

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55445; File No. SR-NASDAQ-2006-049)

March 12, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Incorporate Full Depth of the Nasdaq Quoting of NYSE- and Amex-Listed Stocks into the TotalView Entitlement and Modify the User Fee Schedule for TotalView Data, and to Replace Nasdaq OpenView to Provide the Individual Nasdaq Market Participants' Best Bids and Offers in NYSE- and Amex-Listed Stocks

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2006, The NASDAQ Stock Market LLC ("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 substantially by Nasdaq. 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

Nasdaq proposes to incorporate full depth of the Nasdaq quoting of NYSE- and Amex-listed stocks into the TotalView entitlement and modify the user fee schedule for TotalView data. Nasdaq also proposes to replace Nasdaq OpenView to provide the individual Nasdaq Market Participants' best bids and offers in NYSE- and Amex-listed stocks.

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

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

The text of the proposed rule change is available at Nasdaq, [www.nasdaq.com](http://www.nasdaq.com), and the Commission's Public Reference Room.<sup>3</sup>

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. 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 currently has Commission approval to offer two data entitlements containing quote and order data – commonly known as “depth of book” data – for Nasdaq-listed stocks and for NYSE/Amex-listed stocks trading on Nasdaq systems. The Commission approved both fees in 2002. First, Nasdaq received Commission approval to disseminate a “depth of book” product for Nasdaq stocks called TotalView.<sup>4</sup> TotalView originally contained data representing all quotes and orders in Nasdaq stocks trading on Nasdaq's SuperMontage system. The Commission approved an initial TotalView fee of \$150 per user per month, and later approved Nasdaq's proposal to reduce the fee to \$70 per month for professional users and \$14 per month for non-professional users.<sup>5</sup>

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<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at [www.complinet.com/nasdaq](http://www.complinet.com/nasdaq).

<sup>4</sup> See Securities Exchange Act Release No. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002) (SR-NASD-2002-33).

<sup>5</sup> See Securities Exchange Act Release No. 48581 (October 1, 2003), 68 FR 57945 (October 7, 2003) (SR-NASD-2003-111).

Second, also in 2002, the Commission approved Nasdaq's proposal to disseminate a full depth of book product for NYSE/Amex stocks. That product, called "OpenView," contained all quotes and orders for NYSE/Amex-listed stocks in Nasdaq's execution system.<sup>6</sup> The Commission-approved fee for OpenView was \$6 per user per month. Thus, market participants seeking to receive all Nasdaq market participant quote and order data for Nasdaq, NYSE, and Amex securities, paid two fees totaling \$76 for professional users and \$20 for non-professional users.

Nasdaq has augmented the TotalView product many times while holding the Commission-approved fees constant. In 2004 and 2005, Nasdaq added to TotalView all data from Nasdaq's opening and closing crosses. In March of 2005, Nasdaq added to the TotalView entitlement a separate data feed disseminating depth of book data in an unprocessed, order-by-order format. Also in 2005, Nasdaq added a separate data feed containing depth of book data from its Brut Facility.<sup>7</sup> By 2006, Nasdaq was disseminating via TotalView, depth of book data from the Nasdaq Market Center using multiple formats and multiple data feeds.

Nasdaq proposes to integrate the entitlement for full depth from Nasdaq market participants quoting in Nasdaq stocks with the full depth from Nasdaq market participants quoting in NYSE- and Amex-listed stocks, resulting in a single entitlement, to be called TotalView. This single entitlement would cost \$75 per user per month for professional users and \$14 per user per month for non-professional users, rather than the current total of \$76 and \$20 for TotalView and OpenView. In the case of non-professionals, there is

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<sup>6</sup> See Securities Exchange Act Release No. 46534 (September 23, 2002), 67 FR 61368 (September 30, 2002) (SR-NASD-2002-86).

<sup>7</sup> See Securities Exchange Act Release No. 51862 (June 16, 2005), 70 FR 36426 (June 23, 2005) (SR-NASD-2005-039).

no fee increase on account of this change, simply an increase in functionality. Users that previously subscribed to the TotalView and OpenView entitlements separately will receive a \$1 per user per month fee decrease. Only those users that had one of the companion entitlements without the other would pay more under this proposal.

Nasdaq is also proposing to distribute the best bid and offer from each Nasdaq market participant quoting in NYSE- and Amex-listed stocks in real time. As set forth in proposed Rule 7023(c), Nasdaq proposes a \$5 per user per month price for this product. Nasdaq expects that most users currently receiving full depth from Nasdaq in NYSE- and Amex-listed stocks will continue to do so via the TotalView entitlement. However, for any subscriber currently receiving only data for NYSE- and Amex-listed stocks (i.e., OpenView data), and not wishing to receive also data for Nasdaq-listed stocks, this option allows a user to continue paying at the same rate schedule for user-fees that they have in the past.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that the proposed unified fee for depth data for Nasdaq, NYSE and Amex stocks will result in a fee decrease of \$1 from the current Commission-approved fees for that data. Nasdaq will continue to make NYSE and Amex best bid and offer data available separately at a reduced rate from the current fee for depth of book data. Nasdaq believes that this proposed rule change will encourage the broader redistribution of the Nasdaq

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

depth of book information, thus improving transparency and thereby benefiting the investing public.

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. As a general matter, the Commission has long held the view that “competition and innovation are essential to the health of the securities markets. Indeed, competition is one of the hallmarks of the national market system.”<sup>10</sup> The Commission has also stated “that the notion of competition is inextricably tied with the notion of economic efficiency, and the Act seeks to encourage market behavior that promotes such efficiency, lower costs, and better service in the interest of investors and the general public.”<sup>11</sup>

The Commission goes on to state its belief “that the appropriate analysis to determine a proposal’s competitive impact is to weigh the proposal’s overall benefits and costs to competition based on the particular facts involved, such as examining whether the proposal would promote economically efficient execution of securities and fair competition between and among exchange markets and other market centers, as well as fair competition between the participants of a particular market.”<sup>12</sup>

The proposed rule change is designed to increase transparency and the efficiency of executions by enabling vendors to provide additional market data in a cost efficient

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<sup>10</sup> Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR-NASD-99-53).

<sup>11</sup> Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291, 41298 (July 20, 2006) (SR-NASDAQ-2006-001).

<sup>12</sup> Id.

manner. There is significant competition for the provision of market data to broker-dealers and other market data consumers, as well as competition for the orders that generate the data. Nasdaq fully expects its competitors to quickly respond to this proposal as they have responded to other Nasdaq data products in the past.

Moreover, market forces have shaped the market data fees that Nasdaq has charged for this product in the past and will continue to shape those fees in the future. As noted above, the Commission originally approved a fee of \$150 for TotalView. Nasdaq lowered that fee to \$70 and \$14 in response to the lack of demand by vendors and users. Vendors simply will only utilize the service unless and until they conclude that it is economically beneficial to them and to their users.

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, or
- B. institute proceedings to determine whether the proposed rule change 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 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 No. SR-NASDAQ-2006-049 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2006-049. 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 such filing also will be available for inspection and copying at the principal office of Nasdaq.

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-NASDAQ-2006-049 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).