

off the Exchange Floor, or, if on the Exchange Floor, outside of regular auction market business hours. Finally, specialists will be required to maintain records of these contacts, which will be reviewed by Amex staff.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Amex-2002-48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47478; File No. SR-NASD-2003-28]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a Thirty-Day Waiver of Certain ViewSuite Data Services Fees Assessed Under NASD Rule 7010(q)

March 10, 2003.

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 March 3, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("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 waive for thirty calendar days certain fees assessed under NASD Rule 7010(q) upon distributors for each new subscriber to Nasdaq ViewSuite products. Proposed

new language is in italics; proposed deletions are in brackets.³

* * * * *

Rule 7010. Charges for Services and Equipment

(a)-(p) No Change.

(q) Nasdaq Data Entitlement Packages:

(1) Depth View and Power View—

(A) No Change.

(B) No Change.

(C) No Change.

(D) *Thirty-Day Free-Trial Offer.*

Nasdaq will offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for any ViewSuite service (Depth View or Power View) that such subscriber or potential subscriber chooses to try for the 30-day period. This waiver does not include fees assessed for the NQDS service.⁴ This fee waiver period will 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 Depth View or Power View. A distributor may only provide this waiver to a specific individual subscriber once.

(i) *Depth View.* For the period of the offer, the DepthView fee of \$50 per professional user and \$25 per non-professional user will be waived.

(ii) *PowerView.* For the period of the offer, the PowerView fee of \$45 per professional user and \$20 per non-professional user will be waived.

(2) Total View—

(A) No Change.

(B) No Change.

(C) *30-Day Free-Trial Offer.* *Nasdaq will offer all new individual subscribers and potential new individual subscribers a 30-day waiver of the fees for TotalView. This waiver does not include fees assessed for the NQDS service.⁵ This fee waiver period will 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*

³ Simultaneous with this proposed rule change, Nasdaq has submitted SR-NASD-2003-27 which proposes the addition of NASD Rule 7010(q)(3) and (q)(4), two pilot pricing initiatives for the ViewSuite products. These two filings are completely independent and the approval or rejection of one has no effect on the rule language proposed in the other.

⁴ The NQDS-only fees (incremental to the Level 1 charges) are \$30 for professional users and \$9 for non-professional users.

⁵ The NQDS-only fees (incremental to the Level 1 charges) are \$30 for professional issuers and \$9 for non-professional users.

provide this waiver to a specific individual subscriber once.

(i) *For the period of the offer, the TotalView fee of \$120 per professional user and \$141 per non-professional user will be waived.*

* * * * *

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 Commission approved a rule proposal that established fees assessed for the ViewSuite products, which are offered exclusively through distributors.⁶ DepthView is offered through distributors to professional subscribers for \$50 per month per controlled

⁶ See Securities Exchange Act Release No. 46843 (Nov. 18, 2002), 67 FR 70471 (Nov. 22, 2002).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

device⁷ and to non-professional subscribers for \$25 per month per controlled device, plus \$1,000 per distributor per month. 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.⁸

In order to increase the availability of the ViewSuite Products within the securities industry, Nasdaq proposes to waive all fees that are incremental to the NQDS fees assessed upon distributors for new individual subscribers to each ViewSuite product for a period of up to 30 days. Nasdaq has repeatedly been asked to offer a free trial period so that potential subscribers can test the ViewSuite products before committing to subscribe. Based upon these requests, Nasdaq believes that offering a free trial period will make this data more widely available and enable ViewSuite to reach viability sooner. This fee waiver period would be applied on a rolling basis, determined by the date on which a new individual subscriber or potential individual subscriber contacts a distributor to receive access to a ViewSuite product. A new individual subscriber who has already signed a Level 1 or NQDS agreement would not be obligated to sign any additional agreement or addendum regarding the ViewSuite product(s) until and unless he or she decided to continue to subscribe to such product(s) after the expiration of the free trial period. Nasdaq believes that this waiver is fair and non-discriminatory because it applies to all potential subscribers to ViewSuite products.

