

December 12, 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-2002-176 Proposed Rule Change and Renewal 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, 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-2002-176
Consists of 38 Pages
December 12, 2002

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 December 28, 2002. NASD is proposing to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003. As a result of the proposed rule change, the current fee structure would remain in effect to December 31, 2002. In addition, NASD is proposing technical revisions to Rule 7010(k) to replace references to “the Association” with “NASD.” Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

7010. System Services

(k) Trade Reporting and Compliance Engine (TRACE)

(Rule 7010(k) shall expire on [December 28, 2002] February 28, 2003, 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
<u>From 07/01/02 to 12/31/02:</u> Web Browser Access: \$85/month for 1 user ID; \$75/month for 2-9 user IDs; \$70/month for 2-10+ user	<u>From 07/01/02 to 12/31/02:</u> Trades up to and including \$200,000 par value - \$0.50/trade; Trades between \$201,000	BTDS Professional Display - \$60/month per terminal

<u>IDs, except</u> If less than 25 trades per month, in October, November, or December 2002 - \$25/month per user ID <u>From 01/01/03 to 02/28/03:</u> <u>Level I Trade Report Only Web Browser Access - \$25/month per user ID</u> <u>Level II Full Service Web Browser Access - \$85/month per user ID</u>	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 <u>From 01/01/03 to 02/28/03:</u> <u>Trades up to and including \$200,000 par value - \$0.475/trade;</u> <u>Trades between \$201,000 and \$999,999 par value - \$0.002375 times the number of bonds traded/trade;</u> <u>Trades of \$1,000,000 par value or more - \$2.375/trade</u>	
CTCI - \$25/month/line	<u>From 07/01/02 to 12/31/02:</u> Cancel/Correct - \$3/trade, <u>except</u> For October 2002 - \$1.50/trade For November 2002 - \$2.25/trade <u>From 01/01/03 to 02/28/03:</u> <u>Cancel/Correct - \$1.50/trade</u>	BTDS Internal Usage Authorization - \$500/month per organization
Third Party - \$25/month	<u>From 07/01/02 to 12/31/02:</u> "As of" Trade Late - \$3/trade, <u>except</u> For October 2002 - \$1.50/trade For November 2002 - \$2.25/trade <u>From 01/01/03 to 02/28/03:</u> <u>"As of" Trade Late - \$3/trade</u>	BTDS External Usage Authorization - \$1,000/month per organization
<u>From 07/01/02 to 12/31/02:</u> PDN Administrative - \$100/month/line <u>As of 01/01/03:</u>	Browse & Query - \$0.05 after first page	BTDS Non-Professional Display - \$1/month per terminal

<u>PDN service and corresponding fee eliminated</u>		
		<u>From 07/01/02 to 12/31/02:</u> Daily List Fax - \$15/month per fax number/addressee <u>As of 01/01/03:</u> <u>Daily List Fax service and corresponding fee eliminated</u>

(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 (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

(i) For the period commencing July 1, 2002 and ending December 31, 2002, [T]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 February 28, 2003, 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.

(iii) [In addition, a] A member that elects to report TRACE data to NASD [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.¹ As of January 1, 2003, PDN service and the corresponding fee shall be eliminated.

(B) Computer-to-Computer Interface Access

The charge to be paid by a member that elects to report TRACE data to NASD [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.²

¹ Charges that may be imposed by third parties, such as network providers, are not included in these fees.

² Charges that may be imposed by third parties, such as CTCI line providers, are not included in these fees.

(C) Third Party Access – Indirect Reporting

A member may elect to report TRACE data indirectly to NASD [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 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] 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 \$999,999 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 February 28, 2003, 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] 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 February 28, 2003, 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] 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 February 28, 2003, a member shall be charged an “As of” Trade Late Fee of \$3.00 per canceled or corrected transaction.

(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 NASD [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 NASD [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.³

(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.⁴

³ 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.

⁴ 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.

(B) 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.

(C) 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 202(a)(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 NASD’s [the Association’s] Daily List Fax Service shall be charged \$15 per month, per fax number/addressee.

As of January 1, 2003, Daily List Fax service and the
corresponding fee shall be eliminated.

* * * * *

(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 November 21, 2002, 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. NASD will announce the implementation date of the proposed rule change in a Notice to Members to be published no later than 30 days following filing with the Commission.

