

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54179; File No. SR-NASDAQ-2006-013)

July 20, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify Nasdaq Data Feeds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 21, 2006, The NASDAQ Stock Market LLC (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to incorporate data from Nasdaq’s INET facility into Nasdaq TotalView data entitlements and to establish fees for the use and distribution of those data entitlements. Nasdaq proposes to: (1) incorporate the INET ITCH Feed into the TotalView entitlement, rename the feed TotalView ITCH, and charge TotalView user fees to TotalView ITCH Feed recipients; (2) add the full depth of Nasdaq Market Participant quoting of New York Stock Exchange- (“NYSE”) and American Stock Exchange- (“Amex”) listed stocks into the TotalView entitlement; (3) establish a modified distributor fee for the TotalView entitlement, renamed the “Depth Feed”; (4) establish a modified user fee schedule for TotalView data; (5) allow for the unlimited, free distribution of Nasdaq’s aggregate best bid and offer quotation for Nasdaq’s quoting

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in NYSE- and Amex- listed stocks; and (6) charge fees for the receipt and distribution of individual Nasdaq Market Participants' best bid and offer in NYSE- and Amex- listed stocks. If approved, Nasdaq states that it would make this proposal effective at the beginning of the first full month following the integration of Nasdaq's trading systems into a single platform.³

Below is the text of the proposed rule change. Proposed new language is underlined and proposed deletions are in [brackets].

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7019. Market Data Distributor Fees

(a) No change.

(b) The charge to be paid by Distributors of the following Nasdaq Market Center real time data feeds shall be:

	Monthly Direct Access Fee	Monthly Internal Distributor Fee	Monthly External Distributor Fee
Issue Specific Data			
Dynamic Intraday Depth Feed	\$2,500	<u>\$500 for distribution to 10 or fewer subscribers;</u> <u>\$1,000 for distribution to greater than 10 subscribers.</u>	<u>\$1000 for distribution to 50 or fewer subscribers;</u> <u>\$2,500 for distribution to more than 50 and less than or equal to 100 subscribers;</u> <u>\$4,500 for distribution to greater than 100.</u>

³ See Securities Exchange Act Release No. 53583 (March 31, 2006), 71 FR 19573 (April 14, 2006) (SR-NASDAQ-2006-001).

	Monthly Direct Access Fee	Monthly Internal Distributor Fee	Monthly External Distributor Fee
[TotalView] [OpenView]			
Daily	\$500	\$0	\$500
MFQS			
Market Summary Statistics			
Intraday	\$500	\$50	\$1,500
Real Time Index			

A distributor shall pay the higher of either the internal distributor fee or the external distributor fee but not both.

(c) – (d) No change.

7023. Nasdaq TotalView

(a) TotalView Entitlement

The TotalView entitlement allows a subscriber to see all individual Nasdaq Market Center participant orders and quotes displayed in the system as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center, which currently includes Nasdaq, NYSE- and Amex- listed securities. In the case of Nasdaq listed securities, this entitlement automatically includes[ing] the NQDS feed [and the Brut System Book Feed].

(1)(A) Except as provided in (a)(1)(B) and (C), for the TotalView entitlement there shall be a \$75 [70] monthly charge for each controlled device.

(B) Except as provided in (a)(1)(C), a non-professional subscriber, as defined in Rule 7011(b), shall pay \$14 per month for each controlled device.

(C) As an alternative to (a)(1)(A) and (B), a broker-dealer distributor may purchase an enterprise license at a rate of \$25,000 for non-professional subscribers or \$100,000 per month for both professional and non-professional subscribers. The enterprise license entitles a distributor to provide TotalView to an unlimited number of internal users, whether such users receive the data directly or through third-party vendors, and external users with whom the firm has a brokerage relationship. The enterprise license shall not apply to relevant Level 1 and NQDS fees.

(2) 30-Day Free-Trial Offer. Nasdaq shall offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the user fees for TotalView. This waiver shall not include the incremental fees assessed for the NQDS-only service [, which are \$30 for professional users and \$9 for non-professional users per month]. This fee waiver period shall be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber is first entitled by a distributor to receive access to TotalView. A distributor may only provide this waiver to a specific individual subscriber once.

