these Securities, then investors stand to reap benefits, including improved liquidity, tighter spreads, and lower transaction costs. Finally, Nasdaq believes that any added complexity arising from an opt-in/opt-out system is readily manageable, as is discussed below.

Nasdaq proposes that only a security that otherwise qualifies for initial or continued listing on one of the Nasdaq listing tiers, as applicable, and for which the ADV has been 100,000 shares or less during each of the six⁴⁶ consecutive months immediately prior to submitting the opt-in request, may qualify to opt-into Nasdaq's Thinly-Traded Securities tier, and thus terminate UTP trading of that security. Nasdaq proposes that a request to opt-into the Thinly-Traded Securities tier, and to terminate UTP, would become effective on the first day of the quarter that immediately follows Nasdaq's determination that a security qualifies to opt-in, unless Nasdaq makes its determination less than 45 days prior to the first day of that quarter, in which case the opt-in will become effective on the first day of the next quarter thereafter.⁴⁷

⁴⁵ To avoid undue complexity, the Exchange proposes that when an issuer opts in or out of the Thinly-Traded Securities tier, all of its classes of stock will be subject to that decision at once.

⁴⁶ Nasdaq intends to study whether its proposals to impose six month waiting periods prior to permitting securities to opt-in or graduate from the Thinly-Traded Securities tier are calibrated properly to produce a reasonably stable and appropriate population of Thinly-Traded Securities. To the extent that Nasdaq determines that these waiting periods are either too long, in that they impede deserving securities from joining or graduating from the Thinly-Traded Securities tier, or too short, in that they allow for securities to enter or leave the tier before they are truly ready to do so, then Nasdaq will file proposals to make adjustments.

⁴⁷ Again, to simplify the opt-in and opt-out processes, Nasdaq proposes to make decisions effective at the outset of a quarter. Nasdaq also believes that this approach will give

Nasdaq further proposes that, at any time, an issuer of a Thinly-Traded Security may request to opt-out of such treatment for its Security, thus triggering reinstatement of UTP. Such a request would become effective on the first day of the quarter that immediately follows Nasdaq's receipt of the request, unless Nasdaq receives the request less than 45 days prior to the first day of that quarter, in which case the removal from the tier and reinstatement of UTP will become effective on the first day of the next quarter thereafter.

C. Treatment When ADV Exceeds Threshold; Re-Entry; Restrictions on Status; Delisting

Nasdaq proposes that when a security which initially qualifies as a Thinly-Traded Security – and for which the issuer has opted to terminate UTP – ceases to qualify as such because the ADV of trading in such securities exceeds 100,000 shares during each of six consecutive months, then Nasdaq will remove the security from the Thinly-Traded Securities tier, transfer it to another applicable listing tier for which it qualifies, and restore UTP trading of the security, effective on the first day of the quarter immediately following Nasdaq's determination that the Security no longer qualifies as a Thinly-Traded Security, unless Nasdaq makes its determination less than 45 days prior to the first day of that quarter, in which case the removal and restoration will become effective on the first day of the next quarter thereafter. Nasdaq believes that requiring a security to trade above the ADV threshold for six consecutive months before “graduating” it from the Thinly-Traded Security tier will help ensure that a security will not rejoin a main market tier prematurely, but instead it will do so only after it achieves a sustained level of trading activity that is sufficient to demonstrate its readiness to trade successfully on multiple venues and to do so without supportive measures.

Once a security graduates from the Thinly-Traded Security tier, Nasdaq proposes to restrict the security from opting to re-enter the Thinly-Traded tier for a period of at least six months following its last exit therefrom. Again, Nasdaq proposes this restriction to ensure that a security does not re-enter the Thinly-Traded tier prematurely and also to reduce operational complexity for industry participants that could be caused by securities moving in and out of UTP restricted status.

Finally, Nasdaq notes that if a security qualifies as a Thinly-Traded Security, but fails to satisfy any one of the continued listing requirements for the Nasdaq Capital Market at any time during its inclusion in the Thinly-Traded Securities tier, then the security will be subject to delisting from Nasdaq, pursuant to Nasdaq's generally-applicable delisting procedures.⁴⁸

D. Over-the-Counter Trading of Thinly-Traded Securities

issuers and investors time to prepare in advance of changes to the UTP trading of securities.

