

May 3, 2002

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **File No. SR-NASD-2002-63** – Proposed Fees for the Trade Reporting and Compliance Engine (“TRACE”) for Corporate Bonds

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Kosha K. Dalal, Office of General Counsel, NASD Regulation, Inc., at (202) 728-6903; e-mail kosha.dalal@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President and
Corporate Secretary

Enclosures

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD” or “Association”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed structure for fees to be charged in connection with the NASD’s creation of a corporate bond trade reporting and transaction dissemination facility. The Trade Reporting and Compliance Engine or “TRACE” replaces Nasdaq’s Fixed Income Pricing System (FIPS). The proposed rule change is an addition to the NASD’s Rule 6200 Series for TRACE.¹ Below is the text of the proposed rule change. The current text of NASD Rule 7010 (k) Fixed Income Pricing System (FIPS) will be deleted in its entirety and replaced by the proposed new TRACE fees. Proposed new language is underlined, proposed deletions are in brackets.

Rule 7010. System Services

[(k) Fixed Income Pricing System (FIPS)]

[(1) The following charges shall apply to the operation of Full Function and Limited Function FIPS terminals. Charges for Full Function and Limited Function FIPS terminals will also include equipment related charges as detailed in Rule 7020.

(A) Full Function FIPS terminals:

\$1,000/month for the first terminal plus \$350/month for each additional terminal.

¹ The Commission approved the Rule 6200 Series on January 23, 2001. File No. SR-NASD-99-65, Securities Exchange Act Release No. 34-43873 (January 23, 2001); 66 FR 8131 (January 29, 2001) (“TRACE Approval Order”). On December 13, 2001, NASD filed SR-NASD-2001-91 to establish July 1, 2002 as the effective date of the Rule 6200 Series. File No. SR-NASD-2001-91, Securities Exchange Act Release No. 34-45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (approval order for filing immediately effective upon filing). On April 2, 2002, NASD filed SR-NASD-2002-46 to make certain technical amendments to the new Rule 6200 Series.

Full Function FIPS terminals provide access to the full range of quotation and trade reporting capabilities of FIPS through dedicated communication circuits.

(B) Limited Function FIPS terminals:

\$300/month for each terminal plus dial-up communication charges assessed based on actual costs incurred.

Limited Function FIPS terminals provide access to the full range of quotation and trade reporting capabilities of FIPS through a dial-up service.]

[(2) For each transaction in a high-yield security that is reportable to the Association pursuant to Rule 6240 of the FIPS Rules, there shall be a \$1 charge assessed against the member responsible for reporting the transaction under paragraphs (a)(3) or (b)(3) thereof.]

[(3) There shall be a \$50 monthly charge assessed against members using the FIPS service desk. Pursuant to Rule 6240(a)(2)(B), members that do not have access to a FIPS terminal and average five or fewer trades per day in high yield securities, inclusive of FIPS securities, during the previous calendar quarter may utilize the FIPS service desk to report trades in high yield bonds effected in the over-the- counter market.]

[(4) Bond Quotation Data Service (BQDS)

(A) Full BQDS

The charge to be paid by the subscriber for each interrogation or display device receiving Full BQDS information is \$50 per month. Full BQDS information includes the bids and offers of all FIPS participants registered in each FIPS security, the inside bid/ask quotation for each FIPS security, and hourly summary transaction information on FIPS securities.

(B) Limited BQDS

The charge to be paid by the subscriber for each interrogation or display device receiving Limited BQDS information is \$5 per month. Limited BQDS information includes the inside bid/ask quotation for each FIPS security and hourly summary transaction information of FIPS securities.]

Rule 7010(k) Trade Reporting and Compliance Engine (TRACE)²

² In an unrelated filing with the Commission, the NASD filed notice of proposed rule changes relating to the separation of Nasdaq from the NASD and the establishment of the NASD Alternative Display Facility. Such filing proposes to modify certain NASD rules to effectuate this separation. The Rule 7000 Series is proposed to be modified as part of that rule filing. Such filing may require that subsection (k) referenced herein be renumbered to

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

<u>System Fees</u>	<u>Transaction Reporting Fees</u>	<u>Market Data Fees</u>
<u>Web Browser Access:</u> <u>\$85/month for 1 user ID;</u> <u>\$75/month for 2-9 user IDs;</u> <u>\$70/month for 2-10+ user</u> <u>IDs</u>	<u>Trades up to and including</u> <u>\$0 to \$200,000 par value -</u> <u>\$0.50/trade;</u> <u>Trades up to and including</u> <u>\$201,000 to \$999,999 par</u> <u>value - \$0.0025 times the</u> <u>number of bonds</u> <u>traded/trade;</u> <u>Trades of \$1,000,000 par</u> <u>value or more - \$2.50/trade</u>	<u>BTDS Professional Display -</u> <u>\$60/month per terminal</u>
<u>CTCI - \$25/month/line</u>	<u>Cancel/Correct - \$3/trade</u>	<u>BTDS Internal Usage</u> <u>Authorization - \$500/month</u> <u>per organization</u>
<u>Third Party - \$25/month</u>	<u>“As of” Trade Late - \$3/trade</u>	<u>BTDS External Usage</u> <u>Authorization -</u> <u>\$1,000/month per</u> <u>organization</u>
<u>PDN Administrative -</u> <u>\$100/month/line</u>	<u>Browse & Query - \$0.05</u> <u>after first page</u>	<u>BTDS Non-Professional</u> <u>Display - \$1/month per</u> <u>terminal</u>
		<u>Daily List Fax - \$15/month</u> <u>per fax number/addressee</u>

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to the Association pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to the Association: (a) a TRACE web browser (either over the Internet or a secure private data network (“PDN”)); (b) a Computer-to-Computer Interface (“CTCI”) (either one dedicated solely to TRACE or a multi-purpose line); or (c) a third-party reporting

intermediary. Fees will be charged based on the reporting methodology selected by the member.

