

challenges for cause brought by a public customer will be resolved in favor of the customer.

#### Arbitrator Duty To Disclose and Update Conflict Information

Rule 10312(a) of the Code currently provides that arbitrators "shall be required to disclose" any circumstances which might preclude an arbitrator from rendering an objective and impartial determination, and enumerates specific personal, and professional and financial information that "should" be disclosed under the rule. Rule 10312(b) of the Code provides that arbitrators "should" make a reasonable effort to inform themselves of any such conflicts. Rule 10312(c) of the Code provides that the duties imposed by paragraphs (a) and (b) are ongoing, and that arbitrators must disclose at any stage of the proceeding any such information that arises, is recalled or discovered.

While NASD has always interpreted Rule 10312 of the Code to impose a mandatory duty on arbitrators to disclose the required information, and to update their disclosure, the Perino Report noted that the use of the term "should" in paragraphs (a) and (b) of the Rule may create the misimpression that disclosing and updating the information are merely recommended, but not required. Therefore, to eliminate any possible misunderstanding or confusion, NASD is amending Rule 10312(a) and (b) of the Code to clarify that arbitrators "must" disclose the required information and "must" make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary.

#### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act<sup>5</sup>, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that, by providing further assurance to parties that individuals with significant ties to the securities industry are not able to serve as public arbitrators in NASD arbitrations, the proposed rule change will enhance investor confidence in the fairness and neutrality of NASD's arbitration forum.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

#### 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 **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 the self-regulatory organization 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. 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 No. SR-NASD-2003-95 and should be submitted by September 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48358; File No. SR-NASD-2003-111]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Charges for ViewSuite Services Set Forth in NASD Rule 7010(q)

August 15, 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 July 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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. On August 11, 2003, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.<sup>3</sup> The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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

Nasdaq is proposing a pilot program for a one-year period to reduce the price and simplify the structure of the fees assessed for the Nasdaq ViewSuite products under Rule 7010(q). Nasdaq proposes to implement this rule change effective as of September 15, 2003. Proposed new language is italicized.<sup>4</sup>

\* \* \* \* \*

<sup>6</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.

<sup>3</sup> See Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 8, 2003.

<sup>4</sup> The Commission made certain edits to the notice submitted by Nasdaq as part of Amendment No. 1 to conform it to the changes made to the Form 19b-4. Telephone conversation between Eleni Constantine, Office of General Counsel, Nasdaq and

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

**Rule 7010. Charges for Services and Equipment**

(a)-(p) No Change

(q) *Nasdaq Data Entitlement Packages*

This subsection (q) sets out the charges for the data entitlement packages collectively known as ViewSuite. Subsections (q)(1) and (q)(2) describe the data entitlement packages and set out the regular charges for each. Subsection (q)(3) describes the Enterprise License Program, a optional pilot program that modifies the regular charges for participants as set out therein. Subsection (q)(4) describes the ViewSuite entitlement, a second pilot program that suspends the regular charges set out in (q)(1) and (q)(2) during its operation. Thus, the monthly charges set out in (q)(1) and (q)(2) below are not in effect during the length of the pilot program set out in (q)(4).

(1) No Change

(2) No Change

(3) No Change

(4) For a one-year pilot period commencing on September 15, 2003, the DepthView, PowerView and TotalView entitlements described above in (1) and (2) of this subsection (q) shall be offered as a single entitlement, "the ViewSuite entitlement," and not offered separately. The 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 Prime (aggregated quotes of all participants in the top five price levels).

(A)(i) Except as provided in (4)(A)(ii) below, for the ViewSuite 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 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.

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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

Leah Mesfin, Attorney, Division, Commission on August 14, 2003.

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**

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 20, 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>5</sup> DepthView is offered through distributors to professional subscribers for \$50 per month per controlled device<sup>6</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

<sup>5</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 Rule 7010(q).

<sup>6</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).

of both products to professional and non-professional subscribers).<sup>7</sup> 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 (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 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.<sup>8</sup> There is no distributor fee for the NQDS service.