⁴⁸ See Nasdaq Rule 5800 Series.

In this Application, Nasdaq does not request that the Commission prohibit or restrict over-the-counter (“OTC”) trading of Thinly-Traded Securities for which UTP is terminated.⁴⁹ Although Nasdaq believes that prohibiting or restricting OTC trading of such Securities would serve to maximize the liquidity-concentrating effects of UTP termination, Nasdaq also recognizes that such a prohibition or restriction could adversely impact investors that trade OTC to achieve certain strategies, including effective execution of block trades and the attainment of price improvement opportunities. If a prohibition or restriction is not carefully calibrated, the costs to investors might outweigh the benefits to issuers. Nasdaq believes that the issue deserves further study. Accordingly, Nasdaq respectfully requests that the Commission consider carefully and solicit public comment as to whether or not to prohibit or restrict OTC trading of Thinly-Traded Securities, except perhaps for large block trades and in circumstances where OTC trading involves significant price improvement opportunities.

E. Regulation NMS

While Nasdaq proposes that the Commission terminate the UTP trading of Nasdaq-listed Thinly-Traded Securities, these securities will continue to be NMS stocks.⁵⁰ That is, Thinly-Traded Securities will remain “Eligible Securities” pursuant to the Nasdaq UTP Plan, and quotations and trades in those securities will continue to be reported pursuant to that Plan as they are today.⁵¹ Nasdaq believes that, if UTP trading in Thinly-Traded Securities is terminated, this approach will preserve Commission regulation to ensure fair and nondiscriminatory access to quotation and trade information in Thinly-Traded Securities that is currently available today in these securities, promoting transparency and continuity and thereby protecting investors.

Relatedly, if UTP trading in Thinly-Traded Securities is terminated, Nasdaq would not put the Thinly-Traded Securities on a separate proprietary data feed. To the extent that market data information about Thinly-Traded Securities is already included as part of Nasdaq proprietary data products, Nasdaq would not impose any Thinly-Traded Security specific fee increases for those data products if UTP trading were terminated for those securities.

Further, in recognition of the fact that Nasdaq-listed Thinly-Traded Securities would no longer trade on other exchanges via UTP, Nasdaq would propose to remove quotation and

⁴⁹ This is consistent with the Commission’s position, as it expressed in the Statement. See Statement, supra, at 56958 (“At this time, the Commission’s initiative is focused on encouraging on-exchange innovation for thinly traded securities and is not intended to address OTC trading of these securities.”).

⁵⁰ An NMS stock is defined as any NMS security other than an option. See 17 CFR 242.600(b)(47). An NMS Security is defined as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.” See 17 CFR 242.600(b)(46).

⁵¹ Section II of the Nasdaq UTP Plan defines an Eligible Security as “any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200.” Eligible Securities do not include “any security that is defined as an ‘Eligible Security’ within Section VII of the Consolidated Tape Association Plan.”

trading activity in Thinly-Traded Securities from the current revenue allocation formula, which would be accomplished through an amendment to the Nasdaq UTP Plan.⁵²

To the extent that Thinly-Traded Securities remain NMS Securities, the current definitions and requirements set forth in Regulation NMS⁵³ that apply to NMS stocks and to national securities exchanges and market centers that trade NMS stocks would continue to apply to Thinly-Traded Securities⁵⁴ other than those that pertain to the requirements of the Order Protection Rule. For example, the current limitations on access fees would continue to apply.⁵⁵ Similarly, market-wide regulatory initiatives, such as National Market System Plan to Address Extraordinary Market Volatility, and exchange rules relating to clearly erroneous executions, would not be affected by this proposal. Nasdaq would continue to apply these requirements to the Thinly-Traded Securities as it does today.

F. Resiliency

In the Statement, the Commission expressed concern that Thinly-Traded Securities that trade on a single exchange would be at heightened risk in the event of a failure of the listing exchange's systems.⁵⁶ Nasdaq intends to mitigate this risk by ensuring that a robust "hot-hot" backup system is in place to quickly restore or prevent a disruption in trading in and

⁵² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (S7-10-04) (noting that, "[a]s with any other aspects of the [joint industry] Plans, the language added to the Plans by the Allocation Amendment can be adjusted in the future pursuant to the normal process of Commission approved amendments.").

