



August 18, 2006

Ms. Nancy Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.W.  
Washington, DC 20549-9303

**Re: File No. SR-NASDAQ-2006-013**

Dear Ms. Morris:

The Market Data Subcommittee of the Technology and Regulation Committee of the Securities Industry Association ("SIA")<sup>1</sup> appreciates the opportunity to comment on this important market data fee rule filing. As we understand it, the proposal would accomplish the following:

- Incorporate INET's data feed into the TotalView data feed;
- Incorporate the OpenView data feed (NYSE and Amex listed quotes posted through Nasdaq) into TotalView;
- Firms that were receiving INET's feed for free would now have to pay the TotalView fee (but could still get the new "TotalView ITCH" in the old INET format);
- Firms that only receive OpenView could continue to receive only OpenView and pay the current fee of \$6 per month per user;

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<sup>1</sup> The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. 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 2005, the industry generated an estimated \$322.4 billion in domestic revenue and an estimated \$474 billion in global revenues. (More information about SIA is available at: [www.sia.com](http://www.sia.com).)

- Firms that were already receiving TotalView would also receive INET's and OpenView's data;
- TotalView professional fees would increase by \$5 to \$75 a month per user, so that a firm that had been paying for both TotalView and OpenView at a total of \$76 per month per user would now pay only \$75 per month;
- TotalView Non-professional fees stay the same (\$14 per month per user);
- Enterprise license fees for TotalView stay the same (\$25,000 per month for the non-professional package; \$100,000 per month for combined professional and non-professional package);
- Changes to the various Distributor Fees (as we understand it, to better enable smaller firms to afford TotalView);
- Create a new "OpenView Top-of-File" data product with no fee that would aggregate best bid and offer quotes for NYSE and Amex securities in the Nasdaq system.<sup>2</sup>

SIA generally applauds the approach Nasdaq is taking in terms of aggregating its various data feeds, data products, and data fee schedules into a single approach and platform. This should meaningfully impact member firms' administrative burdens. We also appreciate that, instead of increasing fees for TotalView data as a result of incorporating INET, or instead of packaging INET as a stand-alone "new" Nasdaq market data product subject to a separate and additional fee, Nasdaq is including INET data in TotalView and keeping the overall market data fees essentially the same.

The new OpenView Top-of-File data product appears to be a positive development as well. Members firms may be able to use this free data in circumstances where permitted under SEC rules as a substitute for the consolidated data, or instead of NYSE's own "top-of-file" data which it has indicated it plans to produce and for which it may charge a new fee. Because top-of-file data is the bare minimum investors need to understand trading and pricing in the market at the time they make investment decisions, such data should be made widely available at the lowest possible or no cost. We hope that Nasdaq will continue to make this data available without a fee, even if it gains significant additional market share in NYSE and Amex listed securities. This would avoid a situation where members firms and their clients come to use and rely on OpenView Top-of-File, but then are unexpectedly required to pay for it in the future.

SIA remains very concerned by two ongoing trends. The first is one in which market information (simple facts submitted by member firms about the current bids,

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<sup>2</sup> If this summary is not materially accurate, we would appreciate clarification.

offers, prices, and orders they handle for investors in our equities markets) that was previously free and readily available is now being packaged and sold as “product.” Nasdaq’s proposed integration of INET data (and Brut data before that) into TotalView is but one example.<sup>3</sup> This phenomenon has resulted from the new for-profit exchange business model and is particularly troubling in light of the second trend.<sup>4</sup>

The second trend is the failure of the exchanges to provide any data to support the summary conclusion that whatever fees they propose are “an equitable allocation of overall costs” and are “fair and reasonable.” There is no factual information provided in recent rule filings to help guide the Commission in determining whether the fees bear any relationship to costs, or whether the fees represent an equitable allocation of the costs associated with using exchange facilities. No data is provided as to what formula – if any – is relied upon in the computation of these fees. The Securities Exchange Act of 1934 requires, at a minimum, that fees be fair and reasonable, a determination that is difficult to make without a cost-based analysis. Without this information, the Commission lacks a legally sufficient foundation to approve the proposed fees, and any such approval would amount to an agency action in the absence of a clear standard.

More broadly, as SIA has stated in a series of comment letters, the Commission must undertake a comprehensive analysis of the impact of consolidation in the industry, the emergence of for-profit exchanges, and the fragmentation of liquidity and the resulting need of member firms and their clients to aggregate multiple data sources to accurately view current securities pricing. All this must be examined in the context of how for-profit SROs should set market data fees and restrictions on data access in light of their conflicts of interest between growing profits and meeting their statutory purpose in the national market system to assure fairness to investors and other market participants. SIA, again,<sup>5</sup> urges that the Commission undertake this review before approving any new market data products or fee changes.

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<sup>3</sup> See Comment Letter from Securities Industry Association (June 30, 2006), File No. SR-NYSEArca 2006-21 and 2006-23 (NYSE Arca’s fee proposal to charge for previously free Arca data).

<sup>4</sup> There is a marked difference in the way for-profit SROs charge for market data compared to the NASD, for example. See Comment Letter from the Securities Industry Association (April 8, 2005), File No. SR-NASD-2005-026 (NASD’s TRACE market data fees proposal based on goal of market transparency and actual costs).

<sup>5</sup> See, e.g., Comment Letter from Securities Industry Association and The Bond Market Association (Feb. 2, 2006), File No. SR-NYSE-2005-77, at 19-20 (NYSE combination with Archipelago); Comment Letter on Regulation NMS from Marc Lackritz, President SIA to Jonathan Katz, Secretary, SEC (Feb. 1, 2005), File No. S7-1-04, at 25-31; Comment Letter on SRO Governance and Transparency Concept Release from Marc Lackritz, President SIA to Jonathan Katz, Secretary, SEC (March 9, 2005), File No. S7-39-04, at 16-19; Comment Letter from the Securities Industry Association (April 28, 2006), File No. SR-NYSE-2005-32 (NYSE OpenBook proposal); Comment letter from the Securities Industry Association (July 18, 2005, File No. SR-NASD-2005-05 (TotalView enterprise license fee).

Thank you for your time and consideration of these views. If you have any questions regarding this letter, please contact Melissa MacGregor, SIA, at 202-216-2000.

Respectfully submitted,

Gregory Babyak, Chairman  
Market Data Subcommittee of the  
SIA Technology and Regulation Committee

Christopher Gilkerson, Chairman  
SIA Technology and Regulation Committee

cc: The Hon. Christopher Cox, Chairman  
The Hon. Paul S. Atkins, Commissioner  
The Hon. Roel C. Campos, Commissioner  
The Hon. Annette L. Nazareth, Commissioner  
The Hon. Kathleen L. Casey, Commissioner  
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