Notice to Members

GUIDANCE

Corporate Debt Securities

NASD Restructures Certain TRACE Fees for Market Data and Amends the Definition of "Non-Professional" in Connection with TRACE Market Data; **Effective Date: June 1, 2005**

Executive Summary

On April 26, 2005, the SEC approved amendments to Rule 7010(k) relating to Trade Reporting and Compliance Engine (TRACE) market data to restructure fees for TRACE market data, to amend the definition of "Non-Professional" in connection with TRACE market data, and to make other conforming or minor, technical changes to the rule (the amendments).[1] In amended Rule 7010(k)(3)(A)(ii), NASD establishes a new fee, the Vendor Real-Time Data Feed Fee, which allows TRACE data subscribers to receive a real-time feed of TRACE transaction data (Real-Time Feed) that the subscriber may use in multiple applications. The Vendor Real-Time Data Feed Fee is $1,500 per month, except for qualifying Tax-Exempt Organizations. Amended Rule 7010(k)(3)(A)(iii) provides that qualifying Tax-Exempt Organizations will pay $400 per month, but will be subject to significant restrictions on their use of the Real-Time Feed.

Also, NASD is eliminating two market data fees, the $500 per month Bond Trade Dissemination Service (BTDS) Internal Usage Authorization Fee (per application or use) and the $1,000 per month BTDS External Usage Authorization Fee (per application or use), amending the defined term Non-Professional in Rule 7010(k)(3)(C)(i) in connection with TRACE market data, and making other conforming or minor, technical amendments to Rule 7010(k).

Rule 7010(k), as amended, is set forth in Attachment A. The effective date of the amendments is **June 1, 2005**.

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Questions/Further Information

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Discussion

The amendments restructure and streamline TRACE market data fees and otherwise amend Rule 7010(k) as follows.

New TRACE Market Data Fee. In amended Rule 7010(k)(3)(A)(ii), NASD establishes a new TRACE market data fee, the Vendor Real-Time Data Feed Fee, which is $1,500 per month. (The fee is reduced to $400 per month for qualifying Tax-Exempt Organizations that use the Real-Time Feed solely to provide Non-Professionals access to the TRACE market data at no charge.) The Vendor Real-Time Data Feed Fee allows TRACE data subscribers to receive a Real-Time Feed that the subscriber may use in an unlimited number of internal and external applications.[2]

Two TRACE Market Data Fees Terminated. The amendments terminate the BTDS Internal Usage Authorization Fee and the BTDS External Usage Authorization Fee. Both the fees, in contrast to the new Vendor Real-Time Data Feed Fee, limited a TRACE data subscriber to a single use or application of a TRACE data feed. The Vendor Real-Time Data Feed Fee replaces both fees.

Tax-Exempt Organization. The term Tax-Exempt Organization is defined in Rule 7010(k)(3)(C)(ii). Qualifying organizations that meet the requirements of the definition and the restrictions on use in Rule 7010(k)(3)(A)(iii) may acquire the Real-Time Feed at the reduced fee of $400 per month.

Non-Professional. The definition of the term Non-Professional in Rule 7010(k)(3)(C)(i), which is used in connection with TRACE market data, is amended to permit natural persons, such as persons registered with the SEC, to use TRACE market data without charge, when the use is personal and noncommercial.[3]

Also, NASD made other minor, technical amendments to Rule 7010(k), which are incorporated in the amended rule text in Attachment A.

Effective Date

The effective date of the amendments is **June 1, 2005.**

Endnotes

1   *See* Securities Exchange Act Release No. 51611 (April 26, 2005), 70 Fed. Reg. 22735 (May 2, 2005) (SEC approval order) (File No. SR-NASD-2005-026).

2   The Vendor Real-Time Data Feed Fee in amended Rule 7010(k)(3)(A)(ii) does not include NASD's monthly charge for each desktop or other interrogation display device receiving the Real-Time Feed. *See* Rule 7010(k)(3)(A)(i).

3   Members are advised that NASD intends to file shortly a further technical amendment to the defined term Non-Professional in Rule 7010(k) to heighten uniformity across its rules and facilitate internal data collection practices. This future amendment to the term Non-Professional will not substantively affect Rule 7010(k)'s requirements, as amended.

ATTACHMENT A

New language is underlined; deletions are in brackets.

7010. System Services

(a) through (j) No change.