For the period of the offer, only the TotalView portion of the TotalView monthly fee [of \$40 per professional user and \$5 per non-professional user per month] shall be waived.

(b) No change.

(c) OpenView

(1) The OpenView entitlement package consists of [all] the best bid and offer quotation from each individual Nasdaq Market Center participant quoting [quotes and orders] in non-Nasdaq exchange-listed securities in the system. There shall be a charge of \$6 per month per controlled device for OpenView.

(2) The OpenView Top-of-File (“OpenView TOF”) entitlement package consists of the Nasdaq aggregate best bid and offer quotation for non-Nasdaq exchange-listed securities in the system. There shall be no fee for the distribution of the OpenView TOF.

(d) No change.

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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

On December 7, 2005, Nasdaq acquired INET ATS, Inc., a registered broker-dealer and member of the NASD, and operator of the INET ATS (“INET”). Once purchased by Nasdaq, INET became a facility of a national securities association. On November 1, 2005, Nasdaq submitted a proposed rule change to establish rules governing the operation of this facility.⁴ This proposed rule change was approved by the Commission on December 7, 2005.⁵ On January 13,

⁴ Securities Exchange Act Release No. 52723 (November 2, 2005), 70 FR 67513 (November 7, 2005) (proposing SR-NASD-2005-128).

⁵ Securities Exchange Act Release No. 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (approving SR-NASD-2005-128).

2006, the Commission issued an order conditionally approving Nasdaq's registration as a national securities exchange.⁶

In its proposed rules governing the operation of the INET facility, Nasdaq stated its intention of ultimately integrating the INET facility with Nasdaq into a single technology platform that would further enhance execution quality for system users.⁷ Nasdaq states that, as part of that process, it must, among other things, have INET distribute its full depth of its order book via its premium data entitlements, e.g., TotalView.⁸ Nasdaq states that this step would be completed when Nasdaq completes the integration of its INET, Brut, and Nasdaq Market Center trading facilities into a single integrated system – the “Single Book” - as set forth in SR-NASDAQ-2006-001.⁹

Nasdaq states that Nasdaq TotalView is a comprehensive source of Nasdaq order and quote information, and provides the greatest level of transparency into the Nasdaq stock market. Nasdaq states that today, TotalView provides 23 times the liquidity displayed and nearly 5 times the orders disseminated by the Nasdaq Quotation Dissemination Service (“NQDS”). Nasdaq's full depth in NYSE- and Amex-listed stocks (OpenView) also provides access to 40% more liquidity than the top-of-file quote quotes provided via the Consolidated Quotation System feed from the Securities Information Automation Corporation. If approved, Nasdaq expects the proposed Nasdaq, Brut, and INET integrated data would represent triple the current level of liquidity.

⁶ Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

⁷ See supra note 4 at 67522.

⁸ Id.

⁹ See supra note 3.

Integrating INET Data Into Nasdaq Entitlements

Nasdaq states that a consequence of this integration is that market participants would be able to receive real-time information regarding the orders in INET's order book via two distinct sources. Today, Nasdaq's TotalView Feed provides information regarding all quotes and orders in the Nasdaq Market Center for Nasdaq-listed securities (including, but not limited to, INET orders). Upon the integration of the INET system, the Nasdaq TotalView entitlement would, if approved, for the first time include the equivalent quotation information for NYSE- and Amex-listed securities. Also today, INET separately disseminates the INET ITCH Feed, which contains information regarding orders entered into INET. Upon the integration to a single consolidated platform, the ITCH data feeds (1.0, 2.0, 2.0a, and 3.0) would be re-named "TotalView ITCH" and would contain the equivalent quotes and orders as those carried by TotalView, albeit in different formats. Thus, upon integration of Nasdaq's trading systems, the TotalView Entitlement, would be available in two separate datafeed formats, and both would contain substantially more data than they do today.

Because Nasdaq proposes to continue to distribute INET order information via both the traditional TotalView Feed as well as the TotalView ITCH Feed and because both would contain identical data, Nasdaq believes that it is appropriate for it to incorporate the TotalView ITCH Feed within the TotalView entitlement for fee purposes. The TotalView entitlement is intended to assess fees for the receipt of real-time information regarding depth of order book and related information, regardless of source. While Nasdaq believes it important to offer market participants the choice to receive INET order book information via either the existing TotalView Feed or the TotalView ITCH Feed, it further believes there is no justification to warrant

differential fees based on the method of delivery because the two methods would provide recipients with the same data.

