

OMB APPROVAL

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Page 1 of 26

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2005 - 063

Amendment No.

Proposed Rule Change by National Association of Securities Dealers

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

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒Section 19(b)(3)(A) ☐Section 19(b)(3)(B) ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule change to amend NASD Rule 7010(k) relating to Transaction Reporting and Compliance Engine (TRACE) transaction data and data fees.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

By
(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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 Transaction Reporting and Compliance Engine (“TRACE”) transaction data to (i) amend Rule 7010(k)(3)(A)(i) to offer an optional enterprise-based flat fee for the internal display of real-time TRACE transaction data (“Real-Time TRACE transaction data”) on an unlimited number of interrogation or display devices, and (ii) amend Rule 7010(k)(1)(A) to lower the monthly fee for the first user ID purchased to obtain Level II Full Service Web Browser Access. 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)

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

System Fees	Transaction Reporting Fees	Market Data Fees
Level I Trade Report Only Web Browser Access - \$20/month per user ID Level II Full Service Web Browser Access - \$80/month per user ID, <u>except that the charge for the first such user ID shall be \$50/month</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	BTDS Professional Real-Time Data Display - \$60/month per terminal, <u>or a flat fee of \$7,500/month entitling Professionals to make unlimited internal use of Real-Time TRACE transaction data on any number of interrogation or display devices</u>
CTCI/Third Party - \$25/month/per firm	Cancel/Correct - \$1.50/trade	Vendor Real-Time Data Feed - \$1,500/month for Real-Time TRACE transaction data, except for qualifying Tax-Exempt Organizations
	"As of" Trade Late - \$3/trade	Vendor Real-Time Data Feed - \$400/month for Real-Time TRACE transaction data for qualifying Tax-Exempt Organizations
		BTDS TRACE Non-Professional Real-Time Data Display – No charge

(1) System Related Fees

There are three methods by which a member may report corporate bond transactions that are reportable to [the Association] NASD pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to [the Association] 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

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: \$20 per month, per user ID for Level I Web Trade Report Only Browser Access and \$80 per month, per user ID for Level II Full Service Web Browser Access, except that the charge for the first such user ID for Level II Full Service Web Browser Access shall be \$50 per month.

(B) No change.

(C) No change.

(2) Transaction Reporting Fees

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

(A) through (C) No change.

(3) Market Data Fees

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

(A) Professional Fees

Professionals may subscribe for the following:

(i) Bond Trade Dissemination Service (“BTDS”)

Professional Real-Time Data Display Fee of \$60 per month, per

terminal charge for each interrogation or display device receiving Real-Time TRACE transaction data, or a flat fee of \$7,500 per month entitling Professionals to make unlimited internal use of Real-Time TRACE transaction data on any number of interrogation or display devices.

(ii)-(iii) No change.

(B) through (D) No change.

(l) through (v) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Governors of NASD at its meeting of April 21, 2005, 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 of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be not later than 45 days following publication of the Notice to Members announcing Commission approval.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory

Basis for, the Proposed Rule Change

(a) Purpose

NASD proposes to amend Rule 7010(k) to add an enterprise fee structure and lower another fee related to the receipt of Real-Time TRACE transaction data paid by users of such data (“Subscribers”). NASD proposes to amend Rule 7010(k)(3)(A)(i), the Bond Trade Dissemination Service (“BTDS”) Professional Real-Time Data Display Fee, to enable an enterprise such as a broker-dealer to display Real-Time TRACE transaction data within the enterprise on an unlimited number of internal display devices for a fee of \$7,500 per month. NASD also proposes to amend Rule 7010(k)(1)(A), Web Browser Access, to lower the fee for Level II Full Service Web Browser Access, so that the charge for the first user ID obtained for such access would be \$50 per month rather than the current \$80 per month.

Subscribers typically receive Real-Time TRACE transaction data in one of two ways – either through a market data vendor that redistributes such data through its services/desktops or through NASD’s Level II Full Service Web Browser Access, which provides the Subscriber both reporting functionality and access to Real-Time TRACE transaction data.

