

professional subscribers in the Predicate Month<sup>4</sup> × \$25.

(B) *DepthView Professional Enterprise License:*

(i) The *DepthView Professional Enterprise License* permits a distributor to provide *DepthView* to all of its entitled Level 1 professional subscribers.

(ii) The formula for the *DepthView Professional Enterprise License* fee is  $0.25 \times \text{number of Level 1 professional subscribers in the Predicate Month} \times \$50$ .

(C) *PowerView Non-Professional Enterprise License:*

(i) The *PowerView Non-Professional Enterprise License* permits a distributor to provide *PowerView* to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the *PowerView Non-Professional Enterprise License* fee is  $0.35 \times \text{number of NQDS non-professional subscribers in the Predicate Month} \times \$20$ .

(D) *PowerView Professional Enterprise License:*

(i) The *PowerView Professional Enterprise License* permits a distributor to provide *PowerView* to all of its entitled NQDS professional subscribers.

(ii) The formula for the *PowerView Professional Enterprise License* fee is  $0.35 \times \text{number of NQDS professional subscribers in the Predicate Month} \times \$45$ .

(E) *TotalView Non-Professional Enterprise License:*

(i) The *TotalView Non-Professional Enterprise License* permits a distributor to provide *TotalView* to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the *TotalView Non-Professional Enterprise License* fee is  $0.25 \times \text{number of NQDS non-professional subscribers in the Predicate Month} \times \$141$ .

(F) *TotalView Professional Enterprise License:*

(i) The *TotalView Professional Enterprise License* permits a distributor to provide *TotalView* to all of its entitled NQDS professional subscribers.

(ii) The formula for the *TotalView Professional Enterprise License* fee is  $0.25 \times \text{number of NQDS professional subscribers in the Predicate Month} \times \$120$ .

(4) *Non-Display Enterprise License Pilot.* In addition or as an alternative to the *Enterprise License Pilot*, for a nine-month period commencing on April 1, 2003, each distributor of *DepthView*, *PowerView*, and/or *TotalView* may

purchase one or more non-display licenses that entitle it to provide non-display benefits of the product to users of controlled devices who do not display the data for an additional fee calculated based on the formulae set forth in subparagraphs (A)–(C) below.<sup>5</sup> A distributor must purchase a non-display license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the period. The distributor must also pay applicable distributor fees set forth in subparagraph (1) or (2) above.

(A) *Depth View Non-Display License.* A distributor may provide non-display benefits of *Depth View* to users of controlled devices who do not display the data for an additional fee calculated as  $0.25 \times \text{the population of non-display controlled devices in March 2003} \times \$50$  for professional users or \$25 for non-professional users.

(B) *Power View Non-Display License.* A distributor may provide non-display benefits of *PowerView* to users of controlled devices who do not display the data for an additional fee calculated as  $0.35 \times \text{the population of non-display controlled devices in March 2003} \times \$45$  for professional users or \$20 for non-professional users.

(C) *TotalView Non-Display License.* A distributor may provide non-display benefits of *TotalView* to users of controlled devices who do not display the data for an additional fee calculated as  $0.25 \times \text{the population of non-display controlled devices in March 2003} \times \$120$  for professional users or \$141 for non-professional users.

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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 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 below in Sections A, B, and C, 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

The launch of *SuperMontage*, Nasdaq's integrated quotation and execution system, vastly expanded Nasdaq's ability to offer market data to market participants that choose to display trading interest on Nasdaq that goes beyond the best bid and offer: *Nasdaq DepthView*, *PowerView*, and *TotalView*, collectively referred to as the "ViewSuite" products, offer a wide array of quotation information to market data vendors and broker/dealer distributors. *DepthView* shows the aggregate size, by price level, of all Nasdaq market participants' attributed and unattributed quotations/orders that are in the top five price levels in *SuperMontage*. *PowerView* bundles the Nasdaq Quotation Dissemination Service or "NQDS" and *DepthView*. *TotalView* offers the *PowerView* services plus all Nasdaq market participants' attributed quotations/orders that are in the top five price levels in *SuperMontage*, in addition to the aggregate size of all unattributed quotes/orders at each of the top five price levels.

On November 18, 2002, the Securities and Exchange Commission approved a rule proposal that established fees assessed for the *ViewSuite* products, which are offered exclusively through distributors.<sup>6</sup> *DepthView* is offered through distributors to professional subscribers for \$50 per month per controlled device<sup>7</sup> and to non-professional subscribers for \$25 per month per controlled device, plus \$1,000 per distributor per month (a single *DepthView/PowerView* distributor payment covers distribution of both products to professional and non-professional subscribers).<sup>8</sup> *PowerView* is offered through distributors to professional subscribers for \$75 per month per controlled device

<sup>6</sup> See Securities Exchange Act Release No. 46843 (Nov. 18, 2002), 67 FR 70471 (Nov. 22, 2002). The term "distributor" is defined in footnote six of NASD Rule 7010(q).

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>4</sup> "Predicate Month" shall mean December of 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December of 2002, the most recent month after December of 2002 in which the distributor did report Level 1 or NQDS subscribers.

<sup>5</sup> The Non-Display License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.