⁵³ See 17 CFR 242.600 *et seq.*

⁵⁴ The following rules and requirements in Regulation NMS apply to NMS stocks and national securities exchanges and market centers that trade NMS stocks:

- Definition of NMS stock (Rule 600);
- Dissemination of transaction reports and last sale data with respect to transactions in NMS stocks (Rule 601);
- Dissemination of quotations in NMS securities (Rule 602);
- Distribution and display of information in NMS stocks (Rule 603);
- Display of customer limit orders (Rule 604);
- Disclosure of order execution information (Rule 605);
- Disclosure of order routing information (Rule 606);
- Access to quotations (Rule 610);
- Order Protection Rule (Rule 611); and
- Minimum pricing increment (Rule 612).

⁵⁵ See 17 CFR 242.610(c).

⁵⁶ See Statement, *supra*, at 56958.

dissemination of data regarding Thinly-Traded Securities in the event of a systems failure. Nasdaq also would designate another exchange as a back-up listing exchange for Thinly-Traded Securities, much as it does now for its primary listings and for its closing cross.⁵⁷

IV. Basis for Application

In accordance with Section 12(f) of the Act,⁵⁸ Nasdaq believes that terminating UTP trading for Nasdaq-listed Thinly-Traded Securities is necessary or appropriate in the public interest or for the protection of investors.

First, although UTP may promote competition and price discovery in more liquid issuers, Nasdaq believes that UTP may exacerbate market fragmentation, and thereby negatively impact market quality for Thinly-Traded Securities, which tend to have smaller market capitalizations and are, on average, less liquid than stocks with larger market capitalizations. As the Commission describes in its Statement and the Staff Background Paper, market participants are apt to experience difficulties in sourcing liquidity in Thinly-Traded Securities when it is spread out among multiple venues.⁵⁹ Terminating UTP for such securities would concentrate the thin liquidity for such Securities on a single venue, which would facilitate order interaction, narrow spreads, lower transaction costs, and increase simplicity and efficiency in the trading of Thinly-Traded Securities.

Second, Nasdaq believes that terminating UTP trading in Nasdaq-listed Thinly-Traded Securities will promote market quality by, among other things, promoting the submission of displayed limit orders in those securities. Displayed limit orders facilitate price discovery, a fact recognized by the Commission in affording displayed limit orders at the best price enhanced treatment under the Order Protection Rule.⁶⁰ Terminating UTP trading for Thinly-Traded Securities would allow the trading of those securities, including the posting of limit orders and the submission of contra-side marketable orders, to be concentrated on a single market. This

⁵⁷ Nasdaq notes that NYSE Arca, Inc. is already the official designated back-up exchange in the event of a systems disruption. See Securities Exchange Act Release No. 77309 (March 7, 2016), 81 FR 13007 (March 11, 2016) (SR-NASDAQ-2016-035). Nasdaq also operates two other equities exchanges, Nasdaq BX and Nasdaq PSX that could also serve as back-ups.

⁵⁸ See 17 U.S.C. § 78l(f).

⁵⁹ See Statement, supra, at 56956 (“In particular, thinly traded securities, which are often also smaller-capitalization securities, tend to have wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors. Potential investors in such securities also may be concerned that they could encounter difficulties finding the necessary liquidity to establish or unwind positions in the stocks.”); see Staff Background Paper, supra, at 10-13 (noting that multiple participants in the SEC Staff Roundtable on the Market Structure for Thinly Traded Securities described difficulties and costs associated with sourcing limited liquidity that is spread out among numerous exchange venues).

⁶⁰ 17 CFR 242.611.

would increase the potential for limit orders in those securities to be executed, which would incentivize the submission of limit orders in the Thinly-Traded Securities and promote the price discovery process in those securities.

Third and as explained earlier in the Application, Nasdaq also believes that the ability to terminate UTP trading will unlock innovations in market structure that may not be feasible or effective in an environment where stocks trade via UTP. Such innovations, when combined with UTP termination, have the potential not only to improve the listing and trading of Thinly-Traded Securities, but also more broadly to re-fill the pipeline of SMEs that access the public capital markets, to increase opportunities for retail and other investors to share in the growth and development of those SMEs, and to create new jobs and other economic benefits.