Accordingly, Nasdaq proposes to incorporate the TotalView ITCH Feed into the TotalView entitlement effective upon the completion of the integration of the Single Book. Nasdaq states that, as of that time, any recipient of the TotalView ITCH Feeds would need to complete relevant market data agreements, begin submission of monthly usage reporting, and pay associated fees. Current recipients of the TotalView ITCH pay no fees and would be required to pay the TotalView entitlement fee for the first time. Under this proposal, incremental fees would be assessed only where a distributor distributes the TotalView ITCH Feeds in an application or context that does not already distribute TotalView Entitlements to provide Nasdaq Market Center order book information. Nasdaq notes that, of the approximately 145 firms currently receiving the INET ITCH Feeds, many are already TotalView or OpenView distributors, and thus, for those firms, this rule change would impose no incremental expense unless their usage is expanded.

Consolidating Total View And OpenView Distribution and User Fees

Nasdaq offers various data products that firms may purchase and redistribute either within their own organizations or to outside parties. Nasdaq assesses “distributor fees” that are designed to encourage broad distribution of the data, and allow Nasdaq to recover the relatively high fixed costs associated with supporting connectivity and contractual relationships with distributors. Currently, Nasdaq has the following approved distributor fees¹⁰ in place for both TotalView and OpenView.

¹⁰ See Securities Exchange Act Release No. 51814 (June 9, 2005), 70 FR 35151 (June 16, 2005) (approving SR-NASD-2004-185).

- TotalView and OpenView Direct Access Fee: \$2,500 per month each.
- TotalView and OpenView Internal Distribution Fee: \$1,000 per month each.
- TotalView and OpenView External Distribution Fee: \$2,500 per month each.

Thus, for example, if a firm receives TotalView and OpenView directly from Nasdaq and distributes the data externally, the firm currently pays \$10,000 per month in distributor fees (\$2,500 for direct access to TotalView, \$2,500 for direct access to OpenView, \$2,500 to externally distribute TotalView, and \$2,500 to externally distribute OpenView).

To promote the continued distribution of full depth data as it becomes available with the full complement of INET order information, Nasdaq is proposing to combine the distribution of TotalView and OpenView data into a single entitlement for distribution purposes. Specifically, Nasdaq proposes to establish the “Depth Feed Distributor Fees,” a consolidated entitlement with a pricing structure comprised of three components:

- **Depth Feed Direct Access Fee:** \$2,500 per month for any organization that receives an intraday Nasdaq market center depth data product directly from Nasdaq. Nasdaq states that a distributor receiving this data indirectly via a re-transmission vendor would not be liable for the Direct Access Fee.
- **Depth Feed Internal Distribution Fee:** \$500 per month for internal distributors with distribution of TotalView data to 10 or fewer subscribers; \$1000 per month

for internal distributors with distribution of TotalView data to greater than 10 subscribers. Nasdaq states that, as with the current Internal Distribution Fees, this fee would be applicable to any organization that receives an intraday Nasdaq market center depth data product (either directly from Nasdaq or through a retransmission vendor) and distributes the data solely within its own organization.

- **Depth Feed External Distribution Fee:** \$1,000 per month for external distributors distributing TotalView data to 50 or fewer subscribers; \$2,500 per month for external distributors distributing TotalView data to more than 50 and less than or equal to 100 subscribers; and \$4,500 per month for external distributors distributing TotalView data to more than 100 recipients. Nasdaq states that, as is the case today, this fee would be applicable to any organization that receives an intraday Nasdaq market center depth data product (either directly from Nasdaq or through a retransmission vendor) and distributes the data outside its own organization.

Nasdaq states that, under the new schedule, a firm that receives a TotalView Feed and/or an INET ITCH Feed directly from Nasdaq and distributes the data externally, would pay a range of \$3,500-\$7,000 per month, depending upon the number of end users, a significant reduction from the currently approved fees. Nasdaq states that the only firms that would be assessed higher fees would be: (1) distributors of the TotalView ITCH Feed alone because it is currently free and is proposed to be fee liable; and (2) firms that currently distribute either TotalView or OpenView but not both, and distribute that data to more than 100 subscribers, would have a resulting increase of \$2,000 per month. Nasdaq states that, for that incremental \$2,000 per month, those firms, of which there are currently seventeen, would gain the ability to distribute

both NYSE-/Amex- listed and Nasdaq-listed depth information to their subscribers where they had previously provided only one of them.

