

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75257; File No. SR-NASDAQ-2015-055)

June 22, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change Regarding NASDAQ Last Sale Plus

I. Introduction

On May 11, 2015, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a market data product called NASDAQ Last Sale Plus (“NLS Plus”). The proposed rule change was published for comment in the Federal Register on May 21, 2015.³ No comments on the proposed rule change have been received. The Commission is publishing this Order to approve the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rule 7039 (NASDAQ Last Sale Data Feed) to include the NLS Plus data feed, which is offered by NASDAQ OMX Information LLC.⁴ Currently, Rule 7039 contains the NASDAQ Last Sale data feed (“NLS”). NLS consists of “NLS for NASDAQ,” which is a real-time data channel that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ Trade Reporting Facility

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74972 (May 15, 2015), 80 FR 29370 (“Notice”).

⁴ NASDAQ OMX Information LLC is a subsidiary of The NASDAQ OMX Group, Inc. (“NASDAQ OMX”).

(“FINRA/NASDAQ TRF”). NLS also consists of “NLS for NYSE/NYSE MKT,” which provides real-time last sale information over a second data channel including execution price, volume, and time for NYSE- and NYSE MKT-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF.⁵

Content of NLS Plus

NLS Plus contains the three last sale products offered by each of NASDAQ OMX’s three U.S. equity markets.⁶ Thus, NLS Plus includes all transactions from all of NASDAQ OMX’s equity markets, as well as the FINRA/NASDAQ TRF data that is included in the current NLS product.

NLS Plus also contains cumulative consolidated volume (“consolidated volume”) of real-time trading activity across all U.S. exchanges for Tape C securities⁷ and 15-minute delayed information for Tape A and Tape B securities.⁸ NLS Plus features total cross-market volume information at the issue level, thereby providing redistribution of consolidated volume information from the securities information processors (“SIPs”) for Tape A, B, and C securities.

⁵ These products are available via two separate data channels.

⁶ The NASDAQ OMX U.S. equity markets include The NASDAQ Stock Market (“NASDAQ”), NASDAQ OMX BX (“BX”), and NASDAQ OMX PSX (“PSX”) (together known as the “NASDAQ OMX equity markets”). The Exchange represents that PSX and BX will shortly file companion proposals regarding NLS Plus. NLS includes last sale information from the FINRA/NASDAQ TRF, which is jointly operated by NASDAQ and FINRA. Accordingly, NASDAQ expects that FINRA will submit a proposed change to FINRA Rule 7640A with respect to NLS Plus.

⁷ Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges (“UTP”) Plan.

⁸ Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation’s (“SIAC”) Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS (“CTA”).

Similar to NLS, NLS Plus offers data for all U.S. equities via two separate data channels: the first data channel reflects NASDAQ, BX, and PSX trades with real-time consolidated volume for NASDAQ-listed securities; and the second data channel reflects NASDAQ, BX, and PSX trades with delayed consolidated volume for NYSE, NYSE MKT, NYSE Arca and BATS-listed securities.⁹

In addition to last sale information, NLS Plus also disseminates the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID (together the “data elements”). NLS Plus also features and disseminates the following messages: Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary (together the “messages”).¹⁰ NASDAQ states that these data elements and messages are the

⁹ These NLS Plus channels are each made up of a series of sequenced messages so that each message is variable in length based on the message type and is typically delivered using a higher level protocol. NLS Plus Channel 1 contains NASDAQ trades with real time consolidated volume for NASDAQ listed (Tape C) securities. NLS Plus Channel 2 contains NASDAQ trades with delayed (15 minutes) consolidated volume for NYSE, NYSE Market, NYSE Arca, and BATS listed (Tape A and Tape B) securities.