Fourth, Nasdaq believes that terminating UTP for Nasdaq-listed Thinly-Traded Securities would reduce market complexity, promote market stability, and promote efficiency. If the number of venues that trade Nasdaq-listed Thinly-Traded Securities was limited only to Nasdaq, then market participants would no longer need to link to multiple venues for purposes of price discovery or trade execution for these securities. Additionally, Nasdaq believes that concentrating all exchange trading in Thinly-Traded Securities listed on Nasdaq may assist broker-dealers in meeting their best execution obligations, and would further the recommendation of the Treasury Report for simplifying brokers' best execution obligations.⁶¹ Furthermore, concentrating all exchange trading in the Thinly-Traded Securities listed on Nasdaq would consolidate the surveillance of exchange trading in those securities on Nasdaq, which would increase regulatory efficiency and may foster innovation in surveillance methods and patterns. Finally, order types and artificial time delays designed specifically to accommodate regulations for a fragmented market could be removed, increasing market simplicity.

Lastly, Nasdaq notes that the Department of Treasury has endorsed Nasdaq's position on UTP suspension in its report on capital markets.⁶² Specifically, Treasury recommended "issuers of less-liquid stocks, in consultation with their underwriter and listing exchange, be permitted to partially or fully suspend UTP for their securities and select the exchanges and venues upon which their securities will trade."⁶³ The report noted that "[c]onsolidating trading to fewer venues would simplify the process of making markets in those stocks and thereby encourage more market makers to provide more liquidity in those issues." The report also noted that issuers "have a unique interest in promoting the liquidity of their stocks and balancing the interests of market-makers and investors."⁶⁴

V. Objectives of and Metrics of Success for the Application

In submitting this Application, the objectives of the Exchange, again, are to enhance the listing and trading environments for Nasdaq-listed Thinly-Traded Securities, to remove

⁶¹ See Treasury Report, supra, at 65-66.

⁶² Id. at 60.

⁶³ Id.

⁶⁴ Id.

disincentives for the issuers of such securities to resort to the public capital markets, to broaden investment opportunities for retail and other investors, and to help SMEs to develop and grow in ways that create jobs, lift communities, and provide other attendant economic and social benefits. The Exchange does not, however, deem it an objective or as an essential metric of the success of its proposals that a Thinly-Traded Security graduates from its status as such and rejoins the general population of Nasdaq-listed equity securities that trade with UTP. Nasdaq recognizes that for many small security issues, there is inherently less trading interest than there is in larger issues, such that even with supportive measures such as those that the Exchange describes in its Application, trading in these securities may never achieve the high levels of activity that larger and more established issues have achieved. Thus, the Exchange believes that the relevant metrics of success of its Application will be whether the consolidation of trading onto a single exchange, when combined with the other listing and trading measures discussed above, collectively improve the trading and listing environments for Thinly-Traded Securities, including by, among other things:

- Narrowing bid/ask spreads for Thinly-Traded Securities relative to existing metrics;
- Increasing the depth of liquidity for Thinly-Traded Securities on a single order book relative to multiple order books;
- Increasing the submission of limit orders for Thinly-Traded Securities due to the global enforcement of time priority that accompanies consolidation of orders onto a single order book. This enforcement rewards early submitters of price-improving limit orders, thus incentivizing the submission of limit orders generally.
- Increasing trading activity for Thinly-Traded Securities relative to existing activity levels – again, with the understanding any uptick in trading activity may not be sufficient to graduate a security from its status as “Thinly-Traded.”
- Increasing the numbers of issuances of SMEs and other companies earlier in their growth cycle that enter and remain in the public market.

VI. Competitive Impact of Application

Although several commenters on the Statement have expressed concerns about the competitive impact of UTP termination,⁶⁵ the Exchange believes that its Application will have a positive overall impact on competition and that any potential negative impacts would be limited.

