

June 17, 2003

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-2003-97 - Extension on Pilot Basis of NASD Rule 7010(k)
Relating to Fees for the Trade Reporting and Compliance Engine (TRACE)**

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 or comments, please contact Kosha K. Dalal, Office of General Counsel, Regulatory Policy and Oversight, NASD, 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

cc: Stephen L. Williams, Division of Market Regulation
Gordon K. Fuller, Division of Market Regulation
Mary N. Simpkins, Division of Market Regulation

File No. SR-NASD-2003-97
Consists of 24 Pages
June 17, 2003

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”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 7010(k) relating to fees for the Trade Reporting and Compliance Engine (“TRACE”) prior to the expiration of the pilot program for fees on June 30, 2003. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004. NASD is not proposing any revisions to the current fee structure for TRACE as part of this rule filing. Therefore, as a result of the proposed rule change, the current fee structure would remain in effect to January 31, 2004. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

7010. System Services

(a) through (j) No Change.

(k) Trade Reporting and Compliance Engine (TRACE)

(Rule 7010(k) shall expire on [June 30, 2003] January 31, 2004, unless amended, extended, or permanently adopted by NASD pursuant to SEC approval at or before such date).

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
From 07/01/02 to 12/31/02: Web Browser Access: \$85/month for 1 user ID;	From 07/01/02 to 12/31/02: Trades up to and including \$200,000 par value -	BTDS Professional Display - \$60/month per terminal, except

\$75/month for 2-9 user IDs; \$70/month for 2-10+ user IDs, except If less than 25 trades per month, in October, November, or December 2002 - \$25/month per user ID From 01/01/03 to [06/30/03] <u>01/31/04</u>: Level I Trade Report Only Web Browser Access - \$25/month per user ID Level II Full Service Web Browser Access - \$85/month per user ID, except For a period of one calendar month to be announced: Level II Full Service Web Browser Access - \$25/month per user ID	\$0.50/trade; Trades between \$201,000 and \$999,999 par value - \$0.0025 times the number of bonds traded/trade; Trades of \$1,000,000 par value or more - \$2.50/trade From 01/01/03 to [06/30/03] <u>01/31/04</u>: 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	For a period of one calendar month to be announced: Waiver of fee (\$0)
CTCI - \$25/month/line	From 07/01/02 to 12/31/02: Cancel/Correct - \$3/trade, except For October 2002 - \$1.50/trade For November 2002 - \$2.25/trade From 01/01/03 to [06/30/03] <u>01/31/04</u>: Cancel/Correct - \$1.50/trade	BTDS Internal Usage Authorization - \$500/month per application/service
Third Party - \$25/month	From 07/01/02 to 12/31/02: "As of" Trade Late - \$3/trade, except For October 2002 - \$1.50/trade For November 2002 - \$2.25/trade	BTDS External Usage Authorization - \$1,000/month per application/service

	From 01/01/03 to [06/30/03] <u>01/31/04</u> : “As of” Trade Late - \$3/trade	
	Browse & Query - \$0.05 after first page	BTDS Non-Professional Display - \$1/month per terminal

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to NASD pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to NASD: (a) a TRACE web browser; (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

(i) For the period commencing July 1, 2002 and ending December 31, 2002, the charge to be paid by a member that elects to report TRACE data to NASD 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. If a member reports less than 25 trades per month to the TRACE system in October, November, or December

2002, the charge to be paid by a member for the TRACE web browser shall be \$25, per such month, per user ID.

(ii) For the period commencing January 1, 2003 and ending [June 30, 2003] January 31, 2004, the charge to be paid by a member that elects to report TRACE data to NASD via a TRACE web browser shall be as follows: \$25 per month, per user ID for Level I Web Trade Report Only Browser Access and \$85 per month, per user ID for Level II Full Service Web Browser Access. Notwithstanding the above sentence, following the effective date of increased bond data dissemination as approved by the SEC on January 31, 2003^[1], NASD shall announce a period of one calendar month during which the charge for Level II Full Service Web Browser Access shall be \$25 per month, per user ID.

(B) through (C) No Change.

(2) Transaction Reporting Fees

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

(A) Trade Reporting Fee

(i) For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged a Trade Reporting

¹ [On January 31, 2003, the SEC approved amendments to NASD Rule 6250 of the TRACE rules that will allow NASD to begin disseminating transaction information on more than 4,000 qualifying Investment Grade corporate debt securities. See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (File No. SR-NASD-2002-174).]

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 \$999,999 par value will be charged a fee of \$0.0025 multiplied by the number of bonds traded per trade; and trades of \$1,000,000 par value or more will be charged a fee of \$2.50 per trade.