(A) Web Browser Access

The charge to be paid by a member that elects to report TRACE data to the Association via a TRACE web browser shall be as follows: for the first user ID registered, a charge of \$85 per month; for the next two through nine user IDs registered, a charge of \$75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of \$70 per month, per user ID from two to ten or more. In addition, a member that elects to report TRACE data to the Association via a web browser over a secure PDN rather than over the Internet shall pay an additional administrative charge of \$100 per month, per line.³

(B) Computer-to-Computer Interface Access

The charge to be paid by a member that elects to report TRACE data to the Association via a CTCI line shall be \$25 per month, per line, regardless of whether the line is or is not dedicated exclusively for TRACE.⁴

(C) Third Party Access – Indirect Reporting

A member may elect to report TRACE data indirectly to the Association via third-party reporting intermediaries, such as vendors, service bureaus, clearing firms, or the National Securities Clearing Corporation (“NSCC”). The charge to be paid by a member shall be \$25 per month, per firm. Nothing in this Rule shall prevent such third-party intermediaries from charging additional fees for their services.

³ The charges that may be imposed by third parties, such as network providers, are not included in these fees.

⁴ The charges that may be imposed by third parties, such as CTCI line providers, are not included in these fees.

(2) Transaction Reporting Fees

For each transaction in corporate bonds that is reportable to the Association pursuant to the Rule 6200 Series, the following charges shall be assessed against the member responsible for reporting the transaction:

(A) Trade Reporting Fee

A member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from \$0.50 to \$2.50 per transaction based on the size of the reported transaction. Trades up to and including \$200,000 par value will be charged a \$0.50 fee per trade; trades between \$201,000 par value and \$999,000 par value will be charged a fee of \$0.0025 multiplied by the number of bonds traded ; and trades of \$1,000,000 par value or more will be charged a fee of \$2.50 per trade.

(B) Cancel or Correct Trade Fee

A member shall be charged a Cancel or Correct Trade Fee of \$3.00 per canceled or corrected transaction. To provide firms with time to adjust to the new reporting system, the Cancel or Correct Trade Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE.

(C) “As of” Trade Late Fee

A member shall be charged an “As of” Trade Late Fee of \$3.00 per transaction for those transactions that are not timely reported “As of” as required by these rules. To provide firms with time to adjust to the new reporting system, the “As of” Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE.

(D) Browse and Query Fee

Members may review their own previously reported transaction data through a Browse and Query function. A member shall be charged \$0.05 for each returned page of the query beyond the first page.

(3) Market Data Fees

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

(A) Professional Fees. Professionals may subscribe for the following:

(i) Bond Trade Dissemination Service (“BTDS”) Professional Display Fee of \$60 per month, per terminal charge for each interrogation or display device receiving real-time TRACE transaction data.

(ii) BTDS Internal Usage Authorization Fee of \$500 per month, per organization charge for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities.⁵

(iii) BTDS External Usage Authorization Fee of \$1,000 per month, per organization charge for dissemination of real-time TRACE transaction data used

⁵ Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source.

in one or more of the following ways: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.⁶

(A) Non-Professional Fees

The charge to be 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.

(B) Non-Professional Defined

A “non-professional” is a natural person who is neither:

(i) registered nor qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; or

(ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act);

(iii) 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; nor

(iv) engaged in, or has the intention to engage in, any redistribution of

⁶ Under this service, real-time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing in real-time.

all or any portion of the information disseminated through TRACE.

(4) Daily List Fax Service

Each subscriber for the Association's Daily List Fax Service shall be charged \$15 per month, per fax number/addressee.

* * *

(b) NASD filed proposed rule changes, adding a new Rule 6200 Series, relating to the creation of a corporate bond trade reporting and transaction dissemination facility and the elimination of Nasdaq's FIPS high yield bond reporting system and related fees. The Commission approved the Rule 6200 Series on January 23, 2001. See SR-NASD-99-65 and Amendments No. 1 through 4 thereto, approved in Securities Exchange Act Release No. 43873 (January 23, 2001); 66 FR 8131 (January 29, 2001) ("TRACE Approval Order"). On December 21, 2001, NASD filed SR-NASD-01-91 to establish July 1, 2002 as the effective date of the Rule 6200 Series, which was effective upon filing. On April 2, 2002, NASD filed SR-NASD-2002-46 proposing to make certain technical amendments to the new Rule 6200 Series.

(c) The rule filing relates to the new Rule 6200 Series approved by the Commission in the TRACE Approval Order.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of NASD at its meeting on July 26, 2001 and by unanimous written consent of the Executive Committee of the Board of Governors of NASD on April 18, 2002 which authorized the filing of the rule change with the SEC. No other action by the NASD is necessary for the filing of the proposed rule change.

NASD proposes to make the proposed rule change effective on the same date that the

Rule 6200 Series relating to TRACE is made effective and FIPS is eliminated.

(b) Questions regarding this rule filing may be directed to Kosha K. Dalal, Assistant General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-6903.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The NASD proposed, and the Commission approved, in a separate filing with the Commission, the adoption of the new Rule 6200 Series relating to the creation of a Trade Reporting and Compliance Engine (“TRACE”) and the elimination of Nasdaq’s FIPS high yield reporting system. In this filing, the NASD is proposing to establish fees for participants and users of the TRACE facility and to rescind the FIPS fees.

Background

In 1998, the SEC, in recognition of the relative lack of transparency in the corporate debt market, called upon the NASD to do the following: (1) adopt rules requiring NASD members to report all transactions in corporate bonds to the NASD and to develop systems to receive and distribute transaction prices on an immediate basis; (2) create a database of transactions in corporate bonds to enable regulators to take a proactive role in supervising the corporate debt market; and (3) create a surveillance program, in conjunction with the development of a database to better detect fraud and foster investor confidence in the fairness of the corporate bond market.

