

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82302; File No. SR-NASDAQ-2017-126)

December 12, 2017

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange Fees at Rules 7023, 7044, 7045 and 7048 to Withdraw Four Rarely-Purchased Products From Sale

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 30, 2017, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Exchange’s fees at Rules 7023, 7044, 7045 and 7048 to withdraw four rarely-purchased products from sale: Historical ModelView Information, Nasdaq Custom Data Feeds, the Nasdaq Market Pathfinders Service, and the PORTAL Reference Database.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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.

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

1. Purpose

The purpose of the proposed rule change is to withdraw four rarely-purchased products from sale – Historical ModelView Information, Nasdaq Custom Data Feeds, the Nasdaq Market Pathfinders Service, and the PORTAL Reference Database – as the Exchange performs an ongoing review of its product offerings.

ModelView

Historical ModelView Information (“ModelView”), set forth in Rule 7023(f), provides historical information regarding aggregate displayed and hidden liquidity at each price level in the Nasdaq Market Center on a T+10 basis. The information is aggregated at each price level and is designed to be used by developers of automated trading and order-routing models to improve Nasdaq trading efficiency and help firms understand how to minimize price impact with large orders. Information is useful for historical analysis, and does not reveal information about reserve size posted by any specific market participant.

Nasdaq Custom Data Feeds

Nasdaq Custom Data Feeds, described at Rule 7048, is a data feed service that allows Nasdaq to accommodate individual subscribers’ requests for market data feeds containing a specified combination of data elements that would otherwise be delivered on multiple data feeds.

These customized data feeds provide each customer with the ability to receive a unique combination of functionality and content.

#### Pathfinders

As set forth in Rule 7044, the Nasdaq Market Pathfinders Service (“Pathfinders”) is “a real time data product that tracks the aggregated market activity of certain market participants who are aggressively buying and/or selling.” The product identifies bullish or bearish positions taken by three or more market participants over an extended period of time and captures the aggregate sentiment of this well-informed group by indicating the number of Pathfinders bullish versus bearish in a particular stock, as well as the ratio of shares bought versus sold.

#### PORTAL Reference Database

PORTAL securities are restricted securities.<sup>3</sup> The PORTAL Reference Database, set forth in Rule 7045, is an electronic reference database of information culled from PORTAL offering documents and applications submitted to Nasdaq since 1990. The database is fully electronic and allows users to determine the PORTAL issue’s name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination,

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<sup>3</sup> PORTAL securities are defined in the text of Rule 7045 as “restricted securities, as defined in SEC Rule 144(a)(3) under the Securities Act; or securities that, pursuant to contract or through terms of the security, upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering that were designated for inclusion in the PORTAL Market by Nasdaq. PORTAL equity securities are PORTAL securities that represent an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or nonexercisable, callable or non-callable, redeemable or non-redeemable). PORTAL debt securities are PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations.”

applicable interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation, as well as other information. The database is open to all market participants.<sup>4</sup>

### Proposed Changes

The Exchange proposes to withdraw ModelView, Nasdaq Custom Data Feeds, Pathfinders, and the PORTAL Reference Database from sale. As a result of an ongoing review of its product offerings, the Exchange has elected to withdraw these products due to the evolution of the market, including the competitive forces of operating an Exchange, market feedback, and the advancement of market structure since the products were introduced.

The products are all between nine and twelve years old. ModelView was introduced in 2005,<sup>5</sup> Nasdaq Custom Data Feeds in 2006,<sup>6</sup> Pathfinders in 2008,<sup>7</sup> and the PORTAL Reference Database in 2008,<sup>8</sup> and yet a sustained lack of customer interest over that period has rendered continued investments in these products impractical and unwise. Indeed, ModelView and Pathfinders have fewer than ten customers combined, and Nasdaq Custom Data Feeds and the

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<sup>4</sup> Nasdaq no longer designates securities as PORTAL securities. This is an historical database only, and the information contained within that database is, and will continue to be, widely available after this product is withdrawn.

<sup>5</sup> See Securities Exchange Act Release No. 51851 (June 14, 2005), 70 FR 35752 (June 21, 2005) (SR-NASD-2005-060); Securities Exchange Act Release No. 52112 (July 22, 2005), 70 FR 43917 (July 29, 2005) (approval order).