(k) Trade Reporting and Compliance Engine (TRACE)

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

System Fees	Transaction Reporting Fees	Market Data Fees
Level I Trade Report Only Web Browser Access - $20/month per user ID Level II Full Service Web Browser Access - $80/month per user ID	Trades up to and including $200,000 par value - $0.475/trade; Trades between $201,000 and $999,999 par value - $0.002375 times the number of bonds traded/trade; Trades of $1,000,000 par value or more - $2.375/trade	BTDS Professional Real-Time Data Display - $60/month per terminal[, except]
CTCI/Third Party - $25/month/per firm	Cancel/Correct - $1.50/trade	Vendor Real-Time Data Feed - $1,500/month for Real-Time TRACE transaction data, except for qualifying Tax-Exempt Organizations
	"As of" Trade Late - $3/trade	Vendor Real-Time Data Feed - $400/month for Real-Time TRACE transaction data for qualifying Tax-Exempt Organizations[BTDS Internal Usage Authorization - $500/month per application/service for Real-Time and Delayed-Time Data]
		BTDS Non-Professional Real-Time Data Display - No charge [BTDS External Usage Authorization - $1,000/month per application/ service for Real-Time and Delayed-Time Data] [BTDS Non-Professional Real-Time Data Display – No charge]

(1) through (2) No change.

(3) Market Data Fees

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

(A) Professional Fees

Professionals may subscribe for the following:

(i) No change.

(ii) [Reserved.]<u>Vendor Real-Time Data Feed Fee of $1,500 per month for Real-Time TRACE transaction data for any person or organization (other than a Tax-Exempt Organization) that receives a Real-Time TRACE transaction data feed. The fee entitles use 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, and the repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products. (This fee does not include per terminal charges for each interrogation or display device receiving Real-Time TRACE transaction data.)</u> [2]

(iii) <u>Vendor Real-Time Data Feed Fee of $400 per month for Real-Time TRACE transaction data received by a Tax-Exempt Organization as defined in Rule 7010(k)(3) for the Tax-Exempt Organization to use solely to provide Non-Professionals access to Real-Time TRACE transaction data at no charge.</u> [BTDS Internal Usage Authorization Fee of $500 per month, per application/service for internal dissemination of Real-Time and/or Delayed-Time TRACE transaction data used in one or more of the following ways in a single application/service: 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.[2]]

[(iv) BTDS External Usage Authorization Fee of $1,000 per month, per application/service for dissemination of Real-Time and/or Delayed-Time TRACE transaction data used in one or more of the following ways in a single application/service: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.[3]]

(B) Non-Professional Fees

There shall be no charge paid by a <u>Non-Professional</u>[non-professional] for receiving all or any portion of Real-Time TRACE transaction data disseminated through TRACE.

(C) Definitions

[(i) "Delayed Time" as used in Rule 7010(k)(3) shall mean that period of time starting four hours after the time of dissemination by NASD of transaction data on a TRACE-eligible security, and ending at 11:59:59 p.m. Eastern Time that calendar day.]

<u>(i)</u> [(ii)]"Non-Professional" – [A non-professional subscriber must provide certain information to NASD and shall receive TRACE market data primarily for his or her personal, non-commercial use.] As used in Rule 7010(k)(3) a <u>"Non-Professional"</u> ["non-professional"]is a natural person who [is neither:] <u>uses TRACE transaction data solely for his or her personal, non-commercial use. A Non-Professional subscriber must agree to certain terms of use of the TRACE data, including that he or she receive and use the TRACE transaction data solely for his or her personal, non-commercial use. Persons who are excluded from the definition of "Non-Professional" include a person that:</u>

<u>a. is not a natural person;</u>

[a.]<u>b. is</u> registered <u>or</u>[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 an employee of the above <u>and, with respect to any person identified in this subparagraph b., uses TRACE transaction data for other than personal, non-commercial use;</u>[who uses such information primarily for business-related activities;]

[b.]<u>c. is</u> engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act), or an employee of the above <u>and, with respect to any person identified in this subparagraph c., uses TRACE transaction data for other than personal, non-commercial use;</u>[who uses such information primarily for business-related activities;]

[c.]d. is 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[;], or any other employee of a bank, insurance company or such other organization referenced above and, with respect to any person identified in this subparagraph d., uses TRACE transaction data for other than personal, non-commercial use; or

[d.]e. is engaged in, or has the intention to engage in, any redistribution of all or any portion of the TRACE transaction data.[information disseminated through TRACE.]

(ii) "Tax-Exempt Organization" as used in Rule 7010(k)(3) means an organization that is described in Section 501(c) of the Internal Revenue Code (26 U.S.C. §501(c)); has received recognition of the exemption from federal income taxes from the Internal Revenue Service; and obtains and uses Real-Time TRACE transaction data solely for redistribution to Non-Professionals, as defined for purposes of Rule 7010(k)(3), at no charge.

(iii) No change.

(D) No change.

(l) through (v) No change.

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2 Under the Vendor Real-Time Data Feed Fee and 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.

[2 Under this service, Real-Time and/or Delayed-Time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing, or disseminated to any external source.]

[3 Under this service, Real-Time and/or Delayed-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.]