Since the SEC mandate, the NASD has developed TRACE, which is a reporting facility developed by the NASD that, among other things, accommodates reporting and dissemination of transaction reports in TRACE-eligible securities.⁷ After extensive consultation with industry

⁷ The term “TRACE-eligible security” is defined in Rule 6210(a) of the TRACE rules.

professionals, the NASD filed SR-NASD-99-65⁸, and amendments thereto to implement the TRACE system.

Participation in TRACE is mandatory for all NASD members that transact business in eligible corporate debt securities. Market participants have specified obligations for the use of the TRACE system when entering, or correcting trade details on TRACE. Participants are obligated to report transaction information within one hour and fifteen minutes after trade execution through, among other means, a web browser (either over the Internet or a private data network (“PDN”)), Computer-to-Computer Interface (“CTCI”), or a third-party intermediary.⁹

The purpose of the proposed rule change is to establish a TRACE fee structure. Developmental costs of TRACE, to date, are approximately \$7.2 million. In addition, total operating costs for the TRACE system are estimated to be approximately \$6 million annually. The proposed fees are intended to help the NASD recover the development costs of the new system, fund ongoing operational costs, and fund the regulatory activities necessary for surveillance of the market, all with a view towards making TRACE financially self-sustaining.

The proposed fees are divided into three general categories: (1) system fees paid by member firms based on the method chosen by the member to report corporate bond transactions to the NASD (members will have several options on how to report trades and the fees will vary accordingly); (2) transaction reporting fees paid by members to file trade reports and cancel, correct, or change trade reports; and (3) market data fees paid by members and non-members that use or distribute the data collected through the TRACE system and disseminated by the NASD.

⁸ See Release 34-43616; File No. SR-NASD-99-65.

⁹ See SR-NASD-2002-46. In such filing the NASD has proposed to increase the reporting time from 1 hour to 1 hour and 15 minutes.

System Fees. TRACE offers participants multiple options to comply with the transaction reporting requirements. The NASD proposes to charge fees to members who use the TRACE system based on the method the member selects to input transaction information to the NASD. Under the proposed rules, members will have three means by which to input transaction information directly to the NASD: (1) a web browser through the Internet, which will be useful primarily for low-volume firms; (2) a web browser using a PDN; or (3) a CTCI, which the Association anticipates will be used primarily by high volume firms. Members may also choose to report transactions indirectly to the NASD through third parties, such as vendors, service bureaus, clearing firms, or the NSCC, which will in turn report to the NASD through one of the approved methods described above.

Members may report transaction information manually through a web browser using their own Internet provider.¹⁰ Members using a web browser will be charged a monthly access fee as follows: for the first user ID registered, a charge of \$85 per month; for the next two through nine user IDs registered, a charge of \$75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of \$70 per month, per user ID from two to ten or more. Members reporting through a web browser may elect to report transaction information through a PDN that is owned and operated by Nasdaq's designated network provider, which is currently WorldCom, Inc. Members choosing to report transaction information directly to the NASD using a PDN will be charged a \$100 per line administration fee per month by the NASD. Members should be aware that this fee does not include fees that will be charged by Nasdaq for services provided by its designated network provider that will be billed directly by Nasdaq.

¹⁰ The cost of the Internet service is not included in NASD's fee. A member must obtain Internet access independently.

Members also may report transaction data through the CTCI operated by Nasdaq for most of its transaction reporting facilities. Nasdaq currently leases dedicated lines from WorldCom, Inc. and provides direct connection from a member firm to the NASD. The NASD monthly charge for reporting through a CTCI is \$25 per month, per line, whether or not such line is used exclusively for TRACE, and does not include Nasdaq charges for its designated network provider.

The NASD believes the fees set forth above are reasonably related to the costs of developing the new facility and to meeting the estimated operating expenses of the TRACE system. The fees are also designed to fund the regulatory activities necessary to survey the market. In addition, the NASD believes the proposed fees are non-discriminatory because members may select the technology link that best suits their particular needs. Further, the proposed fees are consistent with similar fees that are being charged by other transaction reporting facilities.

Transaction Reporting Fees. Members will be charged fees to file transaction reports and cancel, correct, or change transaction reports. The NASD proposes to charge a trade reporting fee using a sliding scale, based upon the size of the transaction reported, in an effort to distribute the fees more equitably between retail oriented firms and institutionally oriented firms. A member shall be charged a Trade Reporting Fee on a sliding scale ranging from \$0.50 to \$2.50 per trade based on the size of the reported transaction. For trades up to and including \$200,000 par value, members will be charged a fee of \$0.50 per trade; for trades between \$201,000 par value and \$999,000 par value, members will be charged a fee of \$0.0025 multiplied by the number of bonds traded; and for trades of \$1,000,000 par value or more, members will be charged a fee of \$2.50 per trade.

The NASD proposes to charge a cancel or correct trade fee of \$3.00 per trade. The NASD also proposes to charge an “As of” trade late fee of \$3.00 per trade. A transaction that is executed after the close of the market must be reported within the first 1 hour and fifteen minutes after the open of the market on the following business day to be reported on time “As of”.¹¹ A member shall be charged an “As of” trade late fee of \$3.00 per transaction for those transactions reported beyond such time frame. To provide firms time to adjust to the new reporting system, the cancel or correct trade fee and “As of” trade late fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. In addition, NASD proposes a browse and query fee of \$0.05 for each returned page of query beyond the first page. This feature will allow members to review their own previously reported data.

In order to standardize corporate bond reporting obligations and minimize industry technology burdens, NASD has proposed (as part of the TRACE filing with the Commission) the elimination of the separate FIPS system and its related rules and costs. The TRACE trade reporting fee will replace the flat fee of \$1.00 per trade currently charged to report corporate bonds through FIPS. The NASD believes the proposed TRACE trade reporting fee structure, which replaces the FIPS flat fee structure with a sliding scale, is reasonable and more equitably distributes the fees between retail-orientated firms and institutional-orientated firms. The fees are designed to help the NASD recover its development costs, estimated operating costs, and the costs of related regulatory activities. In addition, the cancel or correct trade fee and the “As of” trade late fee are proposed to encourage the correct reporting of transaction data, as well as to cover the additional costs incurred by the NASD to correct the historical record and notify

¹¹ As noted previously, the NASD has proposed generally to amend the reporting period from 1 hour to 1 hour and 15 minutes, and this period would apply to transactions executed after the close of the market and reported the next morning.

members and the vendor community. The NASD notes these fees are consistent with those charged by other self-regulatory organizations for reporting requirements.

