

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52183; File No. SR-NASD-2005-063)

August 1, 2005

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

I. Introduction

On May 12, 2005, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 7010(k) by adding an enterprise fee structure and lowering another fee for real-time transaction data of the Transaction Reporting and Compliance Engine (“TRACE”). The Commission published the proposed rule change for comment in the Federal Register on June 24, 2005.³ The Commission received one comment letter on the proposal.⁴ On July 26, 2005, NASD filed a response to the comment letter.⁵ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 51874 (June 17, 2005), 70 FR 36681.

⁴ See letter from Stephen Tenison to Jonathan G. Katz, Secretary, Commission, dated July 6, 2005 (“Tenison Letter”).

⁵ See letter from James L. Eastman, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 26, 2005 (“NASD Letter”).

II. Description of the Proposed Rule Change

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.

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. 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. NASD believes that 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 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 that currently pay to display real-time TRACE transaction data on more than 125 terminals. In addition, the \$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 \$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.⁶

Level II Full Service Web Browser Access Fee

NASD also proposes to amend NASD Rule 7010(k)(1)(A) to reduce fees paid by subscribers that 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).⁷ 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. This change would reduce a subscriber's marginal cost for the data portion of Level II Full Service Web Browser Access for the first user

⁶ 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.

⁷ 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.

ID by 50%, to \$30 per month. The proposal would reduce the costs of acquiring real-time TRACE transaction data for current subscribers, and NASD believes it might encourage some smaller professional market participants not 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.”

III. Summary of Comments Received and NASD Response

The Commission received one comment letter on the proposal.⁸ The commenter states that the proposed \$7,500 enterprise fee “would benefit very few users” and “is not in the best interest of the industry as a whole.”⁹ The commenter also states that “NASD fails to address what possible benefits are derived from a firm distributing the transaction data more widely within the organization.”¹⁰ In response, NASD states that it believes that broadening the distribution of real-time TRACE transaction data “will benefit the investing public and market professionals, . . . will facilitate its use, for example, by persons who provide brokerage and/or advisory services to retail investors, and will provide such professionals with an additional tool to better serve and inform retail investors.”¹¹ In addition, the commenter suggests that NASD modify the TRACE fee structure so that “firms submitting fewer than 1,000 trades per month are

⁸ Tenison Letter, supra note 4.

⁹ Id.

¹⁰ Id.

¹¹ NASD Letter, supra note 5.

charged nothing to access the system.”¹² In response, NASD states that it believes that lowering “the monthly fee for the first user within a member or other organization of the Level II Full Service Web Browser Access, by lowering the portion of that fee attributable to Real-Time TRACE transaction data access, is a fair and balanced approach by NASD, and provides for the equitable allocation of reasonable fees among members and other persons desiring access to TRACE market data.”¹³

IV. Discussion

After carefully considering the proposed rule change, the comment submitted, and NASD’s response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.¹⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that the rules of an association 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,¹⁶ which requires, among other things, that rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system which the association

¹²

Id.

¹³

Id.

¹⁴

In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵

15 U.S.C. 78o-3(b)(6).

¹⁶

15 U.S.C. 78o-3(b)(5).

operates or controls. The Commission believes that eliminating the marginal cost of accessing real-time TRACE transaction data beyond a certain number of terminals within a subscriber's organization should encourage wider distribution of such data. Furthermore the Commission believes that reducing by \$30 the fee for the first user ID per subscriber to receive Level II Full Service Web Browser Access is reasonable and consistent with the Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NASD-2005-063) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jill M. Peterson
Assistant Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).