The fee waiver only covers the fees assessed for the ViewSuite product(s) over and above the NQDS charges because NQDS is currently a product covered and shareable under the UTP

Plan. All fees (including fee waivers) for data services covered under the UTP Plan are subject to review and approval by the UTP Plan Participants, and therefore are not solely governed by Nasdaq. Therefore, Nasdaq chooses to offer a waiver only to those fees assessed for the portion of the ViewSuite data services that are solely governed by Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁹ in general, and with section 15A(b)(5) of the Act,¹⁰ 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 believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)¹¹ and 15A(b)(6)¹² of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are 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 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 Act¹³ and Rule 19b-4(f)(6)¹⁴ 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 fee waiver program immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁵

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

⁷ 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).

⁸ 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.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(5).

¹¹ *Id.*

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 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).

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-2003-28 and should be submitted by April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-6243 Filed 3-14-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47481; File No. SR-NASD-2003-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Automated Confirmation Transaction Service ("ACT") Workstation

March 11, 2003.

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 March 3, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("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. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the

Commission.⁵ 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 introduce a new product known as the ACT Workstation. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

6100. AUTOMATED CONFIRMATION TRANSACTION SERVICE (ACT)

6110. Definitions

(a)-(g) No change.

(h) The terms "Gross Dollar Thresholds" or "*Super Caps*" in the risk management application of ACT shall mean the daily dollar amounts for purchases and sales that a clearing broker establishes in the ACT system for each correspondent executing broker that may be raised or lowered on an inter-day or intra-day basis. If the value of a correspondent's trades, including those aggregated from transactions in all automated systems owned and operated by the Association or its subsidiaries, equals or exceeds [the] *any* gross dollar threshold[s], the system will alert the clearing broker.

(i)-(k) No change.

(l) The term "Pre-alert" shall mean the alert notifying the correspondent executing broker and the clearing broker that the correspondent executing broker has equaled or exceeded 70% of [the] *any* purchase or sale gross dollar amount[s]. The Association reserves the right to modify the percentage of the pre-alert as necessary and upon prior notification to the ACT Participants.

(m)-(n) No change.

(o) The term "Single Trade Limit" shall mean the *pre-established* dollar amount [established by the Association] for a single trade that enables an ACT clearing firm to review the trade before it is obligated to clear the trade. When a correspondent executing broker negotiates a trade that equals or exceeds the Single Trade Limit, its clearing broker shall have a period of fifteen (15) minutes to review and agree or decline to act as principal for clearing that trade. [Initially, the Single Trade Limit shall be set at \$1,000,000.] The Association reserves the right to modify the [dollar

amount of the Single-Trade Limit or the] time frame for clearing broker review as necessary and upon prior notification to the ACT Participants.

(p) No change.

6120. Participation in ACT

(a) No change.

(b)(1)-(3) No change.

(4) Clearing Broker Obligations

(A) No change.

(B) ACT clearing brokers may utilize the ACT Risk Management functions upon execution of the ACT Participant Risk Management Agreement. Clearing brokers that utilize[d] the ACT Risk Management functions may establish for each correspondent executing broker daily Gross Dollar Thresholds and may raise or lower the thresholds on an inter-day or intra-day basis. ACT clearing brokers will receive a system alert when a correspondent executing broker equals or exceeds [its] *any* gross dollar threshold[s], and will also receive a system pre-alert when a correspondent executing broker equals or exceeds 70% of [the] *any* daily threshold[s].

(C) For trades effected by a correspondent executing broker that equal or exceed [the ACT system's] *a* Single Trade Limit [of \$1,000,000], clearing brokers have fifteen (15) minutes from the time of trade report input to ACT to review the trade and accept or decline to act as principal to the trade. If the clearing broker does not make an affirmative acceptance or declination of the trade report within fifteen (15) minutes, the trade report will be subject to [normal ACT processing and the clearing broker will be obligated to act as principal for the trade] *processing in accordance with the pre-established criteria described in Rule 6150(b)(6)*.

* * * * *

6150. ACT Risk Management Functions

(a) No change.

(b) If a clearing broker voluntarily uses ACT risk management, the ACT system will provide the following risk management capabilities to clearing brokers that have executed an ACT Participant Risk Management Agreement:

(1) Trade File Scan

Clearing brokers will be able to scan the trading activities of their correspondent executing brokers through a Nasdaq terminal.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq provided the Commission with notice of its intent to file the proposed rule change on January 9, 2003. Nasdaq has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii). The Commission has decided not to waive the 30-day operative delay.