

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51874; File No. SR-NASD-2005-063)

June 17, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Amend NASD Rule 7010(k) Relating to TRACE Transaction Data

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 12, 2005, the National Association of Securities Dealers, Inc. (“NASD”) 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 NASD. 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: (i) amend NASD Rule 7010(k)(3)(A)(i) to offer an optional enterprise-based flat fee for the internal display of real-time transaction data relating to its Transaction Reporting and Compliance Engine (“TRACE”) on an unlimited number of interrogation or display devices; and (ii) amend NASD Rule 7010(k)(1)(A) to lower the monthly fee for the first user ID purchased to obtain Level II Full Service Web Browser Access. The text of the proposed rule change is available on NASD’s Web site (<http://www.nasd.com>), at NASD’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 had 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 proposes to amend NASD Rule 7010(k) to add an enterprise fee structure and lower another fee related to the receipt of real-time TRACE transaction data paid by users of such data (“Subscribers”). NASD proposes to amend NASD Rule 7010(k)(3)(A)(i), the Bond Trade Dissemination Service (“BTDS”) Professional Real-Time Data Display Fee, to enable an enterprise such as a broker-dealer to display real-time TRACE transaction data within the enterprise on an unlimited number of internal display devices for a fee of \$7,500 per month. NASD also proposes to amend NASD Rule 7010(k)(1)(A), Web Browser Access, to lower the fee for Level II Full Service Web Browser Access, so that the charge for the first user ID obtained for such access would be \$50 per month rather than the current \$80 per month.

Subscribers typically receive real-time TRACE transaction data in one of two ways – either through a market data vendor that redistributes such data through its services/desktops or through NASD’s Level II Full Service Web Browser Access, which provides the Subscriber both reporting functionality and access to real-time TRACE transaction data.

Although NASD has achieved positive results delivering real-time TRACE transaction

data to the professional trading community, NASD also is striving to make real-time TRACE transaction data more widely available to individual investors so that they may use it in making investment decisions. In an effort to achieve this goal, recently NASD eliminated the BTDS Non-Professional Real-Time Data Display Fee for “Non-Professionals” as defined in NASD Rule 7010(k)(3)(C)(ii) to encourage Subscribers, especially retail brokers, to redistribute real-time TRACE transaction data to their retail customers via their Web-based services.³ NASD believes it would enhance investor protection to further expand the availability of real-time TRACE transaction data and foster an environment where such data is an integral part of the discussions between investors and the persons serving them.

NASD is proposing two amendments to the TRACE fee structure that NASD believes may significantly increase the use of real-time TRACE transaction data among registered representatives, investment advisors, and other persons serving retail investors as well as address member cost concerns that are discussed further below. NASD believes that broadening the distribution of real-time TRACE transaction data would facilitate its use by persons who provide brokerage and/or advisory services to retail investors, and would provide such professionals with an additional tool to better serve and inform retail investors. In addition, access to real-time TRACE transaction data should enhance the ability of Subscribers that are NASD members to comply with various regulatory obligations. Finally, broadening the distribution of real-time TRACE transaction data is likely to have an incremental beneficial effect on corporate bond market transparency and pricing by generally raising the level of awareness and overall knowledge of specific bond issues as well as the bond market generally.

³ See Securities Exchange Act Release No. 50977 (January 6, 2005), 70 FR 2202 (January 12, 2005) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2004-189).

Proposed “Enterprise” Fee

Currently, NASD charges a Subscriber \$60 per month, per terminal (the BTDS Professional Real-Time Data Display Fee) to display real-time TRACE transaction data. Members have indicated that this \$60 per month, per terminal charge is cost prohibitive for organizations with large numbers of potential internal users of the data. Subscribers serving large numbers of retail investors have indicated that they likely would distribute real-time TRACE transaction data much more widely within their organizations if the costs were reduced.