(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

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, 2002.⁵ 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, based on such factors as actual volume, usage, costs, and revenues.

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, 2002.⁶

Review by NASD staff of the impact of the original fee structure indicates that a continuation of these fees in 2003 could potentially result in a significant financial burden to many firms. NASD is therefore proposing to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003. As a result of the proposed rule change, the current fee structure would remain in effect to December

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

⁶ See SR-NASD-2002-167 (November 15, 2002) filed pursuant to Section 19(b)(3)(A) of the Act for immediate effectiveness.

31, 2002. NASD believes the proposed rule change will more equitably distribute the costs to participants of the TRACE system.

The current TRACE fee structure is divided into three general categories: system related fees, transaction reporting fees, and market data fees. After carefully reviewing the data collected to date, NASD staff is proposing to revise the current fee structure for TRACE as described below.

Proposed Amendments to Web Browser Access Fees

Under the TRACE rules, a member may report TRACE transaction data to NASD by one of three approved methods: (1) web browser access; (2) direct computer-to-computer interface (“CTCI”); or (3) indirectly through third-parties, such as vendors, service bureaus, clearing firms, or the National Securities Clearing Corporation. Many small participants have registered to report TRACE transaction data to NASD through the web browser because the alternative methods are either not cost effective for them or not viable for their methods of processing data.

Following the effective date of TRACE, NASD staff received complaints from certain firms regarding the burden of paying the Web Browser Access Fee. These firms complained that the small number of TRACE transactions that they handle and, therefore, are required to report on a monthly basis are not in line with the \$85 per month cost for one web browser.

The current Web Browser Access Fee for each registered participant is: \$85 per month for the first user ID; \$75 per month for the second through ninth user ID; and \$70 per month for the second through tenth or more user ID, if the participant registers ten or more user IDs. For the fourth quarter of 2002, the Web Browser Access Fee was reduced

to \$25 per month, per user ID for participants that reported less than 25 transactions during the months of October, November, and December 2002. The current web browser permits the reporting of transactions into the TRACE system, and, through the use of a query feature, allows participants access to TRACE transactions and real-time TRACE market data. At the time this service was established (and the fees determined), NASD did not have the capability to separate the real-time market data access feature from the web browser. As a result, the current web browser access fees were largely established based on the cost of including the real-time market data access feature to participants that elected to report TRACE transactions through the web browser.

Since that time, NASD staff has developed the capability to separate the real-time market data access feature from the web browser. Commencing January 1, 2003, NASD is proposing that the Web Browser Access Fee be divided into two service levels – Level I with no access to real-time TRACE data, and Level II with access to real-time TRACE data.

A participant who registers for Level II Full Service Web Browser Access will be able to report TRACE data to NASD over the Internet and to use a query feature to receive real-time TRACE transaction data. Level II Full Service Web Browser Access Fee will be \$85 per month, per user ID and will replace the current graduated fee structure. A participant who registers for Level I Trade Report Only Web Browser Access will be able to report TRACE data to NASD over the Internet. Level I Trade Report Only access will not allow a participant to receive real-time TRACE transaction data. The proposed fee for Level I Web Browser Access is \$25 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.

The charge for the Level II Full Service Web Browser Access includes the cost of developing and providing real-time TRACE data access through the web browser. In addition, NASD is proposing to eliminate the multi-browser discount. While this may result in a small increase in costs for firms that use multiple copies of the browser with market data access, NASD staff believes the flat fee treats all firms equitably and may allow firms to achieve overall cost savings by subscribing to Level I Trade Report Only Web Browser Access, instead of Level II Full Service Web Browser Access, for those users who do not require real-time TRACE data access.

Proposed Amendments to Trade Reporting Fees

The current Trade Reporting Fees are based on a sliding scale that ranges 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 are charged a \$0.50 fee per trade; trades between \$201,000 par value and \$999,999 par value are charged a fee of \$0.0025 multiplied by the number of bonds traded; and trades of \$1,000,000 par value or more are charged a fee of \$2.50 per trade.