(ii) For the period commencing January 1, 2003 and ending [June 30, 2003] January 31, 2004, a member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from \$0.475 to \$2.375 per transaction based on the size of the reported transaction. Trades up to and including \$200,000 par value will be charged a \$0.475 fee per trade; trades between \$201,000 par value and \$999,999 par value will be charged a fee of \$0.002375 multiplied by the number of bonds traded per trade; and trades of \$1,000,000 par value or more will be charged a fee of \$2.375 per trade.

(B) Cancel or Correct Trade Fee

For the period commencing July 1, 2002 and ending December 31, 2002, 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. For the month of October 2002, the Cancel or Correct Trade Fee shall be \$1.50 per canceled or corrected transaction. For the month of November 2002, the Cancel or Correct Trade Fee shall be \$2.25 per canceled or corrected transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] January 31, 2004, a member shall be charged a Cancel or Correct Trade Fee of \$1.50 per canceled or corrected transaction.

(C) “As of” Trade Late Fee

For the period commencing July 1, 2002 and ending December 31, 2002, 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. For the month of October 2002, the “As of” Trade Late Fee shall be \$1.50 per such transaction. For the month of November 2002, the “As of” Trade Late Fee shall be \$2.25 per such transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] January 31, 2004, a member shall be charged an “As of” Trade Late Fee of \$3.00 per canceled or corrected transaction.

(D) No Change.

(3) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of NASD on July 26, 2001 and December 23, 2003, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

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

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

(a) Purpose

Extension of Pilot Program for TRACE Fees

NASD is proposing to extend and/or renew the pilot program for TRACE fees that is scheduled to expire on June 30, 2003 to expire on January 31, 2004. NASD believes the additional time will allow it to more fully reassess the overall impact of the TRACE fee structure. As a result of several changes to the TRACE fee structure during

the pilot period, additional time to review and analyze the fee structure is necessary. NASD believes that the proposed fee structure for TRACE is reasonable. However, NASD remains committed to reviewing and reassessing the impact of the overall TRACE fee structure over time to ensure that the fees are reasonable and equitable for participants in the TRACE system. NASD expects to submit a rule filing to the SEC prior to the January 31, 2004 expiration date seeking approval of a permanent fee structure for TRACE.

Background

On July 1, 2002, the Trade Reporting and Compliance Engine (TRACE) became effective. On June 28, 2002, the Commission approved proposed NASD fees relating to the operation of the TRACE system (Rule 7010(k)) on a pilot basis for a six-month period expiring on December 28, 2002.² As part of that rule filing (Amendment No. 3 to SR-NASD-2002-63), NASD committed to review and reassess the proposed TRACE fees as soon as practicable and within six months after the effective date of TRACE.

On November 15, 2002, NASD submitted a proposed rule change to the SEC to reduce certain TRACE fees for the fourth quarter of 2002 (*i.e.*, the Web Browser Access Fee, the Cancel or Correct Fee, and the “As of” Trade Late Fee). These fees were reduced effective as of October 1, 2002.³

² The Commission approved Rule 7010(k) relating to TRACE fees on June 28, 2002 on a six-month pilot basis. See Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR-NASD-2002-63).

³ On November 22, 2002, the Commission issued a notice to modify certain TRACE fees during the fourth quarter of 2002. See Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (SR-NASD-2002-167).

On December 12, 2002, NASD submitted a proposed rule change to the SEC to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003.⁴ As of January 1, 2003, NASD divided the Web Browser Access Fee into two service and fee levels – Level I with no access to real-time TRACE data, and Level II with access to real-time TRACE data. The fee for Level I Trade Report Only Web Browser Access is \$25 per month, per user ID and the fee for Level II Full Service Web Browser Access is \$85 per month, per user ID. A participant may register for a combination of Level I and Level II service based on their usage and needs.

As of January 1, 2003, NASD also reduced trade reporting fees by 5% for 2003 and reduced the Cancel or Correct Fee from \$3.00 to \$1.50 effective January 1, 2003. The “As of” Trade Late Fee continued at \$3.00 per trade.

On February 27, 2003, NASD filed, for immediate effectiveness, a rule filing to extend the pilot program for TRACE fees to June 30, 2003.⁵

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD’s rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD

⁴ On December 19, 2002, the Commission issued a notice to extend the pilot program for TRACE fees to February 28, 2003 and modify certain fees as of January 1, 2003. See Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR-NASD-2002-176).

⁵ See Securities Exchange Act Release No. 47444 (March 4, 2003), 68 FR 11602 (March 11, 2003) (File No. SR-NASD-2003-25).

operates or controls. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004 to allow NASD greater time to analyze and reassess TRACE fees.

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.

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)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(2) of Rule 19b-4 thereunder,⁶ in that the proposed rule change establishes or changes a due, fee, or other charge. NASD proposes to make the proposed rule change operative immediately.

