

not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

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

Nasdaq does not believe that the proposed rule change will 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*

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and rule 19b-4(f)(6) thereunder.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the pilot to operate without interruption through March 31, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>14</sup>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-35 and should be submitted by April 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-6657 Filed 3-19-03; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47477; File No. SR-NASD-2003-27]

#### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Two Enterprise License Pilot Programs Regarding the Fees Assessed Upon Distributors of Nasdaq View Suite Data Products**

March 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 3, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc.

considered the proposed rule's impact on efficiency, competition, and capital formation. <sup>15</sup> U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "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 proposes to establish two alternative voluntary, nine-month pilot programs regarding the fees assessed for distributors of Nasdaq DepthView, PowerView, and TotalView. These data products, known collectively as the Nasdaq ViewSuite products, provide subscribers with quotation information generated by Nasdaq's SuperMontage quotation and execution system. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

Rule 7010. Charges for Services and Equipment.

(a)-(p) No Change

(q) Nasdaq Data Entitlement Packages

(1) No Change

(2) No Change

(3) *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 enterprise licenses that entitle it to distribute the licensed product to its entitled Level 1 or NQDS subscribers<sup>3</sup> for a fixed monthly fee based on the formulae set forth in subparagraphs (A)-(F) below. A distributor must purchase an enterprise 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 nine-month period. The distributor must also pay applicable distributor fees set forth in subparagraph (1) or (2) above.*

(A) *DepthView Non-Professional Enterprise License:*

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

(ii) *The formula for the DepthView Non-Professional Enterprise License fee is 0.25 × number of entitled Level 1 non-*

<sup>3</sup> *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.*

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.

\* \* \* \* \*

## 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.

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 incremental costs to a user of the PowerView and TotalView services are lower than the total approved fees because 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. There is no distributor fee for the NQDS service. Therefore, the incremental cost of PowerView is \$45 per professional subscriber and \$20 per non-professional subscriber. The incremental cost for TotalView is \$120 per professional subscriber and \$141 per non-professional subscriber. The DepthView prices cited above do not include any NQDS charges, because DepthView is treated as an upgrade from the Level 1 service. In other words, the approved fees for DepthView of \$50 for professionals and \$25 for non-professionals are also the incremental cost of DepthView. The incremental fees over and above the fees for NQDS form the basis of Nasdaq's proposed Enterprise License Pilot.

*Enterprise License Pilot.* To encourage the broadest possible display of the SuperMontage data contained in the ViewSuite products, Nasdaq is proposing an optional pilot program to offer an enterprise-wide license to distributors. This pilot would enable 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<sup>9</sup> 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 the Predicate Month—December 2002, unless a distributor had no NQDS or Level 1 subscribers in December 2002, in which case the license fee will be based upon the most recent reported month thereafter in which the

distributor reported subscribers. 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. Therefore, all distributors will continue to be obligated to report and assess monthly fees separately for all entitled Level 1 and NQDS subscribers throughout the pilot period. In order to apply the Enterprise License equally across all distributors, the Enterprise License program will have a specific multiple that applies equally to all distributors; distributors with large reported subscriber bases will pay proportionately more than those with smaller subscriber bases.

More specifically, the price of an Enterprise License for TotalView will equal the incremental cost of providing TotalView to 25% of each distributor's Predicate Month NQDS professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of \$7,500. For example, if a distributor had 8,000 NQDS professional displays and 2,000 non-professional displays in December 2002, it could purchase a TotalView professional and non-professional Enterprise License for a monthly charge of (25% of 8,000) times \$120 (the incremental cost of TotalView for professional subscribers) plus (25% of 2,000) times \$141 (the incremental cost of TotalView for non-professionals subscribers), plus the distributor fee of \$7,500, for a total of \$318,000 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the distributor chooses to expand its TotalView user base.

The price of an Enterprise License for PowerView will equal the incremental cost of providing PowerView to 35% of each distributor's Predicate Month NQDS professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of \$1,000. For example, if a distributor had 8,000 NQDS professional displays and 2,000 non-professional displays in December 2002, it could purchase a PowerView Enterprise License for a monthly charge of (35% of 8,000) times \$45 (the incremental cost of PowerView for professional subscribers) plus (35% of 2,000) times \$20 (the incremental cost of PowerView for non-professionals subscribers), plus the \$1,000 distributor fee, for a total of \$141,000 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the

distributor chooses to expand its PowerView user base.

