

Rule 7010. Charges for Services and Equipment

(a)-(p) No Change

(q) *Nasdaq Data Entitlement Packages*

This subsection (q) sets out the charges for the data entitlement packages collectively known as ViewSuite. Subsections (q)(1) and (q)(2) describe the data entitlement packages and set out the regular charges for each. Subsection (q)(3) describes the Enterprise License Program, a optional pilot program that modifies the regular charges for participants as set out therein. Subsection (q)(4) describes the ViewSuite entitlement, a second pilot program that suspends the regular charges set out in (q)(1) and (q)(2) during its operation. Thus, the monthly charges set out in (q)(1) and (q)(2) below are not in effect during the length of the pilot program set out in (q)(4).

(1) No Change

(2) No Change

(3) No Change

(4) For a one-year pilot period commencing on September 15, 2003, the DepthView, PowerView and TotalView entitlements described above in (1) and (2) of this subsection (q) shall be offered as a single entitlement, "the ViewSuite entitlement," and not offered separately. The ViewSuite entitlement shall allow a subscriber to see all of the data in DepthView, PowerView and TotalView including the ADAP data feed (aggregated depth at the top five price levels), the NQDS feed, and Prime (aggregated quotes of all participants in the top five price levels).

(A)(i) Except as provided in (4)(A)(ii) below, for the ViewSuite entitlement there shall be a \$70 monthly charge for each controlled device, as defined in subsection (q)(1)(A)(i) above.

(ii) A non-professional subscriber, as defined in subsection (q)(1)(A)(ii) above, shall pay \$14 per month for each controlled device.

(B) The pilot ViewSuite entitlement shall not affect the distributor charges for ADAP data or Prime data set out in subsections (q)(1)(C) and (q)(2)(A) respectively. Those distributors who are presently receiving only aggregate data may at their option continue to receive that feed at the ADAP distributor charge set out in subsection (q)(1)(C) above.

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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**

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 20, 2002, the Securities and Exchange Commission approved a rule proposal that established fees assessed for the ViewSuite products, which are offered exclusively through distributors.⁵ DepthView is offered through distributors to professional subscribers for \$50 per month per controlled device⁶ 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).⁷ 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 (a single TotalView distributor payment covers distribution of DepthView, PowerView, and TotalView to professional and non-professional subscribers).

It is important to note, however, that the total fees, described above, include fees for NQDS. The NQDS-only fees (incremental to the Level 1 charges) are \$30 for professional users and \$9 for non-professional users.⁸ There is no distributor fee for the NQDS service.

To encourage the broadest possible display of the SuperMontage data contained in the ViewSuite products, Nasdaq then proposed an optional pilot program to offer an enterprise-wide license to distributors.⁹ This pilot allows each distributor to provide a ViewSuite product to large numbers of subscribers for a fixed rate based upon a multiple of (1) The incremental cost of the ViewSuite product and (2) the size of that distributor's reported subscriber base for NQDS (in the case of PowerView and TotalView) or for Level 1 (in the case of DepthView) for December 2002. The fee for an Enterprise License will remain the same throughout the pilot, even if its NQDS subscriber base increases or decreases. This Enterprise License Pilot does not apply to the Level 1 or NQDS data services.

⁷ To comply with the SEC Vendor Display Rule, 17 CFR 240.11Ac1-2, distributors must also provide their controlled devices with the Level 1 entitlement service, separately priced at \$20 per professional user and capped at \$1 per non-professional user. The Level 1 entitlement includes the UTP Quotation Data Feed (UQDF), the UTP Trade Data Feed (UTDF), and the Level 1 proprietary feed. The Level 1 charges are not included in the fees discussed in this filing.

⁸ NQDS fees are separately administered and accounted for within Nasdaq in order to maintain its obligations as Administrator to the UTP Plan. As a result, the \$30 per user attributed to NQDS is included in the gross NQDS revenue calculation for UTP revenue sharing.

⁹ See Securities Exchange Act Release No. 47477 (March 10, 2003), 68 FR 13747 (March 20, 2003). This pilot program was effective as of April 2003 and is in effect through December 2003. To participate, a distributor must have purchased an Enterprise License in the first two months of the program.

⁵ 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 Rule 7010(q).

⁶ 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).