<sup>6</sup> See Securities Exchange Act Release No. 54959 (December 18, 2006), 71 FR 77842 (December 27, 2006) (SR-NASDAQ-2006-056); Securities Exchange Act Release No. 59579 (March 13, 2009), 74 FR 12167 (March 23, 2009) (approval order).

<sup>7</sup> See Securities Exchange Act Release No. 58145 (July 11, 2008), 73 FR 41143 (July 17, 2008) (SR-NASDAQ-2008-016); Securities Exchange Act Release No. 59266 (January 16, 2009), 74 FR 4799 (January 27, 2009) (approval order).

<sup>8</sup> See Securities Exchange Act Release No. 58622 (September 23, 2008), 73 FR 56876 (September 30, 2008) (SR-NASDAQ-2008-072); Securities Exchange Act Release 58891 (October 30, 2008), 73 FR 66090 (November 6, 2008) (approval order).

PORTAL Reference Database have no customers. Advancements in market structure over the last ten years, coupled with a lack of customer interest, caused the Exchange to conclude that the products should be discontinued. While the Exchange does not believe any concerns about the products would be warranted, in the case of ModelView and Pathfinders, some customers have recently posed questions regarding the types of information included in the product. The Exchange would not offer a data product that it believed to be detrimental to the market, but Pathfinders and ModelView simply did not earn enough revenue to justify the costly undertaking of upgrading them. Accordingly, the Exchange has elected to discontinue these low-revenue products.

The Exchange proposes these changes so that it can remain competitive among exchanges and other competitors. Data products such as ModelView, Nasdaq Custom Data Feeds, Pathfinders, and the PORTAL Reference Database are a means by which exchanges compete to attract order flow. Customers base their order routing and purchasing decisions on total interactions with an exchange, and the market data products offered inform those decisions. In this competitive environment, the Exchange must continually review and adjust its product offerings and fees and, in this case, the Exchange has determined to jettison these four products to remain competitive.

In light of the age of these products, the small amount of revenue generated, the cost of maintenance, and the fierce competitive environment, the Exchange proposes to withdraw ModelView, Nasdaq Custom Data Feeds, Pathfinders, and the PORTAL Reference Database from the market.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In light of the age of ModelView, Nasdaq Custom Data Feeds, Pathfinders, and the PORTAL Reference Database, the small number of subscribers, and the fact that continuing to invest in unpopular products would be impractical, the Exchange believes that the proposal to remove these products from the market strikes the correct balance to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, rebate opportunities available at other venues to be more favorable, or prefer the market data offerings of another exchange. In such an environment, the Exchange must continually adjust its product offerings to remain competitive with other exchanges. Because competitors are free to modify their product offerings in response, and because market participants may readily adjust their order routing practices, the Exchange

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

believes that the degree to which changes in product offerings may impose any burden on competition is extremely limited. The Exchange does not expect the proposed withdrawal of ModelView, Nasdaq Custom Data Feeds, Pathfinders, and the PORTAL Reference Database to have a significant impact on competition. The products have few purchasers, and the Exchange has already discussed the proposal with current purchasers to ameliorate the impact of withdrawal. The products will not have any future impact on competition as the products will no longer be offered.

The proposed withdrawals illustrate the impact of market forces on the Exchange. Customers have not purchased these products in sufficient numbers to economically justify continuing to offer these products, and the Exchange therefore decided to discontinue them. That is precisely how competitive markets operate.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that, in light of the age of the products, the small number of subscribers (fewer than ten combined for ModelView and Pathfinders, and none for Nasdaq Custom Data Feeds and the PORTAL Reference Database), the impracticality of continuing to invest in these low-revenue products, and the competition among exchanges and other entities, the Exchange has determined to discontinue these products. Also, the Exchange stated that some customers have recently posed questions regarding the types of information included in ModelView and Pathfinders, and the Exchange wants to be responsive to customer feedback about products. Moreover, the Commission notes that the Exchange has already discussed the proposal with the affected customers to ameliorate any impact of the withdrawal. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

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<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-126 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2017-126. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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-2017-126 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).