¹⁰ The Reg SHO Short Sale Price Test Restricted Indicator message is disseminated intra-day when a security has a price drop of 10% or more from the adjusted prior day’s NASDAQ Official Closing Price. Trading Action indicates the current trading status of a security to the trading community, and indicates when a security is halted, paused, released for quotation, and released for trading. Symbol Directory is disseminated at the start of each trading day for all active NASDAQ and non-NASDAQ-listed security symbols. Adjusted Closing Price is disseminated at the start of each trading day for all active symbols in the NASDAQ system, and reflects the previous trading day’s official closing price adjusted for any applicable corporate actions; if there were no corporate actions, however, the previous day’s official closing price is used. End of Day Trade Summary is disseminated at the close of each trading day, as a summary for all active NASDAQ- and non-NASDAQ-listed securities. IPO Information reflects IPO general administrative messages from the UTP and CTA Level 1 feeds for Initial Public Offerings for all NASDAQ- and non-NASDAQ-listed securities.

same as in and are sourced from NLS, BX Last Sale, and PSX Last Sale, except consolidated volume and Bloomberg ID, which are sourced from other publicly accessible or obtainable resources.

Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed (“UTDF”) and delayed trades reported via CTA. NASDAQ OMX calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ OMX) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC’s Consolidated Tape System (“CTS”) for the issue symbol. The Exchange calculates the real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ OMX) trading venues as reported via the CTS data feed.

The second data point that is not sourced from NLS, BX Last Sale, and PSX Last Sale is Bloomberg ID. NASDAQ states that this composite ID is a component of Bloomberg’s Open Symbology and acts as a global security identifier that Bloomberg assigns to securities, and is available free of charge.¹¹

NASDAQ states that NLS Plus may be received by itself or in combination with NASDAQ Basic.¹² If a subscriber chooses to receive NLS Plus in combination with NASDAQ

¹¹ See <http://bsym.bloomberg.com/sym/pages/bbgid-fact-sheet.pdf>
http://bsym.bloomberg.com/sym/pages/NASDAQ_Adopts_BSYM.pdf.

¹² NASDAQ Basic provides the information contained in NLS, together with NASDAQ’s best bid and best offer. See NASDAQ Rule 7047.

Basic, the subscriber receives all of the elements contained in NLS Plus as well as the best bid and best offer information provided by NASDAQ Basic.

The Exchange believes that market data distributors may use the NLS Plus data feed to feed stock tickers, portfolio trackers, trade alert programs, time and sale graphs, and other display systems. NASDAQ notes that NLS Plus provides investors with options for receiving market data that parallel products currently offered by BATS and BATS Y, EDGA, and EDGX and NYSE equity exchanges.¹³

Distribution of NLS Plus

The Exchange states that NASDAQ OMX Information LLC distributes no data that is not equally available to all market data vendors. NASDAQ further states that NASDAQ OMX Information LLC has no competitive advantage over other market data vendors as it receives data from the exchange that is equally available to other market data vendors, with the same information distributed to NASDAQ OMX Information LLC at the same time it is distributed to other vendors.

The Exchange represents that the path for distribution by the Exchange of NLS Plus is not faster than the path for distribution that would be used by a market data vendor to distribute an independently created NLS Plus-like product. As such, NASDAQ states that the proposed NLS Plus data feed is a data product that a competing market data vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and with BX and PSX being equity markets

¹³ See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (SR-BATS-2014-055; SR-BYX-2014-030; SR-EDGA-2014-25; SR-EDGX-2014-25) (approving BATS One Data Feed). See also Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (approving NYSE Best Quote & Trades Data Feed).

owned by NASDAQ OMX, the Exchange represents that the source of the market data it would use to create proposed NLS Plus is available to other vendors. The Exchange further represents that NASDAQ, BX, and PSX will continue to make available these individual underlying data elements, and thus, that the source of the market data that the Exchange would use to create the proposed NLS Plus is the same as what is available to other market data vendors.

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

Fees for NLS Plus

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

Miscellaneous Changes

The Exchange also proposes two housekeeping changes. In the Rule 7039 title, the Exchange adds the phrase “and NASDAQ Last Sale Plus” to make it clear that the rule contains both NLS and NLS Plus. In section (a), the Exchange adds the phrase “NASDAQ Last Sale” to make it clear that section (a), (b), and (c) refers only to NLS.

