

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50571; File No. SR-NASD-2004-146)

October 20, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Permanently Adopt Fees for TotalView Product

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2004, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), 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 Nasdaq. On October 12, 2004, Nasdaq filed an amendment to the proposal.³ Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders it effective upon filing with

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See October 8, 2004 letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (“Division”), Commission (“Amendment No. 1”). The original proposed rule change contained conflicting language about Nasdaq’s intent to make permanent the existing TotalView pilot program. In Amendment No. 1, Nasdaq clarified that the purpose of the proposed rule change is to make permanent the fees associated with TotalView that previously had been implemented on a pilot basis. The Commission also notes that the original proposed rule change was filed with a blank page between pages 13 and 14. Nasdaq confirmed that this was an error, and that no text is missing from the original proposed rule change. Telephone conversation between Jeffrey S. Davis, Nasdaq, and Joseph P. Morra, Commission, September 30, 2004.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

the Commission.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt permanently the TotalView data package and reduced fees assessed for those feeds. The proposed rule change will make permanent the pilot program that was in effect without making any substantive changes to the way the pilot has been operating. The text of the proposed rule change is available at NASD and at the Commission.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change 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. Nasdaq 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In November 2002, the Commission approved a proposed rule change that

⁶ Nasdaq provided the Commission with written notice of its intent to file the proposed rule change on September 21, 2004. See September 21, 2004 letter from Jeffrey S. Davis, Nasdaq, to Katherine A. England, Commission. Nasdaq asked the Commission to waive the 30-day operative delay. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on October 12, 2004, the date that Nasdaq filed Amendment No. 1. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(1), 17 CFR 240.19b-4(f)(6)(iii).

established fees assessed for several products known as “ViewSuite,” which contain data from Nasdaq’s integrated quotation and execution system.⁷ To encourage the broadest possible display of the Nasdaq market center data contained in the ViewSuite products, Nasdaq then proposed an optional pilot program to offer an enterprise-wide license to distributors.⁸ This pilot allowed each distributor to provide a ViewSuite product to large numbers of subscribers for a fixed rate based upon a multiple of the incremental cost of the ViewSuite product and the size of that distributor’s reported subscriber base.

To support broad dissemination of the data and understanding by its customers, Nasdaq subsequently simplified and reduced the pricing for ViewSuite on a pilot basis.⁹ For the one-year pilot, Nasdaq offered subscribers a single ViewSuite entitlement, described in Rule 7010(q)(5), offering professional, non-professional and distributor fees. Finally, Nasdaq later eliminated one data feed that had been contained in the ViewSuite entitlement, renamed another and expanded the data contained in the renamed feed to cover all price levels associated with an individual issue traded on Nasdaq.¹⁰ As a result, the current pilot provides purchasers and distributors with all quotes and orders of individual participants displayed within the Nasdaq market center, as well as the aggregate size of such orders at all price levels within the execution functionality of the Nasdaq market center.

⁷ Securities Exchange Act Release No. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002)(SR-NASD-2002-33).

⁸ Securities Exchange Act Release No. 47477 (March 10, 2003), 68 FR 13747 (March 20, 2003)(SR-NASD-2003-27).

⁹ Securities Exchange Act Release No. 48581 (October 1, 2003), 68 FR 57945 (October 7, 2003)(SR-NASD-2003-111).

¹⁰ Securities Exchange Act Release No. 49088 (January 16, 2004), 69 FR 3413 (January 23, 2004)(SR-NASD-2003-162).

Nasdaq has determined that the structure and pricing of the ViewSuite entitlement as currently set forth in Rule 7010(q) offer many benefits to investors and market data vendors and should be continued. To accomplish that outcome in its rule manual, Nasdaq will delete subsections (1) through (4) of paragraph (q). Subsection (5) will be retained and renumbered as subsection (1) containing the current pricing for professional and non-professional subscribers, as well as pricing for distributors of aggregated and detailed information (currently at (q)(1)(C) and (q)(2)(A)) and a 30-day free-trial period (currently at (q)(2)(C)). Subparagraphs (6) and (7) will be renumbered as subparagraphs (2) and (3) and extraneous definitions will be eliminated.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹¹ in general, and with Section 15A(b)(5) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

¹¹ 15 U.S.C. 78o-3.

¹² 15 U.S.C. 78o-3(b)(5).

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

Nasdaq has asked that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.¹⁵ The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow for a seamless transition from pilot to permanent status for Nasdaq's TotalView product. For

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁶

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2004-146 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-146. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

¹⁶ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-146 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

J. Lynn Taylor
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).