To encourage the broadest possible display of the SuperMontage data contained in the ViewSuite products, Nasdaq then proposed an optional pilot program to offer an enterprise-wide license to distributors.<sup>9</sup> This pilot allows 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 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 December 2002. 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.

<sup>7</sup> To comply with the SEC Vendor Display Rule, 17 CFR 240.11Ac1-2, distributors must also provide their controlled devices with the Level 1 entitlement service, separately priced at \$20 per professional user and capped at \$1 per non-professional user. The Level 1 entitlement includes the UTP Quotation Data Feed (UQDF), the UTP Trade Data Feed (UTDF), and the Level 1 proprietary feed. The Level 1 charges are not included in the fees discussed in this filing.

<sup>8</sup> NQDS fees are separately administered and accounted for within Nasdaq in order to maintain its obligations as Administrator to the UTP Plan. As a result, the \$30 per user attributed to NQDS is included in the gross NQDS revenue calculation for UTP revenue sharing.

<sup>9</sup> See Securities Exchange Act Release No. 47477 (March 10, 2003), 68 FR 13747 (March 20, 2003). This pilot program was effective as of April 2003 and is in effect through December 2003. To participate, a distributor must have purchased an Enterprise License in the first two months of the program.

Nasdaq believes that the originally approved ViewSuite pricing is reasonably related to the costs of creating and operating the product and reflects its eventual value to subscribers. As SuperMontage becomes established and understood by investors and the trading community, Nasdaq believes that the existing pricing will be appropriate for the ViewSuite product. At present, because SuperMontage and ViewSuite are still new products, Nasdaq is seeking to maximize adoption of the products through lower prices and by simplifying user entitlements for potential new subscribers.

To support broad dissemination of the data and understanding by its customers, Nasdaq proposes to simplify and reduce the pricing for ViewSuite on a pilot basis. The pilot would be for one year. The sole ViewSuite entitlement would include ADAP, Prime, and NQDS service, as those products are defined in Rule 7010(q). Nasdaq does not believe that it is appropriate to offer a stand-alone data package of the incremental ViewSuite data that is not contained in NQDS. This is because the incremental information consists of supplemental quotation and order information (NQDS contains all market participants' best quotes) that might be misleading to subscribers as a stand-alone package.

As with the existing ViewSuite pricing, both professional and non-professional fees would be offered. Monthly controlled device fees for existing ViewSuite subscribers would be reduced, with the exception of professional subscribers to DepthView.

<sup>10</sup> Nasdaq believes that the impact of the effective increase in the fees to professional DepthView users will be minimal; Nasdaq's research suggests that, in general, these users will willingly purchase the additional information contained in the ViewSuite entitlement once the charge for this information is reduced.

Nasdaq would continue to distribute both detailed and aggregate data from SuperMontage but decisions on how to display the data would be left to vendors' discretion (subject to the SEC Vendor Display Rule). Any Enterprise License Agreements will remain in effect for their specified term.

<sup>10</sup> Fees would be generally reduced, as follows:

TotalView Professional: –\$80  
 TotalView Non-Professional: –\$136  
 PowerView Professional: –\$5  
 PowerView Non-Professional: –\$15  
 DepthView Professional: +\$20  
 DepthView Non-Professional: –\$11

Nasdaq believes that the increase in Depth View pricing reflects the addition of NQDS, which cannot be discounted because it is part of the UTP Plan, as described above.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the 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 the proposal provides for the equitable allocation of reasonable dues, fees, 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.

### 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, as amended.

### 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.

## 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 the self-regulatory organization 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, as amended, 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-2003-111 and should be submitted by September 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48353; File No. SR-NASD-2003-126]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Period for Rules Relating to Bond Fund Volatility Ratings

August 15, 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 August 7, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit

<sup>13</sup> 1917 CFR 200.30-3(a)(12).

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

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

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

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

<sup>5</sup> The NASD provided written notice of its intention to file the proposed rule change on August 5, 2003. The Commission reviewed the NASD's submission, and told the NASD it was acceptable to file the proposed rule change immediately. The NASD 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).

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

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