

device⁷ and to non-professional subscribers for \$25 per month per controlled device, plus \$1,000 per distributor per month. PowerView is offered through distributors to professional subscribers for \$75 per month per controlled device and to non-professional subscribers for \$29 per month per controlled device, plus \$1,000 per month per distributor. TotalView is offered through distributors to professional subscribers for \$150 per month per controlled device and to non-professional subscribers for \$150 per month per controlled device, plus \$7,500 per month per distributor.⁸

In order to increase the availability of the ViewSuite Products within the securities industry, Nasdaq proposes to waive all fees that are incremental to the NQDS fees assessed upon distributors for new individual subscribers to each ViewSuite product for a period of up to 30 days. Nasdaq has repeatedly been asked to offer a free trial period so that potential subscribers can test the ViewSuite products before committing to subscribe. Based upon these requests, Nasdaq believes that offering a free trial period will make this data more widely available and enable ViewSuite to reach viability sooner. This fee waiver period would be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber contacts a distributor to receive access to a ViewSuite product. A new individual subscriber who has already signed a Level 1 or NQDS agreement would not be obligated to sign any additional agreement or addendum regarding the ViewSuite product(s) until and unless he or she decided to continue to subscribe to such product(s) after the expiration of the free trial period. Nasdaq believes that this waiver is fair and non-discriminatory because it applies to all potential subscribers to ViewSuite products.

The fee waiver only covers the fees assessed for the ViewSuite product(s) over and above the NQDS charges because NQDS is currently a product covered and shareable under the UTP

Plan. All fees (including fee waivers) for data services covered under the UTP Plan are subject to review and approval by the UTP Plan Participants, and therefore are not solely governed by Nasdaq. Therefore, Nasdaq chooses to offer a waiver only to those fees assessed for the portion of the ViewSuite data services that are solely governed by Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁹ in general, and with section 15A(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)¹¹ and 15A(b)(6)¹² of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

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

Nasdaq believes that the proposed rule change will not 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 on the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq gave the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. 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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the rule filing will establish a voluntary program available to all Nasdaq distributors that may increase the availability and distribution of market data. The voluntary program applies to market data that Nasdaq offers exclusively to distributors and not directly to individual investors. In addition, acceleration of the operative date will permit Nasdaq to establish the fee waiver program immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁵

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. Persons making written submissions

⁷ A "controlled device" is defined, in footnote one of Rule 7010(q), as any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) access the information in the Nasdaq Data Entitlement Package(s); or (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package(s).

⁸ To comply with the SEC Vendor Display Rule, distributors must also provide their controlled devices with the Level 1 service, separately priced at \$20 per professional user and capped at \$1 per non-professional user. The Level 1 charges are not included in the fees discussed in this filing.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(5).

¹¹ *Id.*

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

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