

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

(C) "As of" Trade Late Fee

For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged an "As of" Trade Late Fee of \$3.00 per transaction for those transactions that are not timely reported "As of" as required by these rules. To provide firms with time to adjust to the new reporting system, the "As of" Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. For the month of October 2002, the "As of" Trade Late Fee shall be \$1.50 per such transaction. For the month of November 2002, the "As of" Trade Late Fee shall be \$2.25 per such transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004*, a member shall be charged an "As of" Trade Late Fee of \$3.00 per canceled or corrected transaction.

(D) No Change.

(3) No Change.

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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

Extension of Pilot Program for TRACE Fees

NASD is proposing to extend and/or renew the pilot program for TRACE fees that is scheduled to expire on June 30, 2003 to expire on January 31, 2004.

NASD believes the additional time will allow it to more fully reassess the overall impact of the TRACE fee structure. As a result of several changes to the TRACE fee structure during the pilot period, additional time to review and analyze the fee structure is necessary. NASD believes that the proposed fee structure for TRACE is reasonable. However, NASD remains committed to reviewing and reassessing the impact of the overall TRACE fee structure over time to ensure that the fees are reasonable and equitable for participants in the TRACE system.

NASD expects to submit a rule filing to the SEC prior to the January 31, 2004 expiration date seeking approval of a permanent fee structure for TRACE.

Background

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

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

On December 12, 2002, NASD submitted a proposed rule change to the SEC to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003.⁸ As of January 1, 2003, NASD divided the Web Browser Access Fee into two service and fee levels—Level I with no access to real-time TRACE data, and Level II with access to real-time TRACE data. The fee for Level I Trade Report Only Web Browser Access is \$25 per month, per user ID and the fee for

Level II Full Service Web Browser Access is \$85 per month, per user ID. A participant may register for a combination of Level I and Level II service based on its usage and needs.

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

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

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁰ which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004, to allow NASD greater time to analyze and reassess TRACE fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2) thereunder,¹² because the proposal is "establishing or changing a due, fee, or other charge" imposed by NASD. The rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder, and will be operational immediately.

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

⁶ See Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR-NASD-2002-63).

⁷ On November 22, 2002, the Commission issued a notice that this proposed rule change had become effective upon filing with the Commission. See Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (File No. SR-NASD-2002-167).

⁸ On December 19, 2002, the Commission issued a notice that this proposed rule change had become effective upon filing with the Commission. See Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR-NASD-2002-176).

⁹ See Securities Exchange Act Release No. 47444 (March 4, 2003), 68 FR 11602 (March 11, 2003) (File No. SR-NASD-2003-25).

¹⁰ 15 U.S.C. 78o-3(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).