Following the operation of TRACE, NASD staff has been collecting data on trade reporting fees incurred by participants. The revenues generated by this fee have been higher than originally forecasted. As a result, NASD is proposing that trade reporting fees be reduced by 5% for 2003. The Trade Reporting Fee will continue to be based on a sliding scale, but the range will be 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, and trades of \$1,000,000 par value or more will be charged a fee of \$2.375 per trade.

Proposed Amendments to Cancel or Correct Fees

Cancel, correct, and “As of” transactions are used by participants to modify original trade entries. While a certain level of corrective transactions will always be necessary, NASD staff believes it is very important that trades be entered into the system correctly the first time to ensure that data disseminated through the TRACE system is accurate and to allow investors to rely on the data stream they receive. Further, the volume of corrective transactions will increase NASD’s technology costs.

In the original fee proposal, NASD delayed the effectiveness of the Cancel or Correct Fee and the “As of” Late Fee to October 1, 2002. Based on NASD staff review of the data collected on such fees after the first three months of TRACE operation, on November 15, 2002, NASD submitted a proposed rule change to the SEC to phase in the implementation of the two fees during the last quarter of 2002 to allow participants greater time to adjust to the new system and focus on methods to reduce the likelihood of incurring such fees.⁷

The original charge for the Cancel or Correct Fee and the “As of” Late Fee was \$3.00 for each such reported trade. For the month of October 2002, the Cancel or Correct Fee and the “As of” Late Fee charge assessed to each participant were reduced from \$3.00 per trade to \$1.50 per trade (a 50% discount), and for the month of November

⁷ See SR-NASD-2002-167 (November 15, 2002).

2002, the Cancel or Correct Fee and the “As of” Late Fee were reduced from \$3.00 per trade to \$2.25 per trade (a 25% discount).

Based on further NASD staff analysis, the number of cancel and correct transactions submitted continue to be high. NASD staff has been contacting participants to review their systems and reporting methodologies to reduce erroneous reporting by participants. NASD staff still believes that over time the number of corrective transactions submitted to the system will decline. However, NASD believes that fees for corrective transactions are necessary to discourage erroneous reporting and to improve the integrity of disseminated data. Therefore, NASD is proposing that the Cancel or Correct Fee be reduced from \$3.00 to \$1.50 effective January 1, 2003. The “As of” Trade Late Fee will remain at \$3.00 per trade.

Proposed Amendment to Eliminate PDN Administrative Fee

In the original fee proposal, NASD had provided users the option of reporting TRACE data through the web browser over a secure private data network rather than over the Internet. The cost of this additional service is \$100 per month, per line. No users have subscribed to this service and, as a result, NASD is proposing that this service and the corresponding fee be eliminated effective January 1, 2003.

Proposed Amendment to Eliminate Daily List Fax Service

In the original fee proposal, NASD had provided for a daily list fax service that would provide subscribers with daily additions, deletions, and modifications to the list of TRACE-eligible securities. The charge for this service is \$15 per month, per fax number/addressee. To date, one user has subscribed for this service and it is not cost

effective for NASD to continue providing the service. As a result, NASD is proposing that this service and the corresponding fee be eliminated effective January 1, 2003.

Extension and/or Renewal 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 December 28, 2002 to expire on February 28, 2003.

Further, NASD expects to submit a rule filing to the SEC prior to the February 28, 2003 expiration date seeking approval of a permanent fee structure for TRACE. NASD believes that the proposed fee structure for TRACE is reasonable, however, NASD is committed to an ongoing review and reassessment of TRACE fees during 2003. Based on data collected during 2003, NASD expects to recommend additional changes to the TRACE fee structure to ensure that the TRACE fees are reasonable.

NASD will continue to review and reassess 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.

(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 February 28, 2003 and to modify the pilot effective January 1, 2003. As a result of the proposed rule change, the current fee structure would remain in effect to December 31,

2002. NASD believes that such proposed rule change will more equitably allocate fees to NASD members during the early stages of implementing TRACE.

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,⁸ 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 as of the dates described in the proposed rule change.

The proposed rule change to replace references to “the Association” with “NASD” is effective immediately pursuant to Section 19(b)(3)(A)(iii),⁹ as it is concerned solely with the administration of the self-regulatory organization.

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 15 USC 78s(b)(3)(A)(iii).

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

Not applicable.

