

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61700; File No. SR-NASDAQ-2010-034)

March 12, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish an Optional Non-Display Usage Cap for Internal Distributors of TotalView and OpenView

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on March 5, 2010, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared 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

The Exchange proposes to create an optional non-display usage cap of \$30,000 per month for internal distributors of TotalView and OpenView.

The text of the proposed rule change is below. Proposed new language is in italics.³

* * * * *

7023. Nasdaq TotalView

(a) No change.

(a)(1)(A) – (C) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com>.

(D) As an alternative to (a)(1)(A), (B) and (C), a market participant may purchase an enterprise license at a rate of \$30,000 per month for internal use of non-display data. The enterprise license entitles a distributor to provide TotalView and OpenView to an unlimited number of non-display devices within its firm. The enterprise license shall not apply to relevant Level 1 fees.

(a)(2) No change.

(b) – (d) 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 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 is proposing to amend Nasdaq Rule 7023 and establish an optional \$30,000 per month non-display TotalView and OpenView fee cap for internal distributors. The TotalView and OpenView fee cap would not include distributor fees. By providing this non-display usage cap, firms will have more administrative flexibility in their consumption of TotalView and OpenView information.

Currently, Nasdaq requires that internal distributors count and report each server and display device that processes TotalView-ITCH data as a professional TotalView and OpenView user. Some firms report upwards of 500 devices, while other firms report as few as one non-display device using TotalView-ITCH data.

Nasdaq proposes to permit a market participant to purchase an enterprise license at a rate of \$30,000 per month for non-display usage in a firm. As the number of devices increase, so does the administrative burden on the end customer of counting these devices. For firms that feel they are near the capped amount, this new enterprise license helps relieve this administrative burden. Additionally, firms would purchase this optional enterprise license to reduce fees so no firms would experience a fee increase as a result of this filing. Nasdaq has offered similar enterprise licenses for professional and non-professional usage of TotalView-ITCH data in the past and is expanding this service to non-display devices as well.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general and with Sections 6(b)(5) of the Act,⁵ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that this proposal is in keeping

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

with those principles by offering firms an option to increase their administrative flexibility in their consumption of TotalView and OpenView information.

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.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(6)(iii) thereunder⁷ 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 if consistent with the protection of investors and the public interest. In addition, at least five days prior to the instant filing, the Exchange provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change.

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

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6)(iii).

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.

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-NASDAQ-2010-034 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2010-034. 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 web site viewing and printing 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 Exchange. 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-2010-034 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 C.F.R. 200.30-3(a)(12). [sic]