To address these concerns, NASD is proposing to amend NASD Rule 7010(k)(3)(A)(i) to provide Subscribers the option of paying a flat, enterprise fee of \$7,500 per month instead of \$60 per terminal (i.e., per screen or interrogation or display device). The proposed rule change would benefit Subscribers that have a large staff of potential internal data users who desire access to real-time TRACE transaction data. Instead of paying multiple \$60 BTDS Professional Real-Time Data Display Fees, a Subscriber would have the option to pay a flat fee of \$7,500 per month to display real-time TRACE transaction data on an unlimited number of internal terminals/workstations.

The proposed \$7,500 monthly enterprise fee option would lower the fees paid by Subscribers who currently pay to display real-time TRACE transaction data on more than 125 terminals. In addition, the proposed \$7,500 fee option may encourage certain Subscribers that currently pay to display real-time TRACE transaction data on fewer than 125 terminals to pay the proposed \$7,500 flat fee and broaden distribution of real-time TRACE transaction data within their organizations.

The proposed amendment to NASD Rule 7010(k)(3)(A)(i) would apply only to a Subscriber’s internal display of real-time TRACE transaction data and would be independent of

access method or data vendor. The proposed \$7,500 enterprise fee option would include unlimited terminal display use for individual access for all of a Subscriber's employees and the employees of certain of its corporate affiliates.⁴

Level II Full Service Web Browser Access Fee

To ensure a fair and balanced approach to the real-time TRACE transaction data fee structure and encourage use of such data among Subscribers of varying sizes, NASD also is proposing to amend NASD Rule 7010(k)(1)(A) to reduce fees paid by Subscribers who receive real-time TRACE transaction data through Level II Full Service Web Browser Access. Such smaller Subscribers are unlikely to benefit directly from NASD's enterprise pricing proposal.

Currently, the implicit cost for the portion of Level II Full Service Web Browser Access for real-time TRACE transaction data is \$60 per month (per user ID).⁵ NASD proposes to reduce the cost of the first user ID per Subscriber to receive Level II Full Service Web Browser Access from \$80 per month to \$50 per month. The proposed rule change would reduce a Subscriber's marginal cost for the data portion of Level II Full Service Web Browser Access for the first user ID by 50% to \$30 per month. The proposed rule change would reduce the costs of acquiring real-time TRACE transaction data for current Level II Full Service Web Browser Access Subscribers and may encourage some smaller professional market participants not

⁴ A Subscriber wishing to take advantage of this option would enter into an agreement directly with NASD, which in turn would notify the data vendors with which the Subscriber does business to provide blanket permission for use of real-time TRACE transaction data to any user within that organization.

⁵ Level II Full Service Web Browser Access today costs \$80 per month. However, Level II Full Service Web Browser Access also grants users Level I Web Trade Report Only Browser Access (for trade reporting), which otherwise would cost an additional \$20 per month per user ID. Therefore, today the marginal cost of Level II Full Service Web Browser Access is \$60 per month, per user ID.

currently obtaining real-time TRACE transaction data through any service to obtain it through the Level II Full Service Web Browser Access.

Finally, NASD no longer refers to itself using its full corporate name, “the Association,” or “the NASD.” Instead, NASD uses the name “NASD” unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces, as a technical change, several references to “the Association” in Rule 7010 with the name “NASD.”

NASD would announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval, if the Commission approves the proposed rule change. The effective date would be no later than 45 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which requires, among other things, that NASD rules must 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, and Section 15A(b)(5) of the Act,⁷ 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 or controls. NASD believes that reducing the cost to display real-time TRACE transaction data would empower Subscribers to widen distribution of such data, allow Subscribers and their employees to better serve retail investors, and facilitate retail investor awareness of the importance of pricing in the corporate bond market as well as

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78o-3(b)(5).

enhance the ability of certain Subscribers who are NASD members to comply with various regulatory obligations. In addition, NASD believes that introducing the \$7,500 enterprise fee as an option and reducing the cost of Level II Full Service Web Browser Access would result in an equitable allocation of fees for real-time TRACE transaction data among Subscribers.

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

NASD does not believe that the proposed rule change would 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

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 date of 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 NASD 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 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. Please include File Number SR-NASD-2005-063 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-063. 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, 100 F Street, NE, Washington, DC 20549. 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 publicly available. All submissions should refer to File Number SR-NASD-2005-063 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.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).