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: December 12, 2002

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2002-176)
[leave space for date]

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

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 , 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**

NASD is proposing 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 December 28, 2002. NASD is proposing to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003. As a result of the proposed rule change, the current fee structure would remain in effect to December 31, 2002. In addition, NASD is proposing technical revisions to Rule 7010(k) to replace references to "the Association" with "NASD." Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * *

7010. System Services

(k) Trade Reporting and Compliance Engine (TRACE)

(Rule 7010(k) shall expire on [December 28, 2002] February 28, 2003, 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
<u>From 07/01/02 to 12/31/02:</u> Web Browser Access: \$85/month for 1 user ID; \$75/month for 2-9 user IDs; \$70/month for 2-10+ user IDs, <u>except</u> If less than 25 trades per month, in October,	<u>From 07/01/02 to 12/31/02:</u> Trades up to and including \$200,000 par value - \$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	BTDS Professional Display - \$60/month per terminal

November, or December 2002 - \$25/month per user ID <u>From 01/01/03 to 02/28/03: Level I Trade Report Only Web Browser Access - \$25/month per user ID</u> <u>Level II Full Service Web Browser Access - \$85/month per user ID</u>	value or more - \$2.50/trade <u>From 01/01/03 to 02/28/03: Trades up to and including \$200,000 par value - \$0.475/trade;</u> <u>Trades between \$201,000 and \$999,999 par value - \$0.002375 times the number of bonds traded/trade;</u> <u>Trades of \$1,000,000 par value or more - \$2.375/trade</u>	
CTCI - \$25/month/line	<u>From 07/01/02 to 12/31/02: Cancel/Correct - \$3/trade, except</u> For October 2002 - \$1.50/trade For November 2002 - \$2.25/trade <u>From 01/01/03 to 02/28/03: Cancel/Correct - \$1.50/trade</u>	BTDS Internal Usage Authorization - \$500/month per organization
Third Party - \$25/month	<u>From 07/01/02 to 12/31/02: "As of" Trade Late - \$3/trade, except</u> For October 2002 - \$1.50/trade For November 2002 - \$2.25/trade <u>From 01/01/03 to 02/28/03: "As of" Trade Late - \$3/trade</u>	BTDS External Usage Authorization - \$1,000/month per organization
<u>From 07/01/02 to 12/31/02: PDN Administrative - \$100/month/line</u> <u>As of 01/01/03: PDN service and corresponding fee eliminated</u>	Browse & Query - \$0.05 after first page	BTDS Non-Professional Display - \$1/month per terminal
		<u>From 07/01/02 to 12/31/02: Daily List Fax - \$15/month</u>

		per fax number/addressee <u>As of 01/01/03:</u> <u>Daily List Fax service and</u> <u>corresponding fee eliminated</u>
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(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 (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

(i) For the period commencing July 1, 2002 and ending December 31, 2002, [T]he 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 February 28, 2003, 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 Trade Report Only Web Browser Access and \$85 per month, per user ID for Level II Full Service Web Browser Access.

(iii) [In addition, a] A member that elects to report TRACE data to NASD [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 As of January 1, 2003, PDN service and the corresponding fee shall be eliminated.

(B) Computer-to-Computer Interface Access

The charge to be paid by a member that elects to report TRACE data to NASD [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 NASD [the Association] via third-party reporting intermediaries, such as vendors,

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

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

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 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] 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 \$999,999 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 February 28, 2003, 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] 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 February 28, 2003, 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] 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 February 28, 2003, a member shall be charged an “As of” Trade Late Fee of \$3.00 per canceled or corrected transaction.

(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 NASD [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 NASD [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

(B) 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.

(C) 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

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.

(ii) 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);

(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 NASD’s [the Association’s] Daily List Fax Service shall be charged \$15 per month, per fax number/addressee.

As of January 1, 2003, Daily List Fax service and the corresponding fee shall be eliminated.

* * * * *

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

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, 2002.⁹ 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, based on such factors as actual volume, usage, costs, and revenues.

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, 2002.¹⁰

Review by NASD staff of the impact of the original fee structure indicates that a continuation of these fees in 2003 could potentially result in a significant financial burden to many firms. NASD is therefore proposing to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003. As a result of the proposed rule change, the current fee structure would remain in effect to December

⁹ The Commission approved Rule 7010(k) relating to TRACE fees on June 28, 2002 on a six-month pilot basis. See SEC Approval Order File No. SR-NASD-2002-63, Securities Exchange Act Release No. 46145 (June 28, 2002).

