

July 18, 2005

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

**Re: File No. SR-NASD-2005-051
Enterprise License Fee for TotalView**

Dear Mr. Katz:

The Market Data subcommittee of the Technology and Regulation Committee of the Securities Industry Association¹ ("SIA") is pleased to comment on this proposed rule change. Nasdaq's proposal is an initial step in rationalizing market data fees and increasing access to data that makes the markets more transparent and fair for all investors. However, the SIA remains concerned that the Commission continues to defer major policy issues about the cost of and access to market data. Meanwhile, SRO rule and NMS Plan changes proceed at a rapid pace. The SIA reiterates its view that it is not effective or fair to market participants and investors to address these issues in piecemeal fashion through the routine SRO rule filing process with short time periods for review and comment.

Nasdaq is proposing to modify NASD Rule 7010(q)(1)(A) to establish an enterprise fee alternative for TotalView. The new enterprise fee would be \$25,000 per month for an unlimited number of non-professional subscribers, or \$100,000 per month for unlimited non-professional and professional subscribers whether they are employees using internal applications and work stations or customers seeking to access data directly online.

The data found in TotalView is unavailable anywhere else. Nasdaq is the exclusive processor. It is important market data for professional and non-professional traders, as well as for investors who might not trade as frequently but who also want and need to know the depth of the market to understand the price they are likely to obtain for an order larger than the minimal size reflected in the national best bid or offer ("NBBO").

¹ The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated an estimated \$227.5 billion in domestic revenue and \$305 billion in global revenues. (More information about SIA is available at: www.sia.com).

Without TotalView, an investor does not know what price he or she will or should receive for an order larger than a few hundred shares. As Nasdaq states on its website:

TotalView shows you every single quote and order at every price level in the NASDAQ Market Center, plus all displayed orders at every price level for each NASDAQ-listed security in the Brut facility. With 84% more liquidity than NASDAQ's legacy Level II within five cents of the inside market in NASDAQ-100 Index securities, TotalView is the best information available to discover more trading opportunities.²

The SIA commends Nasdaq for taking this step toward simplifying its market data fees and its attempt to develop a fee structure that has the purpose of increasing access to data. Enterprise fees have the potential to reduce administrative burdens relating to classifying, tracking, reporting, and reconciling complicated fee structures.³ They also have the potential to expand the ability of SIA members to make richer market data available to more of their clients. These are points the SIA has raised in its recent comment letters to the Commission on market data.⁴

It is also significant that Nasdaq's TotalView, unlike the New York Stock Exchange's OpenBook product, does not come with data integration strings attached.⁵ In contrast, Nasdaq has taken an "open source" approach to its depth-of-book product. As we understand it, with the TotalView entitlement a vendor or broker-dealer is free to commingle and integrate the TotalView data into internally-facing or externally-facing applications without cumbersome and intrusive branding and display requirements. This approach enables greater utility for the data and should spur more competition and innovation for designing integrated data products.

Despite these advantages, the SIA is concerned about certain negative effects on competition and transparency that flow as a consequence of TotalView's pricing. These negative effects will greatly reduce the potential benefits that Nasdaq's enterprise pricing otherwise would have.

First, you cannot buy TotalView without also purchasing Nasdaq UTP Plan NQDS market data, also known as Nasdaq Level 2. In fact, \$9 of the \$14 of the current monthly rate for TotalView for non-professionals is paid to the Nasdaq UTP Plan for Level 2. It is important to note that the deeper market data in TotalView is only \$5 of the total package, so members who only want TotalView are required to pay the extra \$9. They have no choice. This is also the case with the proposed enterprise fee: while \$25,000 would cover an unlimited number of non-professionals for a month, our members would still be required to pay a flat \$9 per retail client for the mandatory

² https://www.nasdaqtrader.com/easp/totalview_form.asp

³ This is not the only market data administration simplification step Nasdaq has taken recently. In April, in its role as administrator of the Nasdaq UTP Plan, it announced an optional addendum to its distribution agreement which will allow broker-dealers who meet certain conditions to rely on their own account agreements with clients to protect Nasdaq's interests as an information provider, instead of requiring clients to click-through the long and confusing Nasdaq online subscriber agreement. <http://www.nasdaqtrader.com/Trader/News/2005/vendoralerts/nva2005-022.stm>. The SIA is urging other market data plans and SROs to follow Nasdaq's lead.

⁴ SIA Comment Letter on Proposed Regulation NMS (June 30, 2004) at 21; SIA Comment Letter on Re-Proposed Regulation NMS (Feb. 1, 2005) at 24; SIA Comment Letter on SRO Governance and Transparency Proposal and Concept Release Concerning Self-Regulation (March 9, 2005) at 16.

⁵ See SIA Comment Letter on NYSE Real-Time OpenBook Proposal (Oct. 22, 2004), SEC File No. SR-NYSE-2004-43.

entitlement to Nasdaq Level 2 whether they want it or not. There is nothing in the current fee filing that explains how this type of product-tying is fair and reasonable, furthers competition, or is otherwise consistent with the requirements and purposes of the Securities Exchange Act of 1934.

Second, Nasdaq has incorporated the Brut System Book Feed (“Brut Data”) into TotalView.⁶ Although the proposed enterprise fee will include access to the Brut Data, it effectively is a price increase for that data which before integration was available for free. Similar to other ECN book feeds, the investing public previously had access to the Brut Data for free. With the recent announcements of ECN mergers with SROs (NYSE–Arca, and Nasdaq-INET), the SIA is concerned that those ECN data feeds will also be incorporated into unaffordable SRO data products and that investor direct access to this important market data will soon be a thing of the past. In fact, we anticipate that many current Brut Data subscribers will simply choose to not subscribe to TotalView and that many SIA member firms will also not be able to subsidize their clients’ access to the Brut Data through TotalView. It is simply too expensive. This will drain transparency from the market.

Although the SIA does not oppose Nasdaq’s proposal, overall we do not think it will significantly improve transparency for most investors. The SIA continues to emphasize the fundamental importance of timely access to quality market data for price discovery and the successful and fair functioning of the U.S. securities markets. Today, the valuable data that used to be reflected in the NBBO before decimalization is now in non-consolidated data such as TotalView. We therefore urge the Commission to consider broader policy considerations - such as those summarized above – before it approves seemingly isolated fee and market data proposals.

Very truly yours,

Christopher Gilkerson, Chair
SIA Technology & Regulation Committee

Andrew Wels, Chair
SIA Market Data Subcommittee

CC: The Honorable Cynthia A. Glassman, Acting Chairman
The Honorable Harvey J. Goldschmid
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
Annette L. Nazareth, Director, Division of Market Regulation
Robert L. D. Colby, Deputy Director, Division of Market Regulation

⁶ SEC Order Approving Proposed Rule Change to Incorporate the Brut System Book Feed into TotalView, (SR-NASD-2005-039), Exchange Act Release No. 51862 (June 16, 2005), 70 Fed Reg 36426.