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

Not applicable.

⁶ 17 CFR 240.19b-4(f)(2).

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.

NASD, INC.

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

Date: June 17, 2003

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- _____ ; File No. SR-NASD-2003-97)
[leave space for date]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Temporary Fee Reductions and Extension on Pilot Basis of NASD Rule 7010(k) Relating to Fees for the Trade Reporting and Compliance Engine (TRACE) by National Association of Securities Dealers, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June __, 2003, 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. NASD has designated the proposed rule change as “establishing or changing a due, fee, or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR § 240.19b-4(f)(2).

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

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") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NASD Rule 7010(k) relating to fees for the Trade Reporting and Compliance Engine ("TRACE") prior to the expiration of the pilot program for fees on June 30, 2003. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004. NASD is not proposing any revisions to the current fee structure for TRACE as part of this rule filing. Therefore, as a result of the proposed rule change, the current fee structure would remain in effect to January 31, 2004. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

7010. System Services

(a) through (j) No Change.

(k) Trade Reporting and Compliance Engine (TRACE)

(Rule 7010(k) shall expire on [June 30, 2003] January 31, 2004, unless amended, extended, or permanently adopted by NASD pursuant to SEC approval at or before such date).

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
From 07/01/02 to 12/31/02: Web Browser Access: \$85/month for 1 user ID;	From 07/01/02 to 12/31/02: Trades up to and including \$200,000 par value -	BTDS Professional Display - \$60/month per terminal, except

\$75/month for 2-9 user IDs; \$70/month for 2-10+ user IDs, except If less than 25 trades per month, in October, November, or December 2002 - \$25/month per user ID From 01/01/03 to [06/30/03] <u>01/31/04</u>: Level I Trade Report Only Web Browser Access - \$25/month per user ID Level II Full Service Web Browser Access - \$85/month per user ID, except For a period of one calendar month to be announced: Level II Full Service Web Browser Access - \$25/month per user ID	\$0.50/trade; Trades between \$201,000 and \$999,999 par value - \$0.0025 times the number of bonds traded/trade; Trades of \$1,000,000 par value or more - \$2.50/trade From 01/01/03 to [06/30/03] <u>01/31/04</u>: 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	For a period of one calendar month to be announced: Waiver of fee (\$0)
CTCI - \$25/month/line	From 07/01/02 to 12/31/02: Cancel/Correct - \$3/trade, except For October 2002 - \$1.50/trade For November 2002 - \$2.25/trade From 01/01/03 to [06/30/03] <u>01/31/04</u>: Cancel/Correct - \$1.50/trade	BTDS Internal Usage Authorization - \$500/month per application/service
Third Party - \$25/month	From 07/01/02 to 12/31/02: "As of" Trade Late - \$3/trade, except For October 2002 - \$1.50/trade For November 2002 - \$2.25/trade	BTDS External Usage Authorization - \$1,000/month per application/service

	From 01/01/03 to [06/30/03] <u>01/31/04</u> : “As of” Trade Late - \$3/trade	
	Browse & Query - \$0.05 after first page	BTDS Non-Professional Display - \$1/month per terminal

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to NASD pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to NASD: (a) a TRACE web browser; (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

(i) For the period commencing July 1, 2002 and ending December 31, 2002, the charge to be paid by a member that elects to report TRACE data to NASD 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. If a member reports less than 25 trades per month to the TRACE system in October, November, or December

2002, the charge to be paid by a member for the TRACE web browser shall be \$25, per such month, per user ID.

(ii) For the period commencing January 1, 2003 and ending [June 30, 2003] January 31, 2004, the charge to be paid by a member that elects to report TRACE data to NASD via a TRACE web browser shall be as follows: \$25 per month, per user ID for Level I Web Trade Report Only Browser Access and \$85 per month, per user ID for Level II Full Service Web Browser Access. Notwithstanding the above sentence, following the effective date of increased bond data dissemination as approved by the SEC on January 31, 2003⁵, NASD shall announce a period of one calendar month during which the charge for Level II Full Service Web Browser Access shall be \$25 per month, per user ID.

(B) through (C) No Change.

(2) Transaction Reporting Fees

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

(A) Trade Reporting Fee

(i) For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged a Trade Reporting

⁵ [On January 31, 2003, the SEC approved amendments to NASD Rule 6250 of the TRACE rules that will allow NASD to begin disseminating transaction information on more than 4,000 qualifying Investment Grade corporate debt securities. See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (File No. SR-NASD-2002-174).]

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 \$999,999 par value will be charged a fee of \$0.0025 multiplied by the number of bonds traded per trade; and trades of \$1,000,000 par value or more will be charged a fee of \$2.50 per trade.