For example, the Exchange expects that competition among exchanges for listing services would increase upon approval of the Application. Other listing exchanges would likely follow Nasdaq by seeking similar authority to revoke UTP for their similar listed companies. The listing exchanges would then each vie for the right to list Thinly-Traded Securities exclusively, including by augmenting the value of their listing services and by competing on the prices of

⁶⁵ See Cboe Letter, *supra*; see also Letter from J. Ferraro, Deputy General Counsel, MIAX Exchange Group to V. Countryman, dated November 18, 2019, at <https://www.sec.gov/comments/s7-18-19/s71819-6437015-198647.pdf>.

those services. Because issuers of Nasdaq-listed Thinly-Traded Securities could, at any time, either switch their exclusive listings to other exchanges or opt to resume trading of their Securities on multiple exchanges, exchanges that exclusively list Thinly-Traded Securities would maintain strong incentives to continue offering competitive listing services and fees to issuers of such Securities, lest they will lose the listing or the exclusivity associated with it. Furthermore, the Application would enable the exchanges to compete for listings, not only on the basis of their listing services and fees, but also on the basis of their trading services. That is, when an issuer contemplates listing its Thinly-Traded Securities on an exchange where it will trade exclusively, the issuer will likely evaluate which listing exchange offers the most favorable trading environment for those Securities. The ability of exchanges to compete for listings on the basis of their trading services is limited today, as a number of market commentators have noted.⁶⁶

Although as a result of the Application, exchanges would no longer compete directly with one another for orders in Nasdaq-listed Thinly-Traded Securities in which UTP is terminated, competition for such order flow is presently stymied in the current environment due to constraints on innovation. In any event, Nasdaq believes that any negative impact of a reduction in direct competition for such orders will be more than offset by countervailing benefits to market participants and investors. As discussed earlier, such countervailing benefits include narrower spreads, lower transaction costs, increased trading simplicity and efficiency, and an overall improvement in the quality of markets for Thinly-Traded Securities. Moreover, competition among exchanges to list and trade Thinly-Traded Securities exclusively will incentivize exchanges to offer innovative and attractive trading services and fees. Last but not least, Nasdaq notes that the Application will not impact competition for Thinly-Traded order flow among OTC venues and exclusive listing exchanges.

Similarly, while the termination of UTP would limit sources of market data for Thinly-Traded Securities, Nasdaq proposes to mitigate any ensuing adverse competitive impacts, including by committing itself to refrain from establishing new proprietary data products for such Securities and by not imposing any Thinly-Traded Security specific fee increases for its existing proprietary data products.

The Exchange does not expect the Application to affect competition between broker-dealers and exchanges, between competing broker-dealers, or between firms that are vendors to broker-dealers and/or exchanges.

VI. Conclusion

Much of the thrust of regulatory action on equity market structure over the past 20 years has been to strike a balance between competition and consolidation. The Application seeks to retain the realized benefits of competition while increasing liquidity in the trading of smaller stocks. If approved, the Application would increase the level of consolidation in order flow for securities where the level of order flow is already low. Consolidating liquidity for smaller companies this way would improve market quality for these securities. Improved market quality would lower investors' illiquidity discount, reduce the cost of capital, and improve the capital

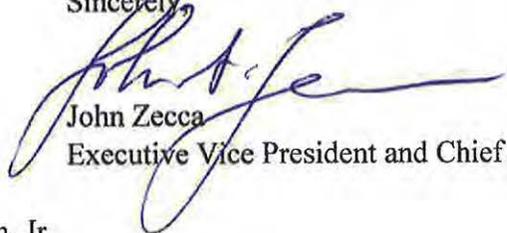
⁶⁶ See <https://www.marketplace.org/2016/03/16/business/stock-exchanges>.

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formation process for smaller companies. In short, terminating UTP as this Application requests is both consistent with the statutory requirements of Section 12(f) of the Act, and would allow the SEC to advance all aspects of its tripartite mission.

Nasdaq appreciates the Commission's thoughtful consideration of this Application, and looks forward to discussing this Application with the staff. In the interim, please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Zecca", written over the typed name and title.

John Zecca

Executive Vice President and Chief Legal Officer

cc: Commissioner Robert J. Jackson, Jr.
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Commissioner Allison H. Lee
Brett Redfearn, Director of the Division of Trading and Markets
William Hinman, Director of the Division of Corporation Finance
S.P. Kothari, Director of the Division of Economic and Risk Analysis
Robert Stebbins, Director of the Office of the General Counsel