Although NASD has achieved positive results delivering Real-Time TRACE transaction data to the professional trading community, NASD also is striving to make Real-Time TRACE transaction data more widely available to individual investors so that they may use it in making investment decisions. In an effort to achieve this goal, recently NASD eliminated the BTDS Non-Professional Real-Time Data Display Fee for “Non-Professionals” as defined in Rule 7010(k)(3)(C)(ii) to encourage Subscribers, especially

retail brokers, to redistribute Real-Time TRACE transaction data to their retail customers via their web-based services.¹ NASD believes it would enhance investor protection to further expand the availability of Real-Time TRACE transaction data and foster an environment where Real-Time TRACE transaction data is an integral part of the discussions between investors and the persons serving them.

NASD is proposing two amendments to the TRACE fee structure that NASD believes may significantly increase the use of Real-Time TRACE transaction data among registered representatives, investment advisors and other persons serving retail investors as well as address member cost concerns that are discussed further below. NASD believes that broadening the distribution of Real-Time TRACE transaction data will facilitate its use by persons who provide brokerage and/or advisory services to retail investors, and will provide such professionals with an additional tool to better serve and inform retail investors. Additionally, access to Real-Time TRACE transaction data should enhance the ability of Subscribers that are NASD members to comply with various regulatory obligations. Finally, broadening the distribution of Real-Time TRACE transaction data is likely to have an incremental beneficial effect on corporate bond market transparency and pricing by generally raising the level of awareness and overall knowledge of specific bond issues as well as the bond market generally.

Proposed “Enterprise” Fee

Currently, NASD charges a Subscriber \$60 per month, per terminal (the BTDS Professional Real-Time Data Display Fee) to display Real-Time TRACE transaction

¹ Securities Exchange Act Release No. 50977 (January 6, 2005); 70 FR 2202 (January 12, 2005) (Notice of Filing and Immediate Effectiveness) (File No. SR-NASD-2004-189) (filed on December 28, 2004).

data. Members have indicated that this \$60 per month, per terminal charge is cost prohibitive for organizations with large numbers of potential internal users of the data. Subscribers serving large numbers of retail investors have indicated that they likely would distribute Real-Time TRACE transaction data much more widely within their organizations if the costs were reduced.

To address these concerns, NASD is proposing to amend Rule 7010(k)(3)(A)(i) to provide Subscribers the option of paying a flat, enterprise fee of \$7,500 per month instead of \$60 per terminal (i.e., per screen or interrogation or display device). The proposed rule change would benefit Subscribers that have a large staff of potential internal data users who desire access to Real-Time TRACE transaction data. Instead of paying multiple \$60 BTDS Professional Real-Time Data Display Fees, a Subscriber would have the option to pay a flat fee of \$7,500 per month to display Real-Time TRACE transaction data on an unlimited number of internal terminals/workstations.

The proposed \$7,500 monthly enterprise fee option would lower the fees paid by Subscribers who currently pay to display Real-Time TRACE transaction data on more than 125 terminals. In addition, the proposed \$7,500 fee option may encourage certain Subscribers that currently pay to display Real-Time TRACE transaction data on fewer than 125 terminals to pay the proposed \$7,500 flat fee and broaden distribution of Real-Time TRACE transaction data within their organizations.

The proposed amendment to Rule 7010(k)(3)(A)(i) would apply only to a Subscriber's internal display of Real-Time TRACE transaction data and would be independent of access method or data vendor. The proposed \$7,500 enterprise fee option

would include unlimited terminal display use for individual access for all of a Subscriber's employees and the employees of certain of its corporate affiliates.²

Level II Full Service Web Browser Access Fee

To ensure a fair and balanced approach to the Real-Time TRACE transaction data fee structure and encourage use of Real-Time TRACE transaction data among Subscribers of varying sizes, NASD also is proposing to amend Rule 7010(k)(1)(A) to reduce fees paid by Subscribers who receive Real-Time TRACE transaction data through Level II Full Service Web Browser Access. Such smaller Subscribers are unlikely to directly benefit from NASD's enterprise pricing proposal.

