

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54286; File No. SR-NASDAQ-2006-028)

August 8, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a New Service Called FilterView

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 August 4, 2006, The NASDAQ Stock Market LLC (“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. Nasdaq has filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On February 22, 2006, The Nasdaq Stock Market, Inc. (Nasdaq Inc.”), as a subsidiary of the National Association of Securities Dealers, Inc. (“NASD”), initially provided notice pursuant to Rule 19b-4(f)(6)(iii) under the Act of its intent to file the proposed rule change as an NASD rule. NASD, through Nasdaq Inc., then filed the proposed rule change (SR-NASD-2006-034) on March 3, 2006, and received confirmation through the electronic filing system that the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

rule change was received by the Commission.⁶ Later that same day, after reviewing the proposed rule change, the Commission rejected the proposed rule change because it contained inconsistencies that rendered the proposed rule change unacceptable. Due to a systems error that is still being investigated, Nasdaq Inc. did not receive notice that the Commission had rejected the proposed rule change. On July 24, 2006, Nasdaq Inc. contacted Commission Staff to inquire as to why notice of the proposed rule change had not appeared in the Federal Register. At that time, Commission Staff explained that the proposed rule change had been rejected on March 3, 2006. Because Nasdaq Inc. never received notice of the rejection, Nasdaq Inc. waited until the 30-day pre-operative waiting period expired, and then implemented FilterView and its fees as originally proposed in April.

Nasdaq filed the instant proposed rule change to allow the public the opportunity to comment on FilterView and its fees, despite the fact that the service has been implemented since April.

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

Nasdaq established a new service called FilterView that allows market data distributors to receive a sub-set of existing real-time data feed products to control bandwidth and computer processing costs. The text of the proposed rule change is below. Proposed new language is underlined; there are no proposed deletions.⁷

7037. Nasdaq FilterView Service

⁶ On August 1, 2006, Nasdaq began to operate as a national securities exchange for purposes of trading Nasdaq-listed securities.

⁷ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at www.complinet.com/nasdaq. These rules became effective on August 1, 2006 when Nasdaq commenced operations as a national securities exchange for Nasdaq-listed securities.

The Nasdaq FilterView service shall allow a Distributor to receive a sub-set of an existing real-time data feed distributed by Nasdaq. FilterView service shall be available for a subscription fee of \$500 per month per sub-set of data, in addition to the fees associated with the relevant underlying data feed. There shall be no incremental user charges for distributors related to use of the FilterView service.

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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 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

General industry trends have driven a significant increase in the rates of market-data message traffic. For example, since January 2004 the 15-second peak message rate for TotalView, Nasdaq's full depth-of-book data feed for Nasdaq-listed securities, has risen over 190 percent. Other data feeds, most notably in the options markets, are experiencing similar rates of increase. Nasdaq believes this trend is likely to continue, if not accelerate, due to the implementation of Regulation NMS and other market changes that place an even greater emphasis on automation.

As a result, distributors and brokers that use and distribute real-time market data have incurred significant incremental costs. First, the telecommunications bandwidth a firm purchases must be increased to handle the message traffic without material increases in latency or dropped information. Second, once the data is received it must be processed, with resulting hardware expenses. In some cases, the cost of receiving and processing real-time data can surpass the cost of the explicit fees charged for receiving such data. As a result, brokers and distributors are seeking ways to “filter” the data they receive (i.e., reduce the amount of data received without losing information necessary for their trading activities). Any service that can successfully filter the data without impacting data performance or integrity is considered valuable, given the savings obtained from lower telecommunications and hardware costs.

To respond to this demand, Nasdaq offers the Nasdaq FilterView service, whereby Nasdaq provides a sub-set of an existing data feed to distributors seeking to limit the network and processing costs of market data usage. Specifically, FilterView offers a variety of options to receive only a portion of a pre-existing data feed. Original offerings include pre-packaged portions of existing feeds, such as a filtered version of TotalView that only contains Net Order Imbalance Indicator information. Ultimately, clients may select their own filtering parameters (requesting to receive data only for certain stocks or other criteria) for a variety of data feeds, including data feeds sourced from third parties.

Filtered data feeds are made available through current Nasdaq data dissemination architecture. Pricing for filtered data feeds is pursuant to the existing fee structure applicable to the relevant feed, plus an additional fee of \$500 per month, per sub-set of data. For example, a firm that requested a filtered version of TotalView would pay the TotalView distributor fee (currently between \$1,000 and \$5,000 per month) plus an additional fee of \$500 per month for

receiving the data in filtered format. There is no incremental user fees assessed for distribution of data feeds provided through FilterView to end users, though normal per user fees for the relevant data feed continue to apply.

The Nasdaq FilterView service is an entirely voluntary service. Firms can either take the feed as it exists currently for the fee that is already in place, or they can voluntarily choose to filter out some of the elements for the added fee for their own pricing or competitive reasons.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Sections 6(b)(4) of the Act,⁹ 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 Nasdaq's facilities.

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.

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

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

At any time within 60 days of the filing of such 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 requested that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.¹² Because FilterView and its fees have been in operation since April 2006 and imposition of the 30-day operative delay could result in the discontinuation of current services, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

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:

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- 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-NASDAQ-2006-028 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-2006-028. 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-2006-028 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.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).