The price of an Enterprise License for DepthView will equal the incremental cost of providing DepthView to 25% of each distributor's Predicate Month 2002 Level 1 professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of \$1,000. For example, if a distributor had 8,000 Level 1 professional displays and 2,000 non-professional displays in December 2002, it could purchase a DepthView Enterprise License for a monthly charge of (25% of 8,000) times \$50 (the incremental cost of DepthView for professional subscribers) plus (25% of 2,000) times \$25 (the incremental cost of DepthView for non-professionals subscribers), plus the \$1,000 distributor fee, for a total of \$113,500 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the distributor chooses to expand its DepthView user base.

*Non-Display Enterprise License Pilot.* Distributors that offer non-display uses of the ViewSuite data packages can also benefit from the non-display enterprise license pilot. Since such distributors may have no NQDS subscribers at present, we will assess the fee based on a percentage (using the same percentages described above for the Enterprise License) of the non-display controlled devices they serve from a predicate month. The predicate month to determine the base for the license is the most recent month prior to the launch of the pilot program.<sup>10</sup> This is consistent with the definition of controlled device in our original rule filing on these products and allows non-display end users to benefit from this pilot period.

The pilots will begin on April 1, 2003, and will run for nine months, but will only be available to distributors that enroll during the first two months of the pilot.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

<sup>10</sup>To calculate the fee for the non-display license Nasdaq will use the non-display ViewSuite population in the most recent month prior to the launch of the pilot program: *i.e.* March 2003. That population (and the resulting monthly fee) would then be fixed for the term of the enterprise license (although the vendor would be entitled to extend the benefits to as many additional customers as they liked). Telephone Conversation between Eleni Constantine, Associate General Counsel, Office of General Counsel, Nasdaq, and Susie Cho, Special Counsel, Division of Market Regulation ("Division"), Commission, on March 6, 2003.

<sup>9</sup>Nasdaq must utilize the incremental cost of the ViewSuite products, rather than the total cost, because the NQDS and Level 1 data feeds are subject to the Nasdaq UTP Plan and may not be discounted.

provisions of section 15A of the Act,<sup>11</sup> in general, and with section 15A(b)(5) of the Act,<sup>12</sup> in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq represents that the proposed pilot programs are available to all distributors of the ViewSuite products, and are designed to apply to all such distributors, large and small. At the same time, heavy users of the data will pay more than light users and, with the exception of TotalView (as described above), professional users will pay more than non-professional users.

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

Nasdaq believes that the proposed rule change will not 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*

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>13</sup> and rule 19b-4(f)(6)<sup>14</sup> thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq gave the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for

the protection of investors or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the rule filing will establish a voluntary program available to all Nasdaq distributors that may increase the availability and distribution of market data. The voluntary program applies to market data that Nasdaq offers exclusively to distributors and not directly to individual investors. In addition, acceleration of the operative date will permit Nasdaq to establish the two enterprise license pilot programs expeditiously. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>15</sup>

### **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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-27 and should be submitted by April 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-6697 Filed 3-19-03; 8:45 am]

**BILLING CODE 8010-01-P**

## **DEPARTMENT OF STATE**

### **[Public Notice 4317]**

### **Bureau of Educational and Cultural Affairs; Request for Grant Proposals: English Language Fellow Program for Academic Year 2004-2005**

**SUMMARY:** The Office of English Language Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the 2004-2005 English Language Fellow Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer and manage the 2004-2005 English Language Fellow Program. The English Language Fellow Program is a worldwide program designed to provide American professional expertise in the field of English as a Foreign Language to foreign educational institutions and other relevant organizations.

### **Program Information**

#### *Overview*

The English Language Fellow Program is a ten-month program designed to permit U.S. English language professional assistance in the improvement of English teaching capability around the world. The Program has placed over 350 English language professionals worldwide in the past five years, enhancing foreign governments' efforts to respond to the dramatic increase in the demand for English among their populations. The goals of the program are to enhance English teaching capacity overseas in order to provide foreign teachers and students with communication skills they will need to participate in the global economy, to improve their access to diverse perspectives on a broad variety of issues, and to give them information that will better enable them to understand and convey concepts about American values, democratic representative government, free enterprise, and the rule of law.

The program is open to U.S. English language professionals at two different levels:

<sup>11</sup> 15 U.S.C. 78o-3.

<sup>12</sup> 15 U.S.C. 78o-3(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).