

October 26, 2004

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 – 2004 -163  
Extension of Pilot for Bond Trade Dissemination Service (“BTDS”)  
Professional Delayed-Time Data Display Fee**

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 Sharon Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985; e-mail [sharon.zackula@nasd.com](mailto:sharon.zackula@nasd.com), or Elliot Levine, Chief Counsel and Senior Advisor, Markets, Services and Information, at (202) 728-8405; e-mail [elliott.levine@nasd.com](mailto:elliott.levine@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Marc Menchel  
Executive Vice President  
and General Counsel

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-2004-163  
Consists of 15 Pages  
October 26, 2004

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C.

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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)(3) 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 Rule 7010(k)(3)(A)(ii) relating to the Bond Trade Dissemination Service (“BTDS”) Professional Delayed-Time Data Display Fee for the Trade Reporting and Compliance Engine (“TRACE”) prior to the expiration of the pilot program on October 31, 2004. NASD is proposing to extend the pilot program for the current BTDS Professional Delayed-Time Data Display Fee for nine months to July 31, 2005. NASD is not proposing any revisions to such fee. 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**

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

| <b>System Fees</b>                                                                                                                         | <b>Transaction Reporting Fees</b>                                                                                                                                                                                                   | <b>Market Data Fees</b>                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Level I Trade Report Only Web Browser Access - \$20/month per user ID<br>Level II Full Service Web Browser Access - \$80/month per user ID | Trades up to and including \$200,000 par value - \$0.475/trade;<br>Trades between \$201,000 and \$999,999 par value - \$0.002375 times the number of bonds traded/trade;<br>Trades of \$1,000,000 par value or more - \$2.375/trade | BTDS Professional Real-Time Data Display - \$60/month per terminal, except                                    |
| CTCI/Third Party - \$25/month/per firm                                                                                                     | Cancel/Correct - \$1.50/trade                                                                                                                                                                                                       | BTDS Professional Delayed-Time Data Display - \$15/month per terminal                                         |
|                                                                                                                                            | “As of” Trade Late - \$3/trade                                                                                                                                                                                                      | BTDS Internal Usage Authorization - \$500/month per application/service for Real-Time and Delayed-Time Data   |
|                                                                                                                                            |                                                                                                                                                                                                                                     | BTDS External Usage Authorization - \$1,000/month per application/service for Real-Time and Delayed-Time Data |
|                                                                                                                                            |                                                                                                                                                                                                                                     | BTDS Non-Professional Real-Time Data Display - \$1/month per terminal                                         |

(1) through (2) No change.

### **(3) Market Data Fees**

Professionals and non-professionals may subscribe to receive Real-Time and Delayed-Time TRACE data disseminated by NASD 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.

**(A) Professional Fees.**

Professionals may subscribe for the following:

(i) No change

(ii) For a pilot period commencing February 1, 2004, and lasting [until October 31, 2004,] through July 31, 2005, BTDS Professional Delayed-Time Data Display Fee of \$15 per month, per terminal charge for each interrogation or display device receiving Delayed-Time TRACE transaction data; provided, that subscribers to the BTDS Professional Real-Time Data Display Fee described above shall not be charged this additional fee. Subject to the execution of appropriate agreements with NASD, certain summary market information of Delayed-Time TRACE transaction data may be published or distributed by newspapers, press associations, newsletters, or similar media sources without charge.

(iii) through (iv) No change.

(B) through (D) No change.

(l) through (u) 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 (“Board”) on July 31, 2003, which authorized the filing of the rule change with the SEC. 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 Board to adopt amendments to NASD Rules without recourse to the membership for approval. As discussed below, NASD is filing the proposed rule change for immediate effectiveness, and the implementation date will be October 29, 2004.

(b) Questions regarding this rule filing may be directed to Sharon K. Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985, or Elliot Levine, Chief Counsel and Senior Advisor, Markets, Services and Information, at (202) 728-8405.

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

(a) Purpose

Currently, NASD charges a BTDS Professional Delayed-Time Data Display Fee of \$15.00 per month, per terminal, for each interrogation or display device receiving Delayed-Time TRACE transaction data under Rule 7010(k)(3)(A)(ii). The fee was established for a pilot period, which will expire on October 31, 2004. NASD is proposing to extend the pilot program and thus charge the \$15.00 fee for the BTDS Professional Delayed-Time Data Display through July 31, 2005.

NASD is proposing to extend the pilot program because it intends to undertake a comprehensive review of TRACE fees and wants to evaluate the BTDS Professional Delayed-Time Data Display Fee as part of this review.

As discussed below, NASD is filing the proposed rule change for immediate effectiveness, and the implementation date will be October 29, 2004.

(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 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 that NASD operates or controls. NASD is proposing to extend the pilot program for the BTDS Professional Delayed-Time Data Display Fee through July 31, 2005 because NASD intends to undertake a comprehensive review of TRACE fees and wants to evaluate the BTDS Professional Delayed-Time Data Display Fee as part of this review.

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

Not applicable.

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)(6) of Rule 19b-4 thereunder, in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days (or such shorter time as the SEC may designate if consistent with the protection of

investors and the public interest) after the date of this filing. NASD has requested that the SEC waive the requirement of Rule 19b-4(f)(6)(iii) that a written notice of intent to file the proposed rule change, along with a brief description and text of the proposed rule change, be submitted at least five business days prior to the date of filing. In addition, NASD has requested that the SEC waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii). NASD proposes to make the proposed rule change operative on October 29, 2004.

