

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 $0.25 \times$ 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] (q)(4)(A)–(C). [below.⁵] *The Non-Display Enterprise License Pilot shall 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.* 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] (q)(1)(C) or (q)(2)(A) [above].

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

(B) PowerView 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 $0.35 \times$ 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 $0.25 \times$ the population of non-display controlled devices in March 2003 \times

\$120 for professional users or \$141 for non-professional users.

[(4)] (5) *TotalView Entitlement Pilot*

For a one-year pilot period commencing on October 1, 2003, the DepthView, PowerView and TotalView entitlements described above in (q) (1) and (q)(2) [of this subsection (q)] shall be offered as a single entitlement, “the [ViewSuite entitlement] *TotalView entitlement*,” and not offered separately. The *TotalView entitlement* [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 the *TotalView Data Feed* [Prime (aggregated quotes of all participants in the top five price levels)]].

(A)(i) Except as provided in (q)(5)[(4)](A)(ii) [below], for the [ViewSuite] *TotalView 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] *TotalView 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].

(6) *Definitions*

(A) A “controlled device” is any device that a distributor of the Nasdaq data entitlement package(s) permits to: (i) Access the information in the Nasdaq data entitlement package(s); or (ii) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq data entitlement package(s). If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden shall be on the distributor to demonstrate that the particular controlled device should not have to pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not; a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information.

Customers of the basic service then would be excluded from the entitlement requirement.

(B) A “distributor” of a Nasdaq data feed is any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. All distributors shall execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and has executed a Nasdaq distributor agreement and pays the distributor charge.

(C) A “non-professional” is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment advisor” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(D) “Predicate Month” shall mean December 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December 2002, the most recent month after December 2002 in which the distributor did report Level 1 or NQDS subscribers.

(7) *Revenue Sharing*

So long as NQDS is subject to the Nasdaq Unlisted Trading Privileges (UTP) Plan, the revenues from TotalView and PowerView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS shall be shared pursuant to the UTP Plan.

Text of Footnotes to Subsections (q)(1) and (q)(2):

[1. A controlled device is 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); (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package(s). If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not have to