III. Discussion and Commission Findings

After carefully considering the proposal the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 11A(c)(1)(C) of the Act¹⁵

¹⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ Section 11A(c)(1)(C) of the Act requires, among other things, that no self-regulatory organization, member thereof, securities information processor, broker or dealer make

and with Rule 603(a)(2) of Regulation NMS thereunder,¹⁶ which requires that any national securities exchange, national securities association, broker, or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹⁷

The Commission notes that, to create NLS Plus, the Exchange would use underlying data feeds that belong to the NASDAQ OMX Equity Markets: NLS, BX Last Sale and PSX Last Sale. Accordingly, the Commission's review of the Exchanges' proposals has focused, in particular, on whether the proposals would result in affiliated exchanges—which are separate self-regulatory organizations under the Act—making their data products or services available to one

use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish or prepare for distribution or publication any information with respect to quotations for or transactions in any security other than an exempted security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act to assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by an exclusive processor of such information acting in such capacity. 15 U.S.C. 78k-1(c)(1)(C).

¹⁶ 17 CFR 242.603(a)(2).

¹⁷ 15 U.S.C. 78f(b)(5) and (b)(8).

another at terms (e.g., content, pricing, or latency) that are more favorable than those available to unaffiliated market participants.

The Exchange represents that NLS Plus would be created using underlying data feeds that are available for subscription by vendors. In recognition that the Exchange is the source of its own market data and that it is affiliated with the other NASDAQ OMX equity markets, the Exchange also represents that it will continue to make available all of the individual underlying feeds and that the source of the market data they would use to create the proposed NLS Plus feed is the same as the source available to competing vendors.

With respect to latency, the Exchange represents that a competing vendor could obtain the underlying data feeds on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed NLS Plus feed and could provide the same kind of product to its customers with the same latency they could achieve by purchasing the NLS Plus feed from NASDAQ.¹⁸ The Exchange also represents that it has designed the NLS Plus feed so that it will have no advantages over a competing vendor with respect to the speed of access to the underlying feeds.

¹⁸ The Exchange represents that, in order to create NLS Plus, the system creating and supporting NLS Plus receives the individual data feeds from each of the NASDAQ OMX equity markets and, in turn, aggregates and summarizes that data to create NLS Plus and then distribute it to end users. The Exchange further represents that this is the same process that a competing market data vendor would undergo should it want to create a market data product similar to NLS Plus to distribute to its end users. The Exchange also represents that a competing market data vendor could receive the individual data feeds from each of the NASDAQ OMX equity markets at the same time the system creating and supporting NLS Plus would for it to create NLS Plus. Therefore, a competing market data vendor could obtain the underlying data elements from the NASDAQ OMX equity markets on the same latency basis as the system that would be performing the aggregation and consolidation of proposed NLS Plus, and provide a similar product to its customers with the same latency they could achieve by purchasing NLS Plus from the Exchange. The Exchange further represents that it would access the underlying NLS feed from the same point as would a market data vendor.

With respect to pricing, although specific fees to be charged for NLS Plus are not part of the proposed rule change, the Exchange represents that the pricing will reflect the incremental cost of the aggregation and consolidation function for NLS Plus, and would not be lower than the cost to a vendor creating a competing product, including the cost of receiving the underlying data feeds. The Exchange further represents that the pricing it would charge clients for NLS Plus would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

Based on the Exchange's representations with respect to the content, latency, and pricing of NLS Plus—which are central to the Commission's analysis of the proposal—the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges. The Commission believes that these representations are designed to ensure that the NASDAQ OMX equity markets, which are separate self-regulatory organizations, do not, because of their relationship as affiliates, offer one another products or services on a more favorable basis than that available to other competing market participants.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 11A(c)(1)(C) of the Act and Rule 603(a)(2) of Regulation NMS thereunder,¹⁹ and Sections 6(b)(5) and (b)(8) of the Act.²⁰

¹⁹ 15 U.S.C. 78k-1(c)(1)(C) and 17 CFR 242.603(a)(2).

²⁰ 15 U.S.C. 78f(b)(5) and (b)(8).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NASDAQ-2015-055) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett
Deputy Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).