

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50977; File No. SR-NASD-2004-189)

January 6, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting and Compliance Engine (“TRACE”) Fees and Implementation Date of Stage Two of Dissemination of TRACE Transaction Information

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 December 28, 2004, the National Association of Securities Dealers, Inc. (“NASD”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. The NASD has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Substance of the Proposed Rule Change

NASD is proposing to amend Rule 7010(k) to terminate the Bond Trade Dissemination Service (“BTDS”) Professional Delayed-Time Data Display Fee pilot program and the BTDS Non-Professional Real-Time Data Display fee, relating to Trade Reporting and Compliance Engine (“TRACE”) transaction data fees, and to amend the

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

implementation date of certain amendments to NASD Rule 6250, relating to TRACE transaction data dissemination and approved by the SEC in SR-NASD-2004-094 (designated as “Stage Two” of the implementation of SR-NASD-2004-094) from February 1, 2005 to February 7, 2005. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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**7010. System Services**

(a) through (j) No change.

**(k) Trade Reporting and Compliance Engine**

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (“TRACE”):

<b>System Fees</b>	<b>Transaction Reporting Fees</b>	<b>Market Data Fees</b>
Level I Trade Report Only Web Browser Access - \$20/month per user ID Level II Full Service Web Browser Access - \$80/month per user ID	Trades up to and including \$200,000 par value - \$0.475/trade; Trades between \$201,000 and \$999,999 par value - \$0.002375 times the number of bonds traded/trade; Trades of \$1,000,000 par value or more - \$2.375/trade	BTDS Professional Real – Time Data Display - \$60/month per terminal, except
CTCI/Third Party - \$25/month/per firm	Cancel/Correct - \$1.50/trade	[BTDS Professional Delayed-Time Data Display - \$15/month per terminal]
	“As of” Trade Late - \$3/trade	BTDS Internal Usage Authorization - \$500/month per application/service for Real-Time and Delayed Time Data

		BTDS External Usage Authorization - \$1,000/month per application/service for Real-Time and Delayed-Time Data
		BTDS Non-Professional Real-Time Data Display – <u>No charge</u> [\$1/month per terminal]

(1) through (2) No change.

**(3) Market Data Fees**

Professionals and non-professionals may subscribe to receive Real-Time and Delayed-Time TRACE data disseminated by NASD in one or more of the following ways for the charges specified, as applicable. Members, vendors and other redistributors shall be required to execute appropriate agreements with NASD.

**(A) Professional Fees**

Professionals may subscribe for the following:

- (i) No change.
- (ii) Reserved. [For a pilot period commencing February 1, 2004, and lasting through July 31, 2005, BTDS Professional Delayed-Time Data Display Fee of \$15 per month, per terminal charge for each interrogation or display device receiving Delayed-Time TRACE transaction data; provided, that subscribers to the BTDS Professional Real-Time Data Display Fee described above shall not be charged this additional fee. Subject to the execution of

appropriate agreements with NASD, certain summary market information of Delayed-Time TRACE transaction data may be published or distributed by newspapers, press associations, newsletters, or similar media sources without charge.]

(iii) through (iv) No change.

**(B) Non-Professional Fees**

[The charge to be] There shall be no charge paid by a non-professional for [each terminal] receiving all or any portion of Real-Time TRACE transaction data disseminated through TRACE. [shall be \$1.00 per month, per terminal.]

(C) through (D) No change.

(l) through (u) No change.

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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, NASD 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. NASD 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

NASD is proposing to amend Rule 7010(k) to terminate the BTDS Professional Delayed-Time Data Display Fee pilot program and the BTDS Non-Professional Real-

Time Data Display fee. Both fees are for TRACE transaction information. In addition, NASD is proposing to change the implementation date of Stage Two of SR-NASD-2004-094. Implementation of Stage Two will make operative certain amendments to NASD Rule 6250 that provide for the delayed dissemination of information on designated transactions in TRACE-eligible securities.

#### TRACE Fees

a. BTDS Professional Delayed-Time Data Display Fee Pilot Program

NASD currently has in place a pilot program that charges for TRACE transaction information provided to professionals on a delayed basis. The charge for this pilot program is the BTDS Professional Delayed-Time Data Display Fee of \$15 per month and is imposed per terminal for each interrogation or display device receiving the delayed data. The pilot program commenced on February 1, 2004.<sup>5</sup>

NASD has recently begun a comprehensive review of TRACE fees. As part of this review, NASD has determined to terminate the BTDS Professional Delayed-Time Data Display Fee and service because the demand for the service was limited.

b. BTDS Non-Professional Real-Time Data Display Fee

NASD currently charges a minimal fee of \$1.00 per month/per terminal for its BTDS Non-Professional Real-Time Data Display service, which allows non-professionals to view TRACE data on a real-time basis.<sup>6</sup> NASD is proposing to eliminate

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<sup>5</sup> The pilot program was recently extended to July 31, 2005. See Securities Exchange Act Release No. 50627 (November 3, 2004); 69 FR 65005 (November 9, 2004) (File No. SR-NASD-2004-163, filed for immediate effectiveness on October 26, 2004).