Market Data Fees. The NASD is committed to delivering real-time market data from the TRACE system to market participants in the broadest and most efficient manner possible. NASD proposes to charge market professionals who subscribe to receive real-time market data as follows: (i) BTDS Professional Display Fee of \$60 per month, per terminal charge for each interrogation or display device receiving real-time TRACE transaction data; (ii) BTDS Internal Usage Authorization Fee of \$500 per month, per organization charge for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities.¹² Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source; (iii) BTDS External Usage Authorization Fee of \$1,000 per month, per organization charge for dissemination of real-time TRACE transaction data used in one or more of the following ways: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.¹³ Non-professionals that subscribe to receive real-time TRACE transaction data will be charged \$1.00 per month, per terminal. In addition, the NASD proposes a fee of \$15.00 per month, per subscriber for the daily list fax

¹² Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source.

¹³ Under this service, real-time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing in real-time.

service that will contain all of the daily additions, deletions, modifications to the list of TRACE-eligible securities.

The NASD believes that the proposed market data fees are reasonable. The various levels of proposed market data fees are intended to provide market participants with the flexibility to select the usage level that best meets their needs. In determining the proposed market data fees, the NASD staff reviewed comparable industry fees for market data. The proposed market data fees are designed to allow the NASD to recover its developmental and operational costs of the TRACE system and the costs of related regulatory activities, while still allowing vendors to resell the data at competitive prices.

Market participants and others who wish to receive real-time TRACE data directly from the NASD will be required to enter into appropriate agreements with the NASD. For example, a vendor or broker/dealer firm that wishes to distribute TRACE real-time data externally will be required to enter into a vendor agreement, which among other things will standardize display facilities and require the vendor to collect specified dissemination fees from its end users for remittance to the NASD. Vendors or broker/dealer firms that wish to receive real-time TRACE data directly from the NASD and subsequently disseminate real-time TRACE data internally will also be required to execute agreements with the NASD, which among other things, will require firms to represent that the TRACE real-time data will not be disseminated externally.

In determining the proposed fees the NASD staff reviewed the existing FIPS fees, Nasdaq fees, and other comparable industry fees. The staff also consulted with members of the industry. In addition, the NASD established the Bond Transaction Reporting Committee (“BTRC”) that has ten members, one-half of whom are recommended by the NASD staff, and the other half of whom are recommended by The Bond Market Association. The staff presented the proposed

TRACE fees to the BTRC for additional industry input, and modified certain aspects of the initial fee proposal in response to concerns raised by the BTRC. With such modifications, the BTRC voted to approve the proposed TRACE fees, subject to a commitment by the NASD staff to reassess the proposed TRACE fees after TRACE is effective.¹⁴ Such reassessment may result in certain fees being reduced or certain new fees being assessed based on the actual usage of the new system. The BTRC recommended that the NASD staff review the TRACE fees based on actual TRACE data collected within the first six months of the system's operation, and adjust the fees if actual revenues are substantially greater than projected.¹⁵

As part of the initiative by the Commission to create price transparency in the corporate bond market, the NASD has worked diligently to develop the TRACE system. Overall, the proposed fees are necessary to achieve a practical, market-driven system for processing and disseminating reliable and uniform corporate bond data. The TRACE system will allow the NASD to take a proactive role in supervising the corporate bond market and promote investor confidence in the fairness of the corporate bond market generally.

Based on the above, the NASD believes the proposed rule change is consistent with the provisions of Section 15A(b)(5)¹⁶ of the Act in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and other persons using

¹⁴ The BTRC did not vote on or approve the Internal Usage Authorization Fee and the External Usage Authorization Fee because the committee did not have sufficient time prior to this filing to appropriately consider these fees.

¹⁵ Generally, the staff believes that a reassessment of the proposed fee structure would not be valid unless it were based on at least 6 months of historical TRACE data (of full TRACE operations and the related revenue stream and costs). However, with respect to certain fees, the Association may require additional historical data, or, conversely, may be able to reassess fees based on data collected over a shorter period. In addition, based on the data collected, the NASD may assess certain internal dissemination fees, including index fees, administrative fees, or distributor fees.

¹⁶ 15 U.S.C. 78o-3(b)(5).

any facility or system which the association operates or controls.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)¹⁷ of the Act, which requires, among other things, that the Association's 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. Based on a mandate by the Commission, the Association developed a corporate bond reporting facility to create transparency in the debt market and allow for surveillance to better detect fraud and foster investor confidence in the fairness of the corporate bond market. In addition, the NASD believes that the proposed rule is consistent with Section 15A(b)(5)¹⁸ of the Act which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which the association operates or controls.

4. 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. Specifically, the proposal allows for competition in the collection of trade reports, and limits the NASD's role to: (1) collecting trade reports directly only from members that choose to report directly to the NASD; (2) consolidating trade reports for regulatory purposes; and (3) disseminating the consolidated data to broker-dealers and those interested in reselling the data but not competing in the market for resale of these data. The proposed fees which the NASD is

¹⁷ 15 U.S.C. 78o-3(b)(6).

¹⁸ 15 U.S.C. 78o-3(b)(5).

seeking to impose for performing these functions are subject to Commission review and approval under the standards set forth for these purposes under Sections 11A and 15A of the Exchange Act.

