

#### 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. 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 Number SR-NASD-2004-105 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 Number SR-NASD-2004-105. 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, 450 Fifth Street, NW., Washington, DC 20549. 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 Number SR-NASD-2004-105 and should be submitted on or before September 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50262; File No. SR-NASD-2004-118]

#### **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**

August 25, 2004.

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>

##### **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*

<sup>8</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> The proposed changes are marked from Rule 7010 as it appears in the NASD Manual available at <http://www.nasd.com>. There are no pending rule filings that affect this rule filing.

*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.*

\* \* \* \* \*

#### **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, 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

<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. 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

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 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 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.

<sup>8</sup> Nasdaq distributor and subscriber fees apply when an entity seeks to use or repackaging 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.

<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

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- 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

a customer orders, the more bandwidth the customer will need to purchase from the direct access provider.

<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.

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 September 22, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-1986 Filed 8-31-04; 8:45 am]

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of final priorities.

**SUMMARY:** In June 2004, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2005. See 69 FR 36148 (June 28, 2004). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission periodically to review

and revise promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2005, and possibly continuing into the amendment cycle ending May 1, 2006. While the Commission intends to address these priority issues, it recognizes that other factors, most notably the resolution of *United States v. Booker*, \_\_\_ F.3d \_\_\_, 2004, WL 1535858 (7th Cir. 2004), cert. granted, \_\_\_ S.Ct. \_\_\_, 2004 WL 1713654 (Aug. 2, 2004) (No. 04-104) and *United States v. Fanfan*, 2004 WL 1723114 (D. Me. June 28, 2004), cert. granted, \_\_\_ S.Ct. \_\_\_, 2004 WL 1713655 (Aug. 2, 2004) (No. 04-105), both of which currently are pending before the United States Supreme Court, as well as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of the identified policy priorities by the statutory deadline of May 1, 2005.

The Commission's policy priorities for the upcoming amendment cycle are as follows:

- (1) Implementation of crime legislation enacted during the second session of the 108th Congress warranting a Commission response;
- (2) Continuation of its policy work regarding immigration offenses, specifically, offenses under §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), and 2L1.2 (Unlawfully Entering or Remaining in the United States), and Chapter Two, Part L, Subpart 2 (Naturalization and Passports), which also may involve the formation of an ad hoc advisory group on immigration offenses;
- (3) Completion of its work on the "15 Year Study," which is composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act;
- (4) Continuation of its multi-year research and policy work, and possible guideline amendments, relating to Chapter Four (Criminal History and Criminal Livelihood), which may include (a) assessment of the calculation of criminal history points for first time offenders and offenders who are in the highest criminal history categories; (b) assessment of the criminal history rules for the inclusion or exclusion of certain prior offenses; (c) assessment of the

criminal history rules for related cases; and (d) consideration of other application issues relating to simplifying the operation of Chapter Four;

(5) Continued review of data regarding the incidence of downward departures and fast-track programs, in view of the PROTECT Act;

(6) Continuation of its work with Congress and other interested parties on cocaine sentencing policy in view of the Commission's 2002 report to Congress, *Cocaine and Federal Sentencing Policy*;

(7) A general review of the firearms guidelines in Chapter Two, Part K (Offenses Involving Public Safety), including an assessment of non-MANPADS destructive devices;

(8) Consideration of policy statements pertaining to motions under 18 U.S.C. § 3582(c)(1)(A)(i) for sentence reductions for "extraordinary and compelling reasons";

(9) A general review of, and possible amendments pertaining to, hazardous materials, and possibly other environmental offenses under Chapter Two, Part Q (Offenses Involving the Environment);

(10) Continued monitoring of, and/or possible amendments pertaining to, section 5 of the CAN-SPAM Act, Pub. L. 108-187;

(11) Other miscellaneous and limited issues pertaining to the operation of the sentencing guidelines, including (a) resolution of a number of circuit conflicts, including the circuit conflict regarding the definition of "felony", as incorporated into § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) effective November 1, 2004; (b) continuation of policy work regarding offenses involving gamma-butyrolactone (GBL), a precursor for gamma-hydroxybutyric acid (GHB), sentenced under § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy); (c) simulated controlled substances; (d) structural issues regarding the Sentencing Table in Chapter Five, Part A, particularly "cliff-like" effects occurring between levels 42 and 43, and a possible adjustment to the offense level computation when the offense level exceeds level 43; (e) commentary regarding the appropriate starting point for departures under § 5K1.1 (Substantial Assistance), particularly in cases in which the government has moved for relief from imposition of an otherwise applicable mandatory minimum term of imprisonment; (f) commentary to § 3C1.1 (Obstructing or Impeding the Administration of Justice) regarding

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