Currently, the implicit cost for the portion of Level II Full Service Web Browser Access for Real-Time TRACE transaction data is \$60 per month (per user ID).³ NASD proposes to reduce the cost of the first user ID per Subscriber to receive Level II Full Service Web Browser Access from \$80 per month to \$50 per month. The proposed rule change would reduce a Subscriber's marginal cost for the data portion of Level II Full Service Web Browser Access for the first user ID by 50% to \$30 per month. The proposed rule change would reduce the costs of acquiring Real-Time TRACE transaction data for current Level II Full Service Web Browser Access Subscribers and may encourage some smaller professional market participants not currently obtaining Real-

² A Subscriber wishing to take advantage of this option would enter into an agreement directly with NASD, which in turn would notify the data vendors with which the Subscriber does business to provide blanket permission for use of Real-Time TRACE transaction data to any user within that organization.

³ Level II Full Service Web Browser Access today costs \$80 per month. However, Level II Full Service Web Browser Access also grants users Level I Web Trade Report Only Browser Access (for trade reporting), which otherwise would cost an

Time TRACE transaction data through any service to obtain it through the Level II Full Service Web Browser Access.

Finally, NASD no longer refers to itself using its full corporate name, “the Association,” or “the NASD.” Instead, NASD uses the name “NASD” unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces, as a technical change, several references to “the Association” in Rule 7010 with the name “NASD.”

As noted in Item 2 of this filing, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be not later than 45 days following publication of the Notice to Members announcing Commission approval.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and 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 believes that reducing the cost to display Real-Time TRACE transaction data will empower Subscribers to widen distribution of such data, will allow Subscribers and their employees to better serve retail investors and will

additional \$20 per month per user ID. Therefore today the marginal cost of Level

facilitate retail investor awareness of the importance of pricing in the corporate bond market as well as enhance the ability of certain Subscribers who are NASD members to comply with various regulatory obligations. In addition, NASD believes that introducing the \$7,500 enterprise fee as an option and reducing the cost of Level II Full Service Web Browser Access will result in an equitable allocation of fees for Real-Time TRACE transaction data among Subscribers.

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)

Not applicable.

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

Not applicable.

9. Exhibits

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

II Full Service Web Browser Access is \$60 per month, per user ID.

Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-063)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
To Amend NASD Rule 7010(k) relating to Transaction Reporting and Compliance
Engine (“TRACE”) transaction data.

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. 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 NASD Rule 7010(k) relating to Transaction Reporting and Compliance Engine (“TRACE”) transaction data to (i) amend Rule 7010(k)(3)(A)(i) to offer an optional enterprise-based flat fee for the internal display of real-time TRACE transaction data (“Real-Time TRACE transaction data”) on an unlimited number of interrogation or display devices, and (ii) amend Rule 7010(k)(1)(A) to lower the monthly fee for the first user ID purchased to obtain Level II Full Service

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Web Browser Access. Below is the text of the proposed rule change. Proposed new language is italics; proposed deletions are in brackets.

* * * * *

7010. System Services

(a) through (j) No change.

(k) Trade Reporting and Compliance Engine (TRACE)

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

System Fees	Transaction Reporting Fees	Market Data Fees
Level I Trade Report Only Web Browser Access - \$20/month per user ID Level II Full Service Web Browser Access - \$80/month per user ID, <u>except that the charge for the first such user ID shall be \$50/month</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	BTDS Professional Real-Time Data Display - \$60/month per terminal, <u>or a flat fee of \$7,500/month entitling Professionals to make unlimited internal use of Real-Time TRACE transaction data on any number of interrogation or display devices</u>
CTCI/Third Party - \$25/month/per firm	Cancel/Correct - \$1.50/trade	Vendor Real-Time Data Feed - \$1,500/month for Real-Time TRACE transaction data, except for qualifying Tax-Exempt Organizations
	"As of" Trade Late - \$3/trade	Vendor Real-Time Data Feed - \$400/month for Real-Time TRACE transaction data for qualifying Tax-Exempt Organizations
		BTDS TRACE Non-Professional Real-Time Data Display – No charge

(1) System Related Fees

There are three methods by which a member may report corporate bond transactions that are reportable to [the Association] NASD pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to [the Association] 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

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: \$20 per month, per user ID for Level I Web Trade Report Only Browser Access and \$80 per month, per user ID for Level II Full Service Web Browser Access, except that the charge for the first such user ID for Level II Full Service Web Browser Access shall be \$50 per month.