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

BY: \_\_\_\_\_  
Marc Menchel, Executive Vice President and General Counsel  
NASD, Regulatory Policy and Oversight

Date: October 26, 2004

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- [leave space] ; File No. SR-NASD-2004-163)  
[leave space for date]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Extension of Pilot for Bond Trade Dissemination Service (“BTDS”) Professional Delayed-Time Data Display Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [leave space] , the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The NASD has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to amend Rule 7010(k)(3)(A)(ii) to extend the pilot program for the Bond Trade Dissemination Service (“BTDS”) Professional Delayed-Time Data

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

Display Fee for the Trade Reporting and Compliance Engine (“TRACE”), prior to its expiration on October 31, 2004, for nine months to July 31, 2005. 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

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

| System Fees                                                                                                                                | Transaction Reporting Fees                                                                                                                                                                                                          | Market Data Fees                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| Level I Trade Report Only Web Browser Access - \$20/month per user ID<br>Level II Full Service Web Browser Access - \$80/month per user ID | Trades up to and including \$200,000 par value - \$0.475/trade;<br>Trades between \$201,000 and \$999,999 par value - \$0.002375 times the number of bonds traded/trade;<br>Trades of \$1,000,000 par value or more - \$2.375/trade | BTDS Professional Real-Time Data Display - \$60/month per terminal, except                                  |
| CTCI/Third Party - \$25/month/per firm                                                                                                     | Cancel/Correct - \$1.50/trade                                                                                                                                                                                                       | BTDS Professional Delayed-Time Data Display - \$15/month per terminal                                       |
|                                                                                                                                            | “As of” Trade Late - \$3/trade                                                                                                                                                                                                      | BTDS Internal Usage Authorization - \$500/month per application/service for Real-Time and Delayed-Time Data |
|                                                                                                                                            |                                                                                                                                                                                                                                     | BTDS External Usage Authorization -                                                                         |

<sup>5</sup> The NASD asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

|  |  |                                                                           |
|--|--|---------------------------------------------------------------------------|
|  |  | \$1,000/month per application/service for Real-Time and Delayed-Time Data |
|  |  | BTDS Non-Professional Real-Time Data Display - \$1/month per terminal     |

(1) through (2) No change.

### **(3) Market Data Fees**

Professionals and non-professionals may subscribe to receive Real-Time and Delayed-Time TRACE data disseminated by NASD 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.

#### **(A) Professional Fees.**

Professionals may subscribe for the following:

(i) No change

(ii) For a pilot period commencing February 1, 2004, and lasting [until October 31, 2004,] through July 31, 2005, BTDS Professional Delayed-Time Data Display Fee of \$15 per month, per terminal charge for each interrogation or display device receiving Delayed-Time TRACE transaction data; provided, that subscribers to the BTDS Professional Real-Time Data Display Fee described above shall not be charged this additional fee. Subject to the execution of appropriate agreements with NASD, certain summary market information of Delayed-Time TRACE

transaction data may be published or distributed by newspapers, press associations, newsletters, or similar media sources without charge.

(iii) through (iv) No change.

(B) through (D) No change.

(l) through (u) No change.

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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

Currently, NASD charges a BTDS Professional Delayed-Time Data Display Fee of \$15.00 per month, per terminal, for each interrogation or display device receiving Delayed-Time TRACE transaction data under Rule 7010(k)(3)(A)(ii). The fee was established for a pilot period, which will expire on October 31, 2004. NASD is proposing to extend the pilot program and the \$15.00 fee for the BTDS Professional Delayed-Time Data Display through July 31, 2005.

NASD is proposing to extend the pilot program because it intends to undertake a comprehensive review of TRACE fees and wants to evaluate the BTDS Professional

Delayed-Time Data Display Fee as part of this review.

As discussed below, NASD is filing the proposed rule change for immediate effectiveness, and the implementation date will be October 29, 2004.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>6</sup> which requires, among other things, that NASD 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 that NASD operates or controls. NASD is proposing to extend the pilot program for the BTDS Professional Delayed-Time Data Display Fee to July 31, 2005 because NASD intends to undertake a comprehensive review of TRACE fees and wants to evaluate the BTDS Professional Delayed-Time Data Display Fee as part of this review.

### (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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on

competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6)thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has asked the Commission to waive the 30-day operative delay. The Commission hereby grants this request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the nine-month extension of the pilot program for the BTDS Professional Delayed-Time Data Display Fee allows professional market participants to continue to access TRACE data at a discounted rate during a transitional period during which more TRACE data will become available. NASD also has requested that the Commission waive the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission).<sup>9</sup> The Commission hereby grants NASD's request to waive the pre-filing requirement.<sup>10</sup>

At any time within 60 days of this filing, the Commission may summarily

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<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(4)(f)(iii).

<sup>10</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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.

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, including whether the proposed rule change [as amended] is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-163 on the subject line.

##### *Paper Comments*

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. All submissions should refer to File Number SR-NASD-2004-163. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site

(<http://www.sec.gov/rules/sro.shtml>). 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 comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-163 and should be submitted on or before [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 H. McFarland  
Deputy Secretary