5. 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.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.¹⁹

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

¹⁹ The NASD has generally submitted proposed rule changes relating to member dues, fees and charges pursuant to Rule 19b-4(f)(2) of the Act and Section 19(b)(3)(A) thereunder which would make such a proposed rule change effective immediately upon filing with the Commission. However, because the TRACE system is new, the NASD is recommending that the Commission solicit comment on the proposed rule change.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

National Association of Securities Dealers, Inc.

By: _____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: May 3, 2002

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- [leave space] ; File No. SR-NASD-2002-63)

[leave space for date]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Fees for the Trade Reporting and Compliance Engine (TRACE) for Corporate Bonds.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 hereunder,² notice is hereby given that on [leave space], the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “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

The NASD is filing with the Commission a proposed structure for fees to be charged in connection with the NASD’s creation of a corporate bond trade reporting and transaction dissemination facility. The facility is currently referred to as the Trade Reporting and Compliance Engine or “TRACE.” TRACE replaces Nasdaq’s Fixed Income Pricing System (FIPS). The proposed rule change is in addition to the NASD’s Rule 6200 Series for TRACE.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved the Rule 6200 Series on January 23, 2001. See SR-NASD-99-65 and Amendments No. 1 through 4 thereto, approved in Securities Exchange Act Release No. 34-43873 (January 23, 2001); 66 FR 811 (January 22, 2001). (“TRACE Approval Order”). On December 21, 2001, NASD filed SR-NASD-2001-91 to establish July 1, 2002 as the effective date of the Rule 6200 Series. See SR-NASD-2001-91, approved in Securities Exchange Act Release No. 34-45229 (January 9, 2002); 67 FR 1255 (January 9, 2002). On April 2, 2002, NASD filed SR-NASD-2002-46 to make certain technical amendments to the new Rule 6200 Series.

The current text of NASD Rule 7010 (k) Fixed Income Pricing System (FIPS) will be deleted in its entirety and replaced by the proposed new TRACE fees. Below is the text of the proposed rule change. Proposed new language is underlined, proposed deletions are in brackets.

Rule 7010. System Services

[(k) Fixed Income Pricing System (FIPS)]

[(1) The following charges shall apply to the operation of Full Function and Limited Function FIPS terminals. Charges for Full Function and Limited Function FIPS terminals will also include equipment related charges as detailed in Rule 7020.

(A) Full Function FIPS terminals:

\$1,000/month for the first terminal plus \$350/month for each additional terminal.

Full Function FIPS terminals provide access to the full range of quotation and trade reporting capabilities of FIPS through dedicated communication circuits.

(B) Limited Function FIPS terminals:

\$300/month for each terminal plus dial-up communication charges assessed based on actual costs incurred.

Limited Function FIPS terminals provide access to the full range of quotation and trade reporting capabilities of FIPS through a dial-up service.]

[(2) For each transaction in a high-yield security that is reportable to the Association pursuant to Rule 6240 of the FIPS Rules, there shall be a \$1 charge assessed against the member responsible for reporting the transaction under paragraphs (a)(3) or (b)(3) thereof.]

[(3) There shall be a \$50 monthly charge assessed against members using the FIPS service desk. Pursuant to Rule 6240(a)(2)(B), members that do not have access to a FIPS terminal and average five or fewer trades per day in high yield securities, inclusive of FIPS securities, during the previous calendar quarter may utilize the FIPS service desk to report trades in high yield bonds effected in the over-the- counter market.]

[(4) Bond Quotation Data Service (BQDS)]

(A) Full BQDS

The charge to be paid by the subscriber for each interrogation or display device receiving Full BQDS information is \$50 per month. Full BQDS information includes the bids and offers of all FIPS participants registered in each FIPS security, the inside bid/ask quotation for each FIPS security, and hourly summary transaction information on FIPS securities.

(B) Limited BQDS

The charge to be paid by the subscriber for each interrogation or display device receiving Limited BQDS information is \$5 per month. Limited BQDS information includes the inside bid/ask quotation for each FIPS security and hourly summary transaction information of FIPS securities.]

Rule 7010(k) Trade Reporting and Compliance Engine (TRACE)⁴

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

<u>System Fees</u>	<u>Transaction Reporting Fees</u>	<u>Market Data Fees</u>
<u>Web Browser Access:</u> <u>\$85/month for 1 user ID;</u> <u>\$75/month for 2-9 user</u> <u>IDs;</u> <u>\$70/month for 2-10+ user</u> <u>IDs</u>	<u>Trades up to and including \$0 to</u> <u>\$200,000 par value - \$0.50/trade;</u> <u>Trades up to and including</u> <u>\$201,000 to \$999,999 par value -</u> <u>\$0.0025 times the number of bonds</u> <u>traded/trade;</u> <u>Trades of \$1,000,000 par value or</u> <u>more - \$2.50/trade</u>	<u>BTDS Professional Display</u> <u>- \$60/month per terminal</u>
<u>CTCI - \$25/month/line</u>	<u>Cancel/Correct - \$3/trade</u>	<u>BTDS Internal Usage</u> <u>Authorization -</u> <u>\$500/month per</u> <u>organization</u>
<u>Third Party - \$25/month</u>	<u>"As of" Trade Late - \$3/trade</u>	<u>BTDS External Usage</u> <u>Authorization -</u> <u>\$1,000/month per</u> <u>organization</u>

⁴ In an unrelated filing with the Commission, the NASD filed notice of proposed rule changes relating to the separation of Nasdaq from the NASD and the establishment of the NASD Alternative Display Facility. Such filing proposes to modify certain NASD rules to effectuate this separation. The Rule 7000 Series is proposed to be modified as part of that rule filing. Such filing may require that subsection (k) referenced herein be renumbered to be consistent with the modifications proposed therein. See SR-NASD-2001-90 filed on December 7, 2001 with the Commission.

<u>PDN Administrative – \$100/month/line</u>	<u>Browse & Query -\$0.05 after first page</u>	<u>BTDS Non-Professional Display - \$1/month per terminal</u>
		<u>Daily List Fax - \$15/month per fax number/addressee</u>

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to the Association pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to the Association: (a) a TRACE web browser (either over the Internet or a secure private data network (“PDN”)); (b) a Computer-to-Computer Interface (“CTCI”) (either one dedicated solely to TRACE or a multi-purpose line); or (c) a third-party reporting intermediary. Fees will be charged based on the reporting methodology selected by the member.