(B) No change.

(C) No change.

(2) Transaction Reporting Fees

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

(A) through (C) No change.

(3) Market Data Fees

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

(A) Professional Fees

Professionals may subscribe for the following:

(i) Bond Trade Dissemination Service (“BTDS”)

Professional Real-Time Data Display Fee of \$60 per month, per terminal charge for each interrogation or display device receiving Real-Time TRACE transaction data, or a flat fee of \$7,500 per month entitling Professionals to make unlimited internal use of Real-Time TRACE transaction data on any number of interrogation or display devices.

(ii)-(iii) No change.

(B) through (D) No change.

(I) through (v) 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

1. Purpose

NASD proposes to amend Rule 7010(k) to add an enterprise fee structure and

lower another fee related to the receipt of Real-Time TRACE transaction data paid by users of such data (“Subscribers”). NASD proposes to amend Rule 7010(k)(3)(A)(i), the Bond Trade Dissemination Service (“BTDS”) Professional Real-Time Data Display Fee, to enable an enterprise such as a broker-dealer to display Real-Time TRACE transaction data within the enterprise on an unlimited number of internal display devices for a fee of \$7,500 per month. NASD also proposes to amend Rule 7010(k)(1)(A), Web Browser Access, to lower the fee for Level II Full Service Web Browser Access, so that the charge for the first user ID obtained for such access would be \$50 per month rather than the current \$80 per month.

Subscribers typically receive Real-Time TRACE transaction data in one of two ways – either through a market data vendor that redistributes such data through its services/desktops or through NASD’s Level II Full Service Web Browser Access, which provides the Subscriber both reporting functionality and access to Real-Time TRACE transaction data.

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via their web-based services.³ NASD believes it would enhance investor protection to further expand the availability of Real-Time TRACE transaction data and foster an environment where Real-Time TRACE transaction data is an integral part of the discussions between investors and the persons serving them.

NASD is proposing two amendments to the TRACE fee structure that NASD believes may significantly increase the use of Real-Time TRACE transaction data among registered representatives, investment advisors and other persons serving retail investors as well as address member cost concerns that are discussed further below. NASD believes that broadening the distribution of Real-Time TRACE transaction data will facilitate its use by persons who provide brokerage and/or advisory services to retail investors, and will provide such professionals with an additional tool to better serve and inform retail investors. Additionally, access to Real-Time TRACE transaction data should enhance the ability of Subscribers that are NASD members to comply with various regulatory obligations. Finally, broadening the distribution of Real-Time TRACE transaction data is likely to have an incremental beneficial effect on corporate bond market transparency and pricing by generally raising the level of awareness and overall knowledge of specific bond issues as well as the bond market generally.

Proposed “Enterprise” Fee

Currently, NASD charges a Subscriber \$60 per month, per terminal (the BTDS Professional Real-Time Data Display Fee) to display Real-Time TRACE transaction

³ Securities Exchange Act Release No. 50977 (January 6, 2005); 70 FR 2202 (January 12, 2005) (Notice of Filing and Immediate Effectiveness) (File No. SR-NASD-2004-189) (filed on December 28, 2004).

data. Members have indicated that this \$60 per month, per terminal charge is cost prohibitive for organizations with large numbers of potential internal users of the data. Subscribers serving large numbers of retail investors have indicated that they likely would distribute Real-Time TRACE transaction data much more widely within their organizations if the costs were reduced.