Nasdaq states that an organization that receives the Nasdaq Market Center full depth data directly from Nasdaq would pay the Direct Access Fee plus the higher of either the Internal Distribution or External Distribution Fee (but not both). An organization that only receives the Nasdaq Market Center full depth data indirectly from a retransmission vendor would pay either the Internal Distribution or External Distribution fee (but not both). Nasdaq states that, as with past distributor fee structures, the External Distribution Fee is higher than the Internal Distribution Fee to reflect the fact that external distributors typically have broader distribution of the data than internal distributors.

Nasdaq believes that lowering the fee for firms that subscribe to depth feeds would encourage more vendors to take the combination of both feeds. Additionally, Nasdaq believes that the new structure spreads the burden of Nasdaq data fees more equitably across the broader customer base of data distributors and consumers of Nasdaq market data.

Fee Increased To Recover Costs Of Providing Additional Data

Nasdaq states that, upon integration of the Single Book, both of Nasdaq's full depth feeds - TotalView and ITCH - would contain not only order and quotation information from Nasdaq market participant activity in Nasdaq-listed securities, but NYSE- and Amex-listed stocks as well. Upon the full Single Book integration, Nasdaq proposes to integrate the entitlement for full depth from Nasdaq market participants quoting in Nasdaq stocks with the full depth from Nasdaq market participants quoting in NYSE- and Amex-listed stocks, resulting in a single entitlement to be called TotalView. This single entitlement would cost \$75 per user per month for professional users and \$14 per user per month for non-professional users. Nasdaq states that,

in the case of non-professionals, there is no fee increase on account of this change, simply an increase in functionality. In the case of professional users, the TotalView user fee increases by \$5, though for those users who previously subscribed to the TotalView and OpenView entitlements separately, this amounts to a \$1 per user per month discount. Nasdaq states that only those users that had one of the companion entitlements without the other would pay more under this proposal.

Distribution of Quotation Information for NYSE and Amex Securities

To encourage more competition in the trading and quoting of NYSE- and Amex-listed stocks, as well as to encourage subscribership to Nasdaq's full-depth products, Nasdaq is proposing Nasdaq Rule 7023(c)(2) to institute a fee waiver for firms wishing to distribute Nasdaq's aggregate real-time best bid and offer quote for NYSE- and Amex-listed stocks via the TotalView or TotalView ITCH versions of its feeds.

Nasdaq states that, in support of its exchange registration transition, it is proposing to distribute the best bid and offer from each Nasdaq market participant quoting in NYSE- and Amex-listed stocks in real-time. As set forth in Nasdaq Rule 7023(c)(1), Nasdaq proposes a \$6 per user per month price for this product. Nasdaq expects that most users currently receiving full depth from Nasdaq in NYSE- and Amex-listed stocks would continue to do so via the TotalView entitlement. However, for any subscriber currently receiving only this depth data for NYSE- and Amex-listed stocks (i.e., OpenView data), and not wishing to also receive the equivalent data for Nasdaq-listed stocks, this option would allow a user to continue paying at the same rate schedule for user-fees that they have in the past and the distributor fee schedule referenced earlier in this filing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act¹¹ in general, and Section 6(b)(4) of the Act¹² in particular, in that the incorporation of the TotalView ITCH Feeds into the TotalView entitlement and creating a unified distributor fee provides for the equitable allocation of reasonable charges among the persons distributing and purchasing Nasdaq depth of order book information. Nasdaq states that the proposed pricing structure would enable it to equitably charge for INET depth of book information regardless of the manner in which it is received, continue to provide market participants with choice regarding receipt of this information, and ease the transition to a single technology platform. Nasdaq further believes that this rule change would encourage the broader redistribution of the Nasdaq depth of book information, thus improving transparency and thereby benefit the investing public.

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

Nasdaq does not believe that the proposed rule change would 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

No written comments were either solicited or received.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2006-013 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-013 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris
Secretary

¹³ 17 CFR 200.30-3(a)(12).