

to consolidate the execution and reporting of a wider range of trades, and will extend the combined benefits of give-up relationships and anonymous trading to reporting of matched trades in exchange-listed securities.

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

Nasdaq does not believe that the proposed rule change, as amended, 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.

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

The foregoing rule change, as amended, has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b-4(f)(5)<sup>16</sup> thereunder in that it effects a change in an existing order execution system of Nasdaq that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and it does not have the effect of limiting the access to or availability of the system. 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.<sup>17</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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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

<sup>16</sup> 17 CFR 240.19b-4(f)(5).

<sup>17</sup> The effective date of the original proposed rule is August 26, 2005. The effective date of Amendment No. 1 is August 31, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 31, 2005, the date on which Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

#### *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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-102 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-102. 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-NASD-2005-102 and should be submitted on or before September 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Jonathan G. Katz,**

*Secretary.*

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52377; File No. SR-NASD-2005-051]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Create an Enterprise License Fee for the TotalView Entitlement**

September 2, 2005.

#### **I. Introduction**

On April 13, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to create an enterprise license fee for the TotalView entitlement. On June 3, 2005, Nasdaq amended the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 28, 2005.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup> On August 16, 2005, Nasdaq filed a response to the comment letter.<sup>5</sup> This order approves the proposed rule change, as amended.

#### **II. Description of the Proposal**

Nasdaq proposes to establish a program whereby a broker-dealer distributor could obtain an enterprise license for the distribution of the TotalView market data entitlement for a fixed cost of either \$25,000 per month for non-professional subscribers or of \$100,000 per month for broker-dealer distributors that serve both non-professional and professional subscribers. This enterprise license pricing structure would mirror the pricing structure already established for individual professional and non-professional subscribers and is an alternative way to pay for the data.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 51869 (June 17, 2005), 70 FR 37144.

<sup>4</sup> See letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Christopher Gilkerson, Chair, SIA Technology & Regulation Committee, and Andrew Wels, Chair, SIA Market Data Subcommittee, dated July 19, 2005 ("SIA Letter").

<sup>5</sup> See letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated August 16, 2005 ("Nasdaq Response Letter").

This program would only be available to broker-dealers registered under the Act, and would cover all TotalView usage fees with respect to both internal usage and re-distribution to customers with whom the firm has a brokerage relationship.<sup>6</sup> Non-broker-dealer vendors and application service providers would not be eligible for the enterprise license, as such firms, according to Nasdaq, typically pass through the cost of market data user fees to their customers. This would enable firms to incorporate TotalView data into the software applications they make available to their institutional and retail customers, without providing them the opportunity to re-distribute TotalView data in competition with pure vendors.

The enterprise license would cover fees for TotalView data received directly from Nasdaq as well as data received from third-party vendors (e.g., Bloomberg, Reuters). Upon signing up for the program, the relevant firm would be entitled to inform any third-party market data vendor it utilizes (through a Nasdaq-provided form) that, going forward, any TotalView data usage by the broker-dealer may be reported to Nasdaq on a non-billable basis.

### III. Summary of Comments

The Commission received one comment letter on the proposed rule change. The commenter expressed its support for enterprise license fees and also for the fact that the product, TotalView, "does not come with data integration strings attached." However, the commenter stated its concerns that NQDS data would be linked with the TotalView data and that the cost of Brut data integrated in the TotalView entitlement is too high.<sup>7</sup> In response, Nasdaq stated that the link between NQDS data and TotalView data was added to ensure compliance with the fee schedule established by the Operating Committee of the UTP Plan, which plan has been approved by the Commission. Nasdaq further noted that the cost of Brut data integrated in the TotalView entitlement has already been approved by the Commission.<sup>8</sup>

### IV. Discussion

The Commission has carefully reviewed the proposed rule change, the SIA Letter and the Nasdaq Response Letter and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities association,<sup>9</sup> the requirements of Section 15A of the Act,<sup>10</sup> in general, and Section 15A(b)(5) of the Act,<sup>11</sup> in particular, which requires that the NASD's rules provide for an equitable allocation of reasonable charges among members for the use of any facility or system which the NASD operates or controls.

The Commission believes that the program whereby a broker-dealer distributor could obtain an enterprise license for the distribution of the TotalView market data entitlement for a fixed cost of either \$25,000 per month for non-professional subscribers or of \$100,000 per month for broker-dealer distributors that serve both non-professional and professional subscribers satisfies the statutory standards outlined above and will provide increased flexibility to market data vendors, which may result in increased access to market data.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASD-2005-051), as amended, be, and it hereby is, approved.

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

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52362; File No. SR-NYSE-2005-57]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Automating the Execution of Elected Stop Orders and CAP-DI Orders and Converted CAP-DI Orders

August 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 10, 2005, the New York Stock Exchange,

<sup>9</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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.

Inc. ("NYSE" or "Exchange") 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 the Exchange. The proposed rule change has been filed by the Exchange as effecting a change in an existing order-entry or trading system pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(5)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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

The Exchange proposes to systematize certain functions that are currently performed manually regarding the execution of elected stop orders and CAP-DI (convert and parity-destabilizing, immediate or cancel) orders and converted CAP-DI orders. The Exchange represents that the rules regarding the election and execution of CAP-DI and stop orders and conversion and execution of CAP-DI orders remain the same.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange 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 Exchange is filing this proposed amendment to systematize certain functions that are currently performed manually regarding the execution of elected stop orders and CAP-DI orders and converted CAP-DI orders.

The rules regarding the election and execution of CAP-DI and stop orders and the conversion and execution of CAP-DI orders remain the same.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(5).

<sup>6</sup> Distributors who utilize the enterprise license would still be liable for the applicable distributor fees.

<sup>7</sup> See SIA Letter.

<sup>8</sup> See Nasdaq Response Letter.