To address these concerns, NASD is proposing to amend Rule 7010(k)(3)(A)(i) to provide Subscribers the option of paying a flat, enterprise fee of \$7,500 per month instead of \$60 per terminal (i.e., per screen or interrogation or display device). The proposed rule change would benefit Subscribers that have a large staff of potential internal data users who desire access to Real-Time TRACE transaction data. Instead of paying multiple \$60 BTDS Professional Real-Time Data Display Fees, a Subscriber would have the option to pay a flat fee of \$7,500 per month to display Real-Time TRACE transaction data on an unlimited number of internal terminals/workstations.

The proposed \$7,500 monthly enterprise fee option would lower the fees paid by Subscribers who currently pay to display Real-Time TRACE transaction data on more than 125 terminals. In addition, the proposed \$7,500 fee option may encourage certain Subscribers that currently pay to display Real-Time TRACE transaction data on fewer than 125 terminals to pay the proposed \$7,500 flat fee and broaden distribution of Real-Time TRACE transaction data within their organizations.

The proposed amendment to Rule 7010(k)(3)(A)(i) would apply only to a Subscriber's internal display of Real-Time TRACE transaction data and would be independent of access method or data vendor. The proposed \$7,500 enterprise fee option

would include unlimited terminal display use for individual access for all of a Subscriber's employees and the employees of certain of its corporate affiliates.⁴

Level II Full Service Web Browser Access Fee

To ensure a fair and balanced approach to the Real-Time TRACE transaction data fee structure and encourage use of Real-Time TRACE transaction data among Subscribers of varying sizes, NASD also is proposing to amend Rule 7010(k)(1)(A) to reduce fees paid by Subscribers who receive Real-Time TRACE transaction data through Level II Full Service Web Browser Access. Such smaller Subscribers are unlikely to directly benefit from NASD's enterprise pricing proposal.

Currently, the implicit cost for the portion of Level II Full Service Web Browser Access for Real-Time TRACE transaction data is \$60 per month (per user ID).⁵ NASD proposes to reduce the cost of the first user ID per Subscriber to receive Level II Full Service Web Browser Access from \$80 per month to \$50 per month. The proposed rule change would reduce a Subscriber's marginal cost for the data portion of Level II Full Service Web Browser Access for the first user ID by 50% to \$30 per month. The proposed rule change would reduce the costs of acquiring Real-Time TRACE transaction data for current Level II Full Service Web Browser Access Subscribers and may

⁴ A Subscriber wishing to take advantage of this option would enter into an agreement directly with NASD, which in turn would notify the data vendors with which the Subscriber does business to provide blanket permission for use of Real-Time TRACE transaction data to any user within that organization.

⁵ Level II Full Service Web Browser Access today costs \$80 per month. However, Level II Full Service Web Browser Access also grants users Level I Web Trade Report Only Browser Access (for trade reporting), which otherwise would cost an additional \$20 per month per user ID. Therefore today the marginal cost of Level II Full Service Web Browser Access is \$60 per month, per user ID.

encourage some smaller professional market participants not currently obtaining Real-Time TRACE transaction data through any service to obtain it through the Level II Full Service Web Browser Access.

Finally, NASD no longer refers to itself using its full corporate name, “the Association,” or “the NASD.” Instead, NASD uses the name “NASD” unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces, as a technical change, several references to “the Association” in Rule 7010 with the name “NASD.”

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be not later than 45 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and 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 believes that reducing the cost to display Real-Time TRACE transaction data will empower Subscribers to widen distribution of such data,

will allow Subscribers and their employees to better serve retail investors and will facilitate retail investor awareness of the importance of pricing in the corporate bond market as well as enhance the ability of certain Subscribers who are NASD members to comply with various regulatory obligations. In addition, NASD believes that introducing the \$7,500 enterprise fee as an option and reducing the cost of Level II Full Service Web Browser Access will result in an equitable allocation of fees for Real-Time TRACE transaction data among Subscribers.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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. Please include File Number SR-NASD-2005-063 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-063. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will 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 the File Number SR-NASD-2005-063 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Secretary

⁶ 17 CFR 200.30-3(a)(12).