

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 would be excluded from the entitlement requirement.

2. A “non-professional” is a natural person who is neither: (a) 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; (b) 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 (c) 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.

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

4. See footnote 2 (definition of non-professional).

5. See footnote 3 (sharing of revenue pursuant to the UTP Plan).

6. 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 must execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and will execute a Nasdaq distributor agreement and pay the distributor charge.

7. The NQDS-only fees (incremental to the Level 1 charges) are \$30 for professional users and \$9 for non-professional users.

8. So long as NQDS is subject to the Nasdaq UTP plan, the revenues from TotalView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.

9. The NQDS-only fees (incremental to the Level 1 charges) are \$30 for

professional users and \$9 for non-professional users.]

Text of Footnotes to Subsection (q)(3):

[3. The Enterprise 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.

4. “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.

5. 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.]

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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

Currently, Nasdaq offers two data feeds to distributors to support the proprietary ViewSuite products that are offered to professional and non-professional subscribers. The Aggregated Depth at Price (“ADAP”) data feed includes the five best price levels in SuperMontage and the aggregate size of attributable and non-attributable quotes and orders at each of the five price levels, but does not include the individual quotes and orders that make up the aggregate size. The Prime data feed provides all of the information in the ADAP data feed plus the individual quotes and orders at the top five price levels in SuperMontage.⁶

⁶ If a market participant has multiple attributable orders at one price, the total number of shares available from that market participant at that price is displayed in Prime. The total number of shares making up unattributable quotes and orders at a given price display under the SIZE moniker.

In this rule filing, Nasdaq proposes to rename Prime as the Nasdaq TotalView Data Feed and expand it to include all of the Prime data feed information at all price levels in SuperMontage, rather than just the top five price levels. Nasdaq also proposes to discontinue the ADAP data feed since all of the data currently offered through it would be available in the new TotalView Data Feed. Nasdaq proposes no change to its distributor fees or its professional or non-professional subscriber fees.⁷ Under Nasdaq's proposal, current ADAP-only distributors that wish to continue to distribute only the aggregate data (*i.e.*, the aggregate size of attributable and non-attributable quotes and orders at each price level) that is received either directly from Nasdaq via the new TotalView Data Feed or from another distributor may do so for the same distributor fee Nasdaq charges today.⁸

Nasdaq believes that the proposed rule change offers many benefits to investors and market data vendors. First, expanding the Prime data feed to cover all price levels, rather than just the top five price levels, enhances the transparency of the Nasdaq market for both securities professionals and individual investors. Second, current Prime distributors will have an opportunity to reduce their telecommunications charges because the new TotalView Data Feed is expected to use less bandwidth than the Prime data feed. Although the TotalView Data Feed will carry more price levels, it will not have to accommodate message traffic for eliminating quotes that have fallen out of the top five levels in SuperMontage as the Prime data feed did. Third, because the TotalView Data Feed will contain all of the data that is currently carried in the NQDS data feed plus the aggregate size information, some data recipients may choose to discontinue receipt of the NQDS data feed as a way to save telecommunications costs.⁹

⁷ The currently applicable subscriber fees are set forth in proposed paragraph (q)(5) of NASD Rule 7010.

⁸ The fee for distributing the aggregate data only from the TotalView data feed will remain \$1,000 per month under NASD Rule 7010(q)(1)(C). The fee for distributing the complete TotalView data feed will remain \$7,500 per month under NASD Rule 7010(q)(2)(A).

⁹ NQDS is the Nasdaq Quote Dissemination Service, a data feed that includes all quotes for Nasdaq issues. The NASD is required to provide the best bid and offer and quote size of each member acting as a market maker under SEC Rule 11Ac1-1(b)(1)(ii), 17 CFR 240.11Ac1-1(b)(1)(ii). As the Securities Information Processor for the UTP Plan, Nasdaq also provides a data feed of the best bid and offer for each Nasdaq issue (the UTP Quote Data Feed or “UQDF”) and last sale information (the UTP Trade Data Feed or “UTDF”). The UQDF and UTDF information are sometimes referred to as