

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51929; File No. SR-NASD-2005-083)

June 28, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of “Non-Professional” and Use of 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 June 23, 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 and II below, which Items have been prepared by NASD. NASD filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 the definition of “Non-Professional” in NASD Rule 7010(k)(3)(C)(i), relating to Transaction Reporting and Compliance Engine (“TRACE”) transaction data and fees, and add new NASD Rule 7010(k)(3)(A)(iv) to clarify that a natural person who receives and uses TRACE transaction data for his or her personal, non-commercial use will not be charged a TRACE market data professional fee for such use. The text of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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.

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 seeks to make minor clarifying changes to the definition of "Non-Professional" in NASD Rule 7010(k)(3)(C)(i) and to add new NASD Rule 7010(k)(3)(A)(iv). The purpose of the proposed rule change is to restructure NASD Rule 7010(k) to reflect more clearly a recently approved rule change to permit natural persons actively engaged in providing financial services or employed in the financial services industry who do not fall within the definition of "Non-Professional" to access TRACE transaction data solely for personal, non-commercial purposes and not be liable for professional TRACE transaction data fees.

Background. NASD recently made minor clarifying amendments to the defined term "Non-Professional" in NASD Rule 7010(k)(C)(3)(i) to make explicit in the rule that persons who are otherwise excluded from the definition of "Non-Professional," such as registered persons employed by a broker-dealer or an investment adviser, should not be liable for professional fees for TRACE market data when such persons access the TRACE data solely for their personal,

non-commercial use.⁵ The amendments became effective June 1, 2005.

Proposal. The definition of “Non-Professional” is used in various NASD rules. NASD is concerned that defining the same term differently among NASD Rules will create confusion and inefficiencies both for the industry and NASD. For the purpose of maintaining uniformity among definitions, eliminating confusion among industry professionals who must apply the multiple provisions, and creating efficiencies for regulatory data searches and data retrieval, NASD is proposing to amend the defined term “Non-Professional” in NASD Rule 7010(k)(3)(C)(i). This amendment would reverse some of the minor clarifying amendments previously made but would conform it to other NASD provisions also defining “Non-Professional” and preserve the previously approved rule change providing natural persons who are affiliated with or employed by the securities or commodities industry or other parts of the financial services industry⁶ access to TRACE transaction data without paying professional TRACE data fees when using the data solely for personal, non-commercial use.

To effect the restructuring rule change, NASD proposes specific minor clarifying changes to NASD Rule 7010(k)(3)(C)(i) that are set forth in the proposed rule text. The proposed amendments reverse some but not all of the minor clarifying changes recently incorporated in the

⁵ See Securities Exchange Act Release No. 51611 (April 26, 2005), 70 FR 22735 (May 2, 2005) (order approving File No. SR-NASD-2005-026); NASD Notice to Members 05-37 (May 2005). For example, a registered representative of a broker-dealer is not liable for fees charged professionals in those instances where the registered representative accesses the TRACE transaction data solely for personal, non-commercial use, such as when the registered representative accesses TRACE data at home to obtain information about bonds held in his or her personal account.

⁶ Such financial services industry affiliations are described fully in NASD Rule 7010(k)(3)(C)(i) in current subparagraphs (a) through (d), to be renumbered as subparagraphs (a) through (c).

Rule.⁷ NASD also proposes to amend NASD Rule 7010(k)(3)(A) to add subparagraph (iv), providing:

A natural person otherwise subject to market data fees under Rule 7010(k)(3)(A) is not subject to such fees when he or she accesses TRACE transaction data solely for his or her personal, noncommercial use.

Together, the proposed amendments continue to make clear that a natural person who is registered in one of several capacities as a securities or commodities professional, or performs similar functions but is not required to be registered due to an exemption, or is an employee of certain financial services businesses, may access TRACE transaction data free of professional TRACE data charges if the natural person uses such data solely for personal, non-commercial uses. These changes also would maintain conformity among various NASD provisions in which the term “Non-Professional” is defined.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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

⁷ NASD is not revising recently adopted amendments to NASD Rule 7010(k)(3)(C)(i)(d) (to be renumbered as NASD Rule 7010(k)(3)(C)(i)(c)). Prior to amendment, NASD Rule 7010(k)(3)(C)(i)(d) excluded from “Non-Professional” persons employed by a bank, insurance company, or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt if such persons used TRACE transaction data for other than personal, noncommercial use. The revisions added that “other employees” of such organizations who use TRACE transaction data for other than personal, non-commercial use also are not “Non-Professionals.”

⁸ 15 U.S.C. 78o-3(b)(6).

Section 15A(b)(5) of the Act,⁹ 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 continuing to provide access to TRACE data to persons who are using TRACE market data solely for personal, non-commercial use is consistent with the NASD's goals to promote corporate bond market transparency, and would not adversely affect the use and distribution of TRACE data for the protection of investors and in furtherance of the public interest.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule

⁹ 15 U.S.C. 78o-3(b)(5).

change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ NASD complied with this pre-filing requirement.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has asked the Commission to waive the 30-day operative delay to clarify an existing policy regarding TRACE market data fees applicable to professionals and to reverse expeditiously recent rule amendments to the definition of “Non-Professional” in Rule 7010(k)(3) regarding the TRACE policy to avoid industry confusion. The Commission hereby grants this request and designates the proposal to be operative upon filing with the Commission.¹² The Commission believes that maintaining conformity among definitions in NASD’s rules and reducing fees for non-professional use of TRACE transaction data are consistent with the protection of investors and the public interest.

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.¹³

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ See 15 U.S.C. 78s(b)(3)(C).

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 No. SR-NASD-2005-083 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 No. SR-NASD-2005-083. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filing will also 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 No. SR-NASD-2005-083 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.¹⁴

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).