<sup>6</sup> A “non-professional” is defined in Rule 7010(k)(3)(C)(ii) and is limited by definition to natural persons. In addition, generally the term excludes any

the \$1.00 BTDS Non-Professional Real-Time Data Display Fee for individual investors who are users of this real-time TRACE market data.

Wider distribution of TRACE data is a cornerstone of a broader effort to better educate individual investors about the corporate bond market. NASD proposes to eliminate the fee to remove any financial barriers to the broad-based distribution of TRACE data and encourage Web sites and other media outlets to widely redistribute real-time data to individual investors.

#### Implementation Date of Stage Two of SR-NASD-2004-094

NASD proposes to amend the implementation date of Stage Two of SR-NASD-2004-094. Stage Two requires the implementation of certain amendments to NASD Rule 6250 that provide for the delayed dissemination of information on designated transactions in TRACE-eligible securities.<sup>7</sup>

NASD proposes to change the implementation date of Stage Two from February 1, 2005, to February 7, 2005. Specifically, NASD will implement on February 7, 2005: (1) Rule 6250(a)(1) and (2); (2) the portion of Rule 6250(b)(1)(C)(i) not effective as of October 1, 2004;<sup>8</sup> and (3) Rule 6250(b)(2). Changing the implementation date will allow

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principal, partner, employee, or other person acting in any capacity in the financial services industry, and any person engaged in or intending to engage in any redistribution of TRACE data.

<sup>7</sup> SR-NASD-2004-094 was approved for implementation in two stages. The implementation date of Stage One was October 1, 2004. See Securities Exchange Act Release No. 50317 (September 3, 2004), 69 FR 55202 (September 13, 2004) (File No. SR-NASD-2004-094) (“SEC Approval Order”). See also NASD Notice to Members 04-65 (September 2004).

<sup>8</sup> Rule 6250(b)(1)(C)(i) provides for the immediate dissemination of transactions in TRACE-eligible securities that are rated BB (or the equivalent rating of one or more nationally recognized statistical rating organizations) or lower and are

NASD to implement Stage Two on a Monday, rather than a Tuesday, which will reduce operational implementation issues.

The implementation date for Stage Two of SR-NASD-2004-094 will be February 7, 2005. NASD will announce all implementation dates of the proposed rule change in Notices to Members to be published no later than 30 days following Commission notice of filing of the rule change for immediate effectiveness. The implementation dates regarding proposed amendments to TRACE fees will be no more than 120 days after publication of the related Notice to Members.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>9</sup> which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates

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executed other than during the New Issue Aftermarket-10, if the size of the transaction is \$1 million or less. (The term “New Issue Aftermarket-10” is defined in Rule 6250(a)(2).) During Stage One, NASD partially implemented Rule 6250(b)(1)(C)(i) by disseminating such transactions but only if larger transactions (i.e., “\$1 million plus” transactions) in the same TRACE-eligible security were also subject to dissemination during Stage One. (“\$1 million plus” transactions in the same TRACE-eligible security were disseminated only if the TRACE-eligible security traded an average of one or more times per day, as provided in Rule 6250(b)(1)(C)(ii).) Transactions in TRACE-eligible securities described in Rule 6250(b)(1)(C)(i) that would otherwise be subject to immediate dissemination, but occurred in a security that is traded an average of less than one time per day and in which “\$1 million plus” transactions are subject to dissemination delays under Rule 6250(b)(2)(A) or Rule 6250(b)(2)(B), were not disseminated during Stage One, but will begin to be disseminated when Stage Two is implemented. See SEC Approval Order. See also NASD Notice to Members 04-65 (September 2004).

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

or controls, and the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the elimination of the BTDS Professional Delayed-Time Data Display Fee will equitably allocate fees among subscribers of TRACE data that desire timely data for commercial use or benefit and will not adversely affect the use and distribution of TRACE data, which provides information on TRACE-eligible securities, protecting investors in the market and furthering the public interest. In addition, NASD believes that the elimination of the BTDS Non-Professional Real-Time Data Display Fee will promote the widespread distribution of transaction information about corporate bonds to the public and provide the public with additional information about investments in debt securities, which is in furtherance of the protection of investors and the public interest. Finally, NASD believes that implementing the changes to Rule 6250 on Monday, February 7, 2005, will minimize any potential operational implementation issues in furtherance of the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

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<sup>10</sup> 15 U.S.C. 78o-3(b)(6).



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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from December 28, 2004, the date on which it was filed, and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

### 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-189 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-2004-189. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of 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-2004-189 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>14</sup>

J. Lynn Taylor  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).