(A) Web Browser Access

The charge to be paid by a member that elects to report TRACE data to the Association via a TRACE web browser shall be as follows: for the first user ID registered, a charge of \$85 per month; for the next two through nine user IDs registered, a charge of \$75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of \$70 per month, per user ID from two to ten or more. In addition, a member that elects to report TRACE data to the Association via a web browser over a secure PDN rather than over the Internet shall pay an additional administrative charge of \$100 per month, per line.⁵

⁵ Charges that may be imposed by third parties, such as network providers, are not included in these fees.

(B) Computer-to-Computer Interface Access

The charge to be paid by a member that elects to report TRACE data to the Association via a CTCI line shall be \$25 per month, per line, regardless of whether the line is or is not dedicated exclusively for TRACE.⁶

(C) Third Party Access – Indirect Reporting

A member may elect to report TRACE data indirectly to the Association via third-party reporting intermediaries, such as vendors, service bureaus, clearing firms, or the National Securities Clearing Corporation (“NSCC”). The charge to be paid by a member shall be \$25 per month, per firm. Nothing in this Rule shall prevent such third-party intermediaries from charging additional fees for their services.

(2) Transaction Reporting Fees

For each transaction in corporate bonds that is reportable to the Association pursuant to the Rule 6200 Series, the following charges shall be assessed against the member responsible for reporting the transaction:

(A) Trade Reporting Fee

A member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from \$0.50 to \$2.50 per transaction based on the size of the reported transaction. Trades up to and including \$200,000 par value will be charged a \$0.50 fee per trade; trades between \$201,000 par value and \$999,000 par value will be charged a fee of \$0.0025 multiplied by the number of bonds traded ; and trades of \$1,000,000 par value or more will be charged a fee of \$2.50 per trade.

(B) Cancel or Correct Trade Fee

⁶ Charges that may be imposed by third parties, such as CTCI line providers, are not included in these fees.

A member shall be charged a Cancel or Correct Trade Fee of \$3.00 per canceled or corrected transaction. To provide firms with time to adjust to the new reporting system, the Cancel or Correct Trade Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE.

(C) “As of” Trade Late Fee

A member shall be charged an “As of” Trade Late Fee of \$3.00 per transaction for those transactions that are not timely reported “As of” as required by these rules. To provide firms with time to adjust to the new reporting system, the “As of” Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE.

(D) Browse and Query Fee

Members may review their own previously reported transaction data through a Browse and Query function. A member shall be charged \$0.05 for each returned page of the query beyond the first page.

(3) Market Data Fees

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

(A) Professional Fees. Professionals may subscribe for the following:

(i) Bond Trade Dissemination Service (“BTDS”) Professional Display Fee of \$60 per month, per terminal charge for each interrogation or display device receiving real-time TRACE transaction data.

(ii) BTDS Internal Usage Authorization Fee of \$500 per month, per organization charge for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities.⁷

(iii) BTDS External Usage Authorization Fee of \$1,000 per month, per organization charge for dissemination of real-time TRACE transaction data used in one or more of the following ways: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.⁸

(A) Non-Professional Fees

The charge to be 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.

(B) Non-Professional Defined

A “non-professional” is a natural person who is neither:

(i) registered nor qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market

⁷ Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source.

⁸ Under this service, real-time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing in real-time.

or association; or

(ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act);

(iii) 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; nor

(iv) engaged in, or has the intention to engage in, any redistribution of all or any portion of the information disseminated through TRACE.

(4) Daily List Fax Service

Each subscriber for the Association’s Daily List Fax Service shall be charged \$15 per month, per fax number/addressee.

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

(a) Purpose

The NASD proposed, and the Commission approved, in a separate filing with the Commission, the adoption of the new Rule 6200 Series relating to the creation of a Trade Reporting and Compliance Engine (“TRACE”) and the elimination of Nasdaq’s FIPS high yield reporting system.⁹ In this filing, the NASD is proposing to establish fees for participants and users of the TRACE facility and to rescind the FIPS fees.

Background

In 1998, the SEC, in recognition of the relative lack of transparency in the corporate debt market, called upon the NASD to do the following: (1) adopt rules requiring NASD members to report all transactions in corporate bonds to the NASD and to develop systems to receive and distribute transaction prices on an immediate basis; (2) create a database of transactions in corporate bonds to enable regulators to take a proactive role in supervising the corporate debt market; and (3) create a surveillance program, in conjunction with the development of a database to better detect fraud and foster investor confidence in the fairness of the corporate bond market.

Since the SEC mandate, the NASD has developed TRACE, which is a reporting facility developed by the NASD that, among other things, accommodates reporting and dissemination of transaction reports in TRACE-eligible securities.¹⁰ After extensive consultation with industry professionals, the NASD filed SR-NASD-99-65¹¹, and amendments thereto to implement the

⁹ The Commission approved the Rule 6200 Series on January 23, 2001. File No. SR-NASD-99-65, Securities Exchange Act Release No. 34-43873 (January 23, 2001); 66 FR 8131 (January 29, 2001) (“TRACE Approval Order”). On December 13, 2001, NASD filed SR-NASD-01-91 to establish July 1, 2002 as the effective date of the Rule 6200 Series. File No. SR-NASD-2001-91, Securities Exchange Act Release No. 34-45229 (January 3, 2002); 67 FR 1255 (January 9, 2002) (approving order for filing immediately effective upon filing). On April 2, 2002, NASD filed SR-NASD-2002-46 proposing to make certain technical amendments to the new Rule 6200 Series.

¹⁰ The term “TRACE-eligible security” is defined in Rule 6210(a) of the TRACE rules.

¹¹ See Release 34-43616; File No. SR-NASD-99-65.

