

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52377; File No. SR-NASD-2005-051)

September 2, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Create an Enterprise License Fee for the TotalView Entitlement

I. Introduction

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”) a proposed rule change 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> to create an enterprise license fee for the TotalView entitlement. On June 3, 2005, Nasdaq amended the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on June 28, 2005.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup> On August 16, 2005, Nasdaq filed a response to the comment letter.<sup>5</sup> This order approves the proposed rule change, as amended.

II. Description of the Proposal

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 51869 (June 17, 2005), 70 FR 37144.

<sup>4</sup> See letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Christopher Gilkerson, Chair, SIA Technology & Regulation Committee, and Andrew Wels, Chair, SIA Market Data Subcommittee, dated July 19, 2005 (“SIA Letter”).

<sup>5</sup> See letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated August 16, 2005 (“Nasdaq Response Letter”).

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 and is an alternative way to pay for the data.

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 customers with whom the firm has a brokerage relationship.<sup>6</sup> Non-broker-dealer vendors and application service providers would not be eligible for the enterprise license, as such firms, according to Nasdaq, 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). Upon signing up for the program, the relevant firm would be entitled to inform any third-party market data vendor it utilizes (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.

### III. Summary of Comments

The Commission received one comment letter on the proposed rule change. The commenter expressed its support for enterprise license fees and also for the fact that the product, TotalView, “does not come with data integration strings attached.” However, the commenter

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<sup>6</sup> Distributors who utilize the enterprise license would still be liable for the applicable distributor fees.

stated its concerns that NQDS data would be linked with the TotalView data and that the cost of Brut data integrated in the TotalView entitlement is too high.<sup>7</sup> In response, Nasdaq stated that the link between NQDS data and TotalView data was added to ensure compliance with the fee schedule established by the Operating Committee of the UTP Plan, which plan has been approved by the Commission. Nasdaq further noted that the cost of Brut data integrated in the TotalView entitlement has already been approved by the Commission.<sup>8</sup>

#### IV. Discussion

The Commission has carefully reviewed the proposed rule change, the SIA Letter and the Nasdaq Response Letter and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,<sup>9</sup> the requirements of Section 15A of the Act,<sup>10</sup> in general, and Section 15A(b)(5) of the Act,<sup>11</sup> in particular, which requires that the NASD's rules provide for an equitable allocation of reasonable charges among members for the use of any facility or system which the NASD operates or controls.

The Commission believes that the 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

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<sup>7</sup> See SIA Letter.

<sup>8</sup> See Nasdaq Response Letter.

<sup>9</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

satisfies the statutory standards outlined above and will provide increased flexibility to market data vendors, which may result in increased access to market data.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASD-2005-051), as amended, be, and it hereby is, approved.

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

Jonathan G. Katz  
Secretary

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

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