¹⁰ See SR-NASD-2002-167 (November 15, 2002) filed pursuant to Section 19(b)(3)(A) of the Act for immediate effectiveness.

31, 2002. NASD believes the proposed rule change will more equitably distribute the costs to participants of the TRACE system.

The current TRACE fee structure is divided into three general categories: system related fees, transaction reporting fees, and market data fees. After carefully reviewing the data collected to date, NASD staff is proposing to revise the current fee structure for TRACE as described below.

Proposed Amendments to Web Browser Access Fees

Under the TRACE rules, a member may report TRACE transaction data to NASD by one of three approved methods: (1) web browser access; (2) direct computer-to-computer interface (“CTCI”); or (3) indirectly through third-parties, such as vendors, service bureaus, clearing firms, or the National Securities Clearing Corporation. Many small participants have registered to report TRACE transaction data to NASD through the web browser because the alternative methods are either not cost effective for them or not viable for their methods of processing data.

Following the effective date of TRACE, NASD staff received complaints from certain small firms regarding the burden of paying the Web Browser Access Fee. These firms complained that the small number of TRACE transactions that they handle and, therefore, are required to report on a monthly basis are not in line with the \$85 per month cost for one web browser.

The current Web Browser Access Fee for each registered participant is: \$85 per month for the first user ID; \$75 per month for the second through ninth user ID; and \$70 per month for the second through tenth or more user ID, if the participant registers ten or more user IDs. For the fourth quarter of 2002, the Web Browser Access Fee was reduced

to \$25 per month, per user ID for participants that reported less than 25 transactions during the months of October, November, and December 2002. The current web browser permits the reporting of transactions into the TRACE system, and, through the use of a query feature, allows participants access to TRACE transactions and real-time TRACE market data. At the time this service was established (and the fees determined), NASD did not have the capability to separate the real-time market data access feature from the web browser. As a result, the current web browser access fees were largely established based on the cost of including the real-time market data access feature to participants that elected to report TRACE transactions through the web browser.

Since that time, NASD staff has developed the capability to separate real-time market data access feature from the web browser. Commencing January 1, 2003, NASD is proposing that the Web Browser Access Fee be divided into two service levels – Level I with no access to real-time TRACE data, and Level II with access to real-time TRACE data.

A participant who registers for Level II Full Service Web Browser Access will be able to report TRACE data to NASD over the Internet and to use a query feature to receive real-time TRACE transaction data. Level II Full Service Web Browser Access Fee will be \$85 per month, per user ID and will replace the current graduated fee structure. A participant who registers for Level I Trade Report Only Web Browser Access will be able to report TRACE data to NASD over the Internet. Level I access will not allow a participant to receive real-time TRACE transaction data. The proposed fee for Level I Trade Report Only Web Browser Access is \$25 per month, per user ID. A

participant may subscribe for a combination of Level I and Level II service based on usage and need.

The charge for the Level II Full Service Web Browser Access includes the cost of developing and providing real-time TRACE data access through the web browser. In addition, NASD is proposing to eliminate the multi-browser discount. While this may result in a small increase in costs for firms that use multiple copies of the browser with market data access, NASD staff believes the flat fee treats all firms equitably and may allow firms to achieve overall cost savings by subscribing to Level I Trade Report Only Web Browser Access, instead of Level II Full Service Web Browser Access, for those users who do not require real-time TRACE data access.

Proposed Amendments to Trade Reporting Fees

The current Trade Reporting Fees are based on a sliding scale that ranges 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 are charged a \$0.50 fee per trade; trades between \$201,000 par value and \$999,999 par value are charged a fee of \$0.0025 multiplied by the number of bonds traded; and trades of \$1,000,000 par value or more are charged a fee of \$2.50 per trade.

Following the operation of TRACE, NASD staff has been collecting data on trade reporting fees incurred by participants. The revenues generated by this fee have been higher than originally forecasted. As a result, NASD is proposing that trade reporting fees be reduced by 5% for 2003. The Trade Reporting Fee will continue to be based on a sliding scale, but the range will be 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, and trades of \$1,000,000 par value or more will be charged a fee of \$2.375 per trade.