TRACE system.

Participation in TRACE is mandatory for all NASD members that transact business in eligible corporate debt securities. Market participants have specified obligations for the use of the TRACE system when entering, or correcting trade details on TRACE. Participants are obligated to report transaction information within one hour and fifteen minutes after trade execution through, among other means, a web browser (either over the Internet or a private data network (“PDN”)), Computer-to-Computer Interface (“CTCI”), or a third-party intermediary.¹²

The purpose of the proposed rule change is to establish a TRACE fee structure. Developmental costs of TRACE, to date, are approximately \$7.2 million. In addition, total operating costs for the TRACE system are estimated to be approximately \$6 million annually. The proposed fees are intended to help the NASD recover the development costs of the new system, fund ongoing operational costs, and fund the regulatory activities necessary for surveillance of the market, all with a view towards making TRACE financially self-sustaining.

The proposed fees are divided into three general categories: (1) system fees paid by member firms based on the method chosen by the member to report corporate bond transactions to the NASD (members will have several options on how to report trades and the fees will vary accordingly); (2) transaction reporting fees paid by members to file trade reports and cancel, correct, or change trade reports; and (3) market data fees paid by members and non-members that use or distribute the data collected through the TRACE system and disseminated by the NASD.

System Fees. TRACE offers participants multiple options to comply with the transaction reporting requirements. The NASD proposes to charge fees to members who use the TRACE

¹² See SR-NASD-2002-46. In such filing, the NASD has proposed to increase the reporting time from 1 hour to 1 hour and 15 minutes.

system based on the method the member selects to input transaction information to the NASD. Under the proposed rules, members will have three means by which to input transaction information directly to the NASD: (1) a web browser through the Internet, which will be useful primarily for low-volume firms; (2) a web browser using a PDN; or (3) a CTCI, which the Association anticipates will be used primarily by high volume firms. Members may also choose to report transactions indirectly to the NASD through third parties, such as vendors, service bureaus, clearing firms, or the NSCC, which will in turn report to the NASD through one of the approved methods described above.

Members may report transaction information manually through a web browser using their own Internet provider.¹³ Members using a web browser will be charged a monthly access fee as follows: for the first user ID registered, a charge of \$85 per month; for the next two through nine user IDs registered, a charge of \$75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of \$70 per month, per user ID from two to ten or more. Members reporting through a web browser may elect to report transaction information through a PDN that is owned and operated by Nasdaq's designated network provider, which is currently WorldCom, Inc. Members choosing to report transaction information directly to the NASD using a PDN will be charged a \$100 per line administration fee per month by the NASD. Members should be aware that this fee does not include fees that will be charged by Nasdaq for services provided by its designated network provider that will be billed directly by Nasdaq.

Members also may report transaction data through the CTCI operated by Nasdaq for most of its transaction reporting facilities. Nasdaq currently leases dedicated lines from WorldCom,

¹³ The cost of the Internet service is not included in NASD's fee. A member must obtain Internet access independently.

Inc. and provides direct connection from a member firm to the NASD. The NASD monthly charge for reporting through a CTCI is \$25 per month, per line, whether or not such line is used exclusively for TRACE, and does not include Nasdaq charges for its designated network provider.

The NASD believes the fees set forth above are reasonably related to the costs of developing the new facility and to meeting the estimated operating expenses of the TRACE system. The fees are also designed to fund the regulatory activities necessary to survey the market. In addition, the NASD believes the proposed fees are non-discriminatory because members may select the technology link that best suits their particular needs. Further, the proposed fees are consistent with similar fees that are being charged by other transaction reporting facilities.

Transaction Reporting Fees. Members will be charged fees to file transaction reports and cancel, correct, or change transaction reports. The NASD proposes to charge a trade reporting fee using a sliding scale, based upon the size of the transaction reported, in an effort to distribute the fees more equitably between retail oriented firms and institutionally oriented firms. A member shall be charged a Trade Reporting Fee on a sliding scale ranging from \$0.50 to \$2.50 per trade based on the size of the reported transaction. For trades up to and including \$200,000 par value, members will be charged a fee of \$0.50 per trade; for trades between \$201,000 par value and \$999,000 par value, members will be charged a fee of \$0.0025 multiplied by the number of bonds traded; and for trades of \$1,000,000 par value or more, members will be charged a fee of \$2.50 per trade.

The NASD proposes to charge a cancel or correct trade fee of \$3.00 per trade. The NASD also proposes to charge an “As of” trade late fee of \$3.00 per trade. A transaction that is

executed after the close of the market must be reported within the first 1 hour and 15 minutes after the open of the market on the following business day to be reported on time “As of.”¹⁴ A member shall be charged an “As of” trade late fee of \$3.00 per transaction for those transactions reported beyond such time frame. To provide firms time to adjust to the new reporting system, the cancel or correct trade fee and “As of” trade late fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. In addition, NASD proposes a browse and query fee of \$0.05 for each returned page of query beyond the first page. This feature will allow members to review their own previously reported data.

In order to standardize corporate bond reporting obligations and minimize industry technology burdens, NASD has proposed (as part of the TRACE filing with the Commission) the elimination of the separate FIPS system and its related rules and costs. The TRACE trade reporting fee will replace the flat fee of \$1.00 per trade currently charged to report corporate bonds through FIPS. The NASD believes the proposed TRACE trade reporting fee structure, which replaces the FIPS flat fee structure with a sliding scale, is reasonable and more equitably distributes the fees between retail-orientated firms and institutional-orientated firms. The fees are designed to help the NASD recover its development costs, estimated operating costs, and the costs of related regulatory activities. In addition, the cancel or correct trade fee and the “As of” trade late fee are proposed to encourage the correct reporting of transaction data, as well as to cover the additional costs incurred by the NASD to correct the historical record and notify members and the vendor community. The NASD notes these fees are consistent with those charged by other self-regulatory organizations for reporting requirements.

