

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50262; File No. SR-NASD-2004-118)

August 25, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Introduce an Extranet Access Fee for Extranet Providers to Provide Direct Access Services for Nasdaq Market Data Feeds

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 4, 2004, 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”) 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 the Substance of the Proposed Rule Change

Nasdaq proposes to add paragraph (v) to Rule 7010 to introduce an extranet access fee for extranet providers to provide direct access services for Nasdaq market data feeds. The text of the proposed rule change is set forth below. Proposed new language is in italics.<sup>3</sup>

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

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

<sup>3</sup> The proposed changes are marked from Rule 7010 as it appears in the NASD Manual available at [www.nasd.com](http://www.nasd.com). There are no pending rule filings that affect this rule filing.

**7010. System Services.**

**(a) – (u) No change.**

**(v) Extranet Access Fee**

Extranet providers that establish a connection with Nasdaq to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of \$750 per recipient Customer Premises Equipment (“CPE”) Configuration. If an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration. For purposes of this paragraph (v), the term “Customer Premises Equipment Configuration” shall mean any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Nasdaq market data feeds to a recipient’s site.

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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 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 purpose of this rule filing is to provide market data customers with more options for direct access connectivity<sup>4</sup> to Nasdaq market data feeds.<sup>5</sup> Currently, MCI,

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<sup>4</sup> A direct access connection means a connection through a private network provider where the provider transmits Nasdaq’s market data feeds to the recipient but does not control the devices used to receive the market data feeds at the recipient’s site.

<sup>5</sup> The proposed rule change applies to connectivity services for both Nasdaq’s Securities Information Processor (“SIP”) and proprietary market data feeds.

Inc. (“MCI”) is the sole provider of direct access connections to Nasdaq’s market data feeds. The monthly fees for direct access connections are set forth in contracts between MCI and its direct access customers. MCI’s monthly direct access fees depend on the customer’s particular bandwidth needs.<sup>6</sup> Nasdaq proposes to establish connections with extranet providers who will also offer direct access connectivity to Nasdaq’s market data feeds. Direct access customers will then be free to contract with such extranet providers instead of MCI to receive direct access connectivity.

As noted above, MCI is the sole provider of direct access connections to Nasdaq’s market data feeds. In order to comply with Nasdaq’s market data integrity requirements, MCI first processes Nasdaq’s market data feeds through its proprietary error correction system, the Republisher. This error correction system is necessary because gaps of information may be lost when a data feed is transmitted to a recipient’s site. After MCI “republishes” the market data feeds, they are then transmitted across MCI’s network. A republished data feed gives MCI’s customers the ability to recover any gaps of information that may have occurred during transmission. The cost of this enhanced service is included in MCI’s monthly direct access fees. MCI owns and is the exclusive

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Nasdaq will not permit any extranet provider to obtain access to Nasdaq’s SIP market data feeds until approval for such access is granted pursuant to the Unlisted Trading Privileges (“UTP”) Plan. Upon approval by the UTP Plan, Nasdaq would include its SIP market data feeds in the extranet access offering without additional charges.

<sup>6</sup> The term “bandwidth” refers to the amount of data that can be transmitted over a circuit in one second. Nasdaq’s market data feeds have specific minimum bandwidth requirements. For example, Nasdaq’s TotalView data feed requires a minimum of 4000 Kbs/feed. Thus, the more market data feeds a customer orders, the more bandwidth the customer will need to purchase from the direct access provider.

operator of the Republisher for Nasdaq until December 31, 2005. In 2006, Nasdaq plans to transition to its own error correction system to replace the Republisher.<sup>7</sup>

In order to monitor the transmission quality of its market data feeds, Nasdaq has an existing connection with MCI's Republisher that routes a copy of all republished market data feeds back to Nasdaq. Nasdaq proposes to permit extranets access to this connection in order for extranets to transmit republished market data feeds. Providing extranets with access to republished market data feeds from Nasdaq will enable extranets to supply the same quality market data feed services that vendors purchase today through MCI.

Nasdaq proposes to charge extranet providers a monthly fee of \$750 per recipient Customer Premises Equipment Configuration for access to Nasdaq's republished market data feeds. The proposed fee will be used to support Nasdaq's costs associated with establishing and maintaining multiple extranet connections. These costs include the costs for republishing, increased network monitoring and maintenance costs, and new administrative and operational costs. The proposed access fee will not affect distributor or subscriber fees.<sup>8</sup> Since MCI currently operates Nasdaq's network and republishes the market data feeds pursuant to a contract, it will not, by definition, be considered an extranet. In 2006, MCI will stop operating the current network and the Republisher for

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<sup>7</sup> Nasdaq plans to invest in its own error correction system in order to gain more control over the quality of its market data feeds. Furthermore, some extranets have expressed their unwillingness to operate their own error correction system to meet Nasdaq's data integrity requirements because of cost considerations.

<sup>8</sup> Nasdaq distributor and subscriber fees apply when an entity seeks to use or repackage the content in a market data feed. The proposed extranet access fee shall apply when an entity seeks to connect to Nasdaq to transport market data feeds without repackaging or using the content of the data feed (i.e., offer direct access connections). A particular entity may, depending on the circumstances, be required to pay all three types of fees.

Nasdaq. At that time, MCI will become an extranet if it chooses to continue offering direct access connections to Nasdaq's data feeds.

The proposed rule change will result in extranet providers competing not only amongst themselves, but also against MCI for direct access customers. Nasdaq believes that competition in the direct access market could potentially decrease the costs for direct access connections and may drive innovation in the direct access market, which may benefit Nasdaq's market data customers through improved network service offerings and lower prices.<sup>9</sup> Lower connectivity costs and innovative service offerings could also result in more direct access customers and a wider distribution of Nasdaq market data feeds.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>10</sup> in general and with Section 15A(b)(5) of the Act,<sup>11</sup> in particular, in that it 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 association operates or controls. All users that establish an extranet connection with Nasdaq to access market data feeds from Nasdaq will pay the same fee, which will offset republishing costs, network monitoring and maintenance costs, and other administrative and operational costs.

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<sup>9</sup> Nasdaq states that, indeed, in anticipation of extranets also offering direct access connections, MCI recently started offering new direct access packages at prices substantially lower than the prices for its older direct access packages.

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

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

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.

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

Within 35 days of the 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. Comments may be submitted by any of the following methods:

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 No. SR-NASD-2004-118 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File No. SR-NASD-2004-118. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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 No. SR-NASD-2004-118 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland  
Deputy Secretary

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