

purchasing PostData for redistribution to their subscribers.

#### POSTDATA SUBSCRIBERS FROM MARCH TO DECEMBER 2002

Month	Number of sell-side firms post- ing their data	Number of firms sub- scribing to postdata
March .....	3	9
April .....	5	12
May .....	7	14
June .....	10	15
July .....	12	17
August .....	19	24
September .....	22	26
October .....	25	30
November .....	28	31
December .....	30	33

Nasdaq was able to start marketing PostData to potential subscribers such as buy-side firms and data vendors this past fall. It is from these marketing efforts that additional feedback was received such as whether more data can be provided. Nasdaq believes that these actions will increase the likelihood of attracting a meaningful number of subscribers sooner rather than later. It is difficult to predict when that will occur, but Nasdaq represents that it will update the staff regularly, and it will provide a full analysis of the fees as quickly as possible.

*Proposed Enhancements.* Based on feedback provided by potential subscribers, Nasdaq proposes to make the following data elements available to PostData subscribers at no additional charge:

- Daily share volume for all market participants per Nasdaq security on a T+10 basis including the ACT Reported, Buy, Sell, Crossed and Total Activity reports.
- Daily share volume aggregates for all market participants per Nasdaq index on a T+10 basis including the ACT Reported, Buy, Sell, Crossed and Total Activity reports.

Monthly share volume of all market participants on a per security basis has been available to Nasdaq broker-dealers for several years. Initially, the data was provided via computer diskettes sent to the head of Nasdaq trading at firms. Since October 1997, this data has been disseminated on the NasdaqTrader.com web site without charge. The monthly volume reports attribute volume to the reporting party of media-disseminated trades (trades reported to the "tape"). Monthly data is available about 10 business days after the end of the previous month. The web site provides monthly, quarterly and year-to-date

volume aggregates for up to 12 calendar months.

Subscribers and potential subscribers to PostData have requested the ability to access share volume information in customized timeframes outside of the daily and monthly information that is made available in PostData and the public part of NasdaqTrader.com. For example, a customer may track their firm's share volume activity in securities that they begin to perform research analysis for, or have raised capital in a public offering. Most often, these events do not begin at the beginning of a month. Therefore, they would like to be able to request data from customized timeframes (e.g., February 15 to March 15). The daily and monthly reports in PostData do not currently meet this customer base needs.

Additionally, some market participants, primarily buy-side firms, have requested to view all market participant data on a T+1 basis and not just those sell-side firms that voluntarily choose to post their data. Other participants, primarily sell-side firms, have expressed concerns that T+1 data would reveal their trading positions. Those firms have not, however, expressed concern about revealing all market participants' volume information on a T+10 basis because the 10-day delay prevents the disclosure of meaningful information about firms' current positions. Therefore, the proposal appropriately balances the needs and concerns of each customer group and the public interest. As more time passes, the sensitivity of a specific day's volume of a market participant decreases. Ten business days is an appropriate timeframe when the daily volume information of all market participants can be made available either on a per security basis or by a Nasdaq index for example.

Nasdaq proposes to make this information available to all PostData subscribers at no additional charge on a non-discriminatory basis. In its original proposal to create PostData, Nasdaq represented that it would make product enhancements available on an equal basis to all users of the proposed products, whether customers of Nasdaq or of a participating data vendor. Specifically, if Nasdaq offers a free product enhancement during the pilot program, it will be free to all direct and indirect users,<sup>9</sup> and that such

<sup>9</sup> Nasdaq also represented that it would seek Commission approval of any fees to be assessed for such enhancements. Nasdaq notes that this rule filing is properly made immediately effective because Nasdaq is not proposing to assess an

modifications to PostData during the pilot period would be limited to minor enhancements to the content of the package. Nasdaq believes that this rule proposal meets those requirements. In accordance with the conditions of approval of Nasdaq PostData, Nasdaq represents that the PostData modifications described in this proposed rule change will be made available at no charge to all vendors and direct subscribers of Nasdaq. Nasdaq also represents that it has made modification information available to market data vendors generally, but that no vendors are currently accepting the PostData data or redistributing that data to subscribers.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)<sup>10</sup> and 15A(b)(6) of the Act.<sup>11</sup> Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees and other charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system, and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

#### 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.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not:

additional fee for the enhancements proposed herein.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).