¹⁴ As noted previously, the NASD has proposed generally to amend the reporting period from 1 hour to 1 hour and 15 minutes, and this period would apply to transactions executed after the close of the market and reported the next morning.

Market Data Fees. The NASD is committed to delivering real-time market data from the TRACE system to market participants in the broadest and most efficient manner possible. NASD proposes to charge market professionals who subscribe to receive real-time market data as follows: (i) BTDS Professional Display Fee of \$60 per month, per terminal charge for each interrogation or display device receiving real-time TRACE transaction data; (ii) BTDS Internal Usage Authorization Fee of \$500 per month, per organization charge for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities.¹⁵ Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source; (iii) BTDS External Usage Authorization Fee of \$1,000 per month, per organization charge for dissemination of real-time TRACE transaction data used in one or more of the following ways: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.¹⁶ Non-professionals that subscribe to receive real-time TRACE transaction data will be charged \$1.00 per month, per terminal. In addition, the NASD proposes a fee of \$15.00 per month, per subscriber for the daily list fax service that will contain all of the daily additions, deletions, modifications to the list of TRACE-

¹⁵ Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source.

¹⁶ Under this service, real-time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing in real-time.

eligible securities.

The NASD believes that the proposed market data fees are reasonable. The various fee levels of proposed market data fees are intended to provide market participants with the flexibility to select the usage level that best meets their needs. In determining the proposed market data fees, the NASD staff reviewed comparable industry fees for market data. The proposed market data fees are designed to allow the NASD to recover its developmental and operational costs of the TRACE system and the costs of related regulatory activities, while still allowing vendors to resell the data at competitive prices.

Market participants and others who wish to receive real-time TRACE data directly from the NASD will be required to enter into appropriate agreements with the NASD. For example, a vendor or broker/dealer firm that wishes to distribute TRACE real-time data externally will be required to enter into a vendor agreement, which among other things will standardize display facilities and require the vendor to collect specified dissemination fees from its end users for remittance to the NASD. Vendors or broker/dealer firms that wish to receive real-time TRACE data directly from the NASD and subsequently disseminate real-time TRACE data internally will also be required to execute agreements with the NASD, which among other things, will require firms to represent that the TRACE real-time data will not be disseminated externally.

In determining the proposed fees the NASD staff reviewed the existing FIPS fees, Nasdaq fees, and other comparable industry fees. The staff also consulted with members of the industry. In addition, the NASD established the Bond Transaction Reporting Committee (“BTRC”) that has ten members, one-half of whom are recommended by the NASD, and the other half of whom are recommended by The Bond Market Association. The staff presented the proposed TRACE fees to the BTRC for additional industry input, and modified certain aspects of the initial fee

proposal in response to concerns raised by the BTRC. With such modifications, the BTRC voted to approve the proposed TRACE fees, subject to a commitment by the NASD staff to reassess the proposed TRACE fees after TRACE is effective.¹⁷ Such reassessment may result in certain fees being reduced or certain new fees being assessed based on the actual usage of the new system. The BTRC recommended that the NASD staff review the TRACE fees based on actual TRACE data collected within the first six months of the system's operation and adjust the fees if actual revenues are substantially greater than projected.¹⁸

As part of the initiative by the Commission to create price transparency in the corporate bond market, the NASD has worked diligently to develop the TRACE system. Overall, the proposed fees are necessary to achieve a practical, market-driven system for processing and disseminating reliable and uniform corporate bond data. The TRACE system will allow the NASD to take a proactive role in supervising the corporate bond market and promote investor confidence in the fairness of the corporate bond market generally.

Based on the above, the NASD believes the proposed rule change is consistent with the provisions of Section 15A(b)(5)¹⁹ of the Act in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility or system which the association operates or controls.

¹⁷ The BTRC did not vote on or approve the Internal Usage Authorization Fee and the External Usage Authorization Fee because the committee did not have sufficient time prior to this filing to appropriately consider these fees.

¹⁸ Generally, the staff believes that a reassessment of the proposed fee structure would not be valid unless it were based on at least 6 months of historical TRACE data (of full TRACE operations and the related revenue stream and costs). However, with respect to certain fees, the Association may require additional historical data, or, conversely, may be able to reassess fees based on data collected over a shorter period. In addition, based on the data collected, the NASD may assess certain internal dissemination fees, including index fees, administrative fees, or distributor fees.

¹⁹ 15 U.S.C. 78o-3(b)(5).

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)²⁰ of the Act, which requires, among other things, that the Association's 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. Based on a mandate by the SEC, the Association has developed a corporate bond reporting facility to create transparency in the debt market and allow for surveillance to better detect fraud and foster investor confidence in the fairness of the corporate bond market. In addition, the NASD believes that the proposed rule is consistent with Section 15A(b)(5)²¹ of the Act which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which the association operates and controls.²²

(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. Specifically, the proposal allows for competition in the collection of trade reports, and limits the NASD's role to: (1) collecting trade reports directly only from members that choose to report directly to the NASD; (2) consolidating trade reports for regulatory purposes; and (3) disseminating the consolidated data to broker-dealers and those interested in reselling the data

²⁰ 15 U.S.C. 78o-3(b)(6).

²¹ 15 U.S.C. 78o-3(b)(5).

²² The NASD has generally submitted proposed rule changes relating to member dues, fees and charges pursuant to Rule 19b-4(f)(2) of the Act and Section 19(b)(3)(A) thereunder which would make such a proposed rule change effective immediately upon filing with the Commission. However, because the TRACE system is new, the NASD is recommending that the Commission solicit comments on the proposed rule change.

but not competing in the market for resale of these data. The proposed fees which the NASD is seeking to impose for performing these functions are subject to Commission review and approval under the standards set forth for these purposes under Sections 11A and 15A of the Exchange 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 ACTION²³

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 the self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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

²³ The NASD proposes to make the proposed rule change effective on the same date that the NASD Rule 6200 Series relating to TRACE is made effective and FIPS is eliminated.

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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary