SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51869: File No. SR-NASD-2005-051)

June 17, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing
of Proposed Rule Change and Amendment No. 1 thereto to Create an Enterprise License Fee for
the TotalView Entitlement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and

Rule 19b-4 thereunder,[2] notice is hereby given that on April 13, 2005, 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, II, and III below, which Items have been prepared by

Nasdaq. On June 3, 2005, Nasdaq amended the proposed rule change. 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 modify NASD Rule 7010(q)(1)(A) to establish an enterprise license

option for the TotalView entitlement. The text of the proposed rule change is set forth below.

Proposed additions are in italics; proposed deletions are in [brackets].[3]

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7010. System Services

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

[2]   17 CFR 240.19b-4.

[3]   The proposed changes are marked from NASD Rule 7010 as it appears in the NASD
        Manual available at www.nasd.com.

(a) – (p) No change

(q) Nasdaq TotalView

    (1) No Change.

        (A)   (i) Except as provided in (q)(1)(A)(ii) <u>and (iii)</u>, for the TotalView entitlement there shall be a $70 monthly charge for each controlled device.

                (ii) <u>Except as provided in (q)(1)(A)(iii),</u> a non-professional subscriber, as defined in Rule 7010(e), shall pay $14 per month for each controlled device.

                <u>(iii) As an alternative to (q)(1)(A)(i) and (ii), a broker-dealer distributor may purchase an enterprise license at a rate of $25,000 for non-professional subscribers or $100,000 per month for both professional and non-professional subscribers. The enterprise license entitles a distributor to provide TotalView to an unlimited number of internal users, whether such users receive the data directly or through third-party vendors, and external users with whom the firm has a brokerage relationship. The enterprise license shall not apply to relevant Level 1 and NQDS fees.</u>

        (B) – (C) No Change.

    (2) – (4) No change

(r) - (v) No Change.

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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, as amended, 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

        Nasdaq continues to seek broader distribution of its TotalView data entitlement to

facilitate broader exposure of orders in the Nasdaq Market Center and improve customer

execution quality. To facilitate this objective, Nasdaq is seeking ways to reduce the cost of

providing TotalView data to large numbers of a broker-dealer's customer base. In addition, as

many brokers augment their traditional institutional customer relationship tools with one or more

electronic software applications, the need to provide cost-efficient market data on those

applications has become increasingly important.

        Accordingly, Nasdaq proposes to establish a program whereby a broker-dealer distributor

could obtain an enterprise license for the distribution of the TotalView market data entitlement

for a fixed cost of either $25,000 per month for non-professional subscribers or of $100,000 per

month for broker-dealer distributors that serve both non-professional and professional

subscribers. This enterprise license pricing structure would mirror the pricing structure already

established for individual professional and non-professional subscribers.

        This program would only be available to broker-dealers registered under the Act, and

would cover all TotalView usage fees with respect to both internal usage and re-distribution to

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customers with whom the firm has a brokerage relationship.[4]   Non-broker-dealer vendors and

application service providers would not be eligible for the enterprise license, as such firms

typically pass through the cost of market data user fees to their customers. This would enable

firms to incorporate TotalView data into the software applications they make available to their

institutional and retail customers, without providing them the opportunity to re-distribute

TotalView data in competition with pure vendors.

The enterprise license would cover fees for TotalView data received directly from

Nasdaq as well as data received from third-party vendors (e.g., Bloomberg, Reuters, etc.). Upon

signing up for the program, the relevant firm would be entitled to inform any third-party market

data vendor they utilize (through a Nasdaq-provided form) that, going forward, any TotalView

data usage by the broker-dealer may be reported to Nasdaq on a non-billable basis. Such a

structure attempts to address a long-standing concern that broker-dealers are over-billed for

market data consumed by one person through multiple market-data display devices. At the same

time, the proposed billing structure would continue to provide Nasdaq with accurate reporting

information for purposes of usage monitoring and auditing.

2.   Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the

provisions of Section 15A of the Act,[5] in general, and with Section 15A(b)(5) of the Act,[6] in

particular, in that the incorporation of an enterprise license for user fees under the TotalView

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[4]   Distributors who utilize the enterprise license would still be liable for the applicable
       distributor fees.

[5]   15 U.S.C. 78o-3.

[6]   15 U.S.C. 78o-3(b)(5).

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entitlement provides for the equitable allocation of reasonable charges among the persons distributing and purchasing this information. Nasdaq believes that the proposed pricing structure would provide meaningful cost controls to brokers, who typically absorb user fees, seeking to broadly distribute TotalView data to their customers, while preventing them from using such a license to gain an unfair competitive advantage over pure application vendors, who typically pass such costs through. Nasdaq further believes that this rule change would encourage the broader redistribution of the Nasdaq Market Center depth of book order information, thus improving transparency and thereby benefit the investing public.

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

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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A.   by order approve such proposed rule change, as amended, or

B.   institute proceedings to determine whether the proposed rule change, as amended, should be 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, as amended, 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-2005-051 on the subject line.

Paper comments:

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-051. 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 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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-2005-051 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.[7]

Margaret H. McFarland
Deputy Secretary

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[7]   17 CFR 200.30-3(a)(12).