Proposed Amendments to Cancel or Correct Fees

Cancel, correct, and “As of” transactions are used by participants to modify original trade entries. While a certain level of corrective transactions will always be necessary, NASD staff believes it is very important that trades be entered into the system correctly the first time to ensure that data disseminated through the TRACE system is accurate and to allow investors to rely on the data stream they receive. Further, the volume of corrective transactions will increase NASD’s technology costs.

In the original fee proposal, NASD delayed the effectiveness of the Cancel or Correct Fee and the “As of” Late Fee to October 1, 2002. Based on NASD staff review of the data collected on such fees after the first three months of TRACE operation, on November 15, 2002, NASD submitted a proposed rule change to the SEC to phase in the implementation of the two fees during the last quarter of 2002 to allow participants greater time to adjust to the new system and focus on methods to reduce the likelihood of incurring such fees.¹¹

The original charge for the Cancel or Correct Fee and the “As of” Late Fee was \$3.00 for each such reported trade. For the month of October 2002, the Cancel or Correct Fee and the “As of” Late Fee charge assessed to each participant were reduced from \$3.00 per trade to \$1.50 per trade (a 50% discount), and for the month of November

¹¹ See SR-NASD-2002-167 (November 15, 2002).

2002, the Cancel or Correct Fee and the “As of” Late Fee were reduced from \$3.00 per trade to \$2.25 per trade (a 25% discount).

Based on further NASD staff analysis, the number of cancel and correct transactions submitted continue to be high. NASD staff has been contacting participants to review their systems and reporting methodologies to reduce erroneous reporting by participants. NASD staff still believes that over time the number of corrective transactions submitted to the system will decline. However, NASD believes that fees for corrective transactions are necessary to discourage erroneous reporting and to improve the integrity of disseminated data. Therefore, NASD is proposing that the Cancel or Correct Fee be reduced from \$3.00 to \$1.50 effective January 1, 2003. The “As of” Trade Late Fee will remain at \$3.00 per trade.

Proposed Amendment to Eliminate PDN Administrative Fee

In the original fee proposal, NASD had provided users the option of reporting TRACE data through the web browser over a secure private data network rather than over the Internet. The cost of this additional service is \$100 per month, per line. No users have subscribed to this service and, as a result, NASD is proposing that this service and the corresponding fee be eliminated effective January 1, 2003.

Proposed Amendment to Eliminate Daily List Fax Service

In the original fee proposal, NASD had provided for a daily list fax service that would provide subscribers with daily additions, deletions, and modifications to the list of TRACE-eligible securities. The charge for this service is \$15 per month, per fax number/addressee. To date, one user has subscribed for this service and it is not cost

effective for NASD to continue providing the service. As a result, NASD is proposing that this service and the corresponding fee be eliminated effective January 1, 2003.

Extension and/or Renewal 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 December 28, 2002 to expire on February 28, 2003.

Further, NASD expects to submit a rule filing to the SEC prior to the February 28, 2003 expiration date seeking approval of a permanent fee structure for TRACE. NASD believes that the proposed fee structure for TRACE is reasonable, however, NASD is committed to an ongoing review and reassessment of TRACE fees during 2003. Based on data collected during 2003, NASD expects to recommend additional changes to the TRACE fee structure to ensure that the TRACE fees are reasonable.

NASD will continue to review and reassess 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.

(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 February 28, 2003 and to modify the pilot effective January 1, 2003. As a result of the proposed rule change, the current fee structure would remain in effect to December

31, 2002. NASD believes that such proposed rule change will more equitably allocate fees to NASD members during the early stages of implementing TRACE.

(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.

(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 pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and Rule 19b-4(f)(2) thereunder,¹³ because the proposal is “establishing or changing a due, fee, or other charge.” The rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder, and will be operational immediately as of the dates described in the proposed rule change. The proposed rule change to replace references to “the Association” with “NASD” is effective immediately pursuant to Section 19(b)(3)(A)(iii),¹⁴ as it is concerned solely with the administration of the self-regulatory organization.

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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR § 240.19b-4(f)(2).

¹⁴ 15 USC 78s(b)(3)(A)(iii).

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 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