(ii) For the period commencing January 1, 2003 and ending [June 30, 2003] January 31, 2004, a member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from \$0.475 to \$2.375 per transaction based on the size of the reported transaction. Trades up to and including \$200,000 par value will be charged a \$0.475 fee per trade; trades between \$201,000 par value and \$999,999 par value will be charged a fee of \$0.002375 multiplied by the number of bonds traded per trade; and trades of \$1,000,000 par value or more will be charged a fee of \$2.375 per trade.

(B) Cancel or Correct Trade Fee

For the period commencing July 1, 2002 and ending December 31, 2002, 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. For the month of October 2002, the Cancel or Correct Trade Fee shall be \$1.50 per canceled or corrected transaction. For the month of November 2002, the Cancel or Correct Trade Fee shall be \$2.25 per canceled or corrected transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] January 31, 2004, a member shall be charged a Cancel or Correct Trade Fee of \$1.50 per canceled or corrected transaction.

(C) “As of” Trade Late Fee

For the period commencing July 1, 2002 and ending December 31, 2002, 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. For the month of October 2002, the “As of” Trade Late Fee shall be \$1.50 per such transaction. For the month of November 2002, the “As of” Trade Late Fee shall be \$2.25 per such transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] January 31, 2004, a member shall be charged an “As of” Trade Late Fee of \$3.00 per canceled or corrected transaction.

(D) No Change.

(3) No Change.

* * * * *

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

Extension of Pilot Program for TRACE Fees

NASD is proposing to extend and/or renew the pilot program for TRACE fees that is scheduled to expire on June 30, 2003 to expire on January 31, 2004. NASD believes the additional time will allow it to more fully reassess the overall impact of the TRACE fee structure. As a result of several changes to the TRACE fee structure during the pilot period, additional time to review and analyze the fee structure is necessary. NASD believes that the proposed fee structure for TRACE is reasonable. However, NASD remains committed to reviewing and reassessing the impact of the overall TRACE fee structure over time to ensure that the fees are reasonable and equitable for participants in the TRACE system. NASD expects to submit a rule filing to the SEC prior to the

January 31, 2004 expiration date seeking approval of a permanent fee structure for TRACE.

Background

On July 1, 2002, the Trade Reporting and Compliance Engine (TRACE) became effective. On June 28, 2002, the Commission approved proposed NASD fees relating to the operation of the TRACE system (Rule 7010(k)) on a pilot basis for a six-month period expiring on December 28, 2002.⁶ As part of that rule filing (Amendment No. 3 to SR-NASD-2002-63), NASD committed to review and reassess the proposed TRACE fees as soon as practicable and within six months after the effective date of TRACE.

On November 15, 2002, NASD submitted a proposed rule change to the SEC to reduce certain TRACE fees for the fourth quarter of 2002 (*i.e.*, the Web Browser Access Fee, the Cancel or Correct Fee, and the “As of” Trade Late Fee). These fees were reduced effective as of October 1, 2002.⁷

On December 12, 2002, NASD submitted a proposed rule change to the SEC to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003.⁸ As of January 1, 2003, NASD divided the Web Browser Access Fee into two service and fee levels – Level I with no access to real-time TRACE

⁶ The Commission approved Rule 7010(k) relating to TRACE fees on June 28, 2002 on a six-month pilot basis. See Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR-NASD-2002-63).

⁷ On November 22, 2002, the Commission issued a notice to modify certain TRACE fees during the fourth quarter of 2002. See Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (SR-NASD-2002-167).

⁸ On December 19, 2002, the Commission issued a notice to extend the pilot program for TRACE fees to February 28, 2003 and modify certain fees as of January 1, 2003. See Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR-NASD-2002-176).

data, and Level II with access to real-time TRACE data. The fee for Level I Trade Report Only Web Browser Access is \$25 per month, per user ID and the fee for Level II Full Service Web Browser Access is \$85 per month, per user ID. A participant may register for a combination of Level I and Level II service based on their usage and needs.

As of January 1, 2003, NASD also reduced trade reporting fees by 5% for 2003 and reduced the Cancel or Correct Fee from \$3.00 to \$1.50 effective January 1, 2003. The "As of" Trade Late Fee continued at \$3.00 per trade.

On February 27, 2003, NASD filed, for immediate effectiveness, a rule filing to extend the pilot program for TRACE fees to June 30, 2003.⁹

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act, which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004 to allow NASD greater time to analyze and reassess TRACE fees.

(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.

⁹

See Securities Exchange Act Release No. 47444 (March 4, 2003), 68 FR 11602 (March 11, 2003) (File No. SR-NASD-2003-25).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ because the proposal is “establishing or changing a due, fee, or other charge.” The rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder, and will be operational immediately.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR § 240.19b-4(f)(2).

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 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).

Margaret McFarland
Secretary