

or an employee of the above who uses such information primarily for business-related activities;

(c) 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; or

(d) engaged in, or has the intention to engage in, any redistribution of all or any portion of the information disseminated through TRACE.

(iii) "Real-Time" as used in Rule 7010(k)(3) shall mean that period of time starting from the time of dissemination by NASD of transaction data on a TRACE-eligible security, and ending no more than four hours thereafter.

(D) Other Requests for Data

NASD may impose and collect charges for data NASD supplied upon request, where there is no provision elsewhere in this Rule 7010(k) for charges for such service or sale.

[6]¹ The charges that may be imposed by third parties, such as CTCI line providers, are not included in these fees.

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

[8]² Under this service, *R[real-T]ime and/or Delayed-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.

[9]³ Under this service, *R[real-T]ime and/or Delayed-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].

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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

NASD is proposing the rule change to establish a permanent fee structure for the TRACE system. TRACE became effective on July 1, 2002. At such time, the Commission approved the original fee structure for TRACE on a pilot basis. Since then, NASD staff has been committed to reassessing the TRACE fee structure based on actual information collected such as the number of participants, debt securities transaction volume, and subscribers for transaction data. During the last fourteen months, in response to industry concerns and emerging trends, NASD staff has revised the TRACE fee structure five times. Following more than a year of reassessment of the originally approved TRACE fees, NASD believes the fees are reasonable and necessary to ensure recovery of developmental costs of the TRACE system, fund ongoing operational costs, and fund the regulatory activities necessary for surveillance of the market. NASD believes the proposed rule change will equitably distribute the costs to participants of the TRACE system. While NASD is seeking permanent approval of the TRACE fees, NASD remains committed to periodically reassessing the appropriateness of TRACE fees.

Background

In 1998, former SEC Chairman Arthur Levitt requested NASD to provide increased transparency in, and better surveillance of, the corporate debt market by (i) requiring that NASD members report corporate bond transactions to NASD; (ii) developing a system or systems to surveil the corporate debt market, including an audit trail of reported transactions; and (iii) delivering price and other information to large and small investors and other debt market participants. At that time, NASD began to develop TRACE and make it operational.

On June 28, 2002, the SEC 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, 2002.⁴

⁴ The Commission approved Rule 7010(k) relating to TRACE fees on June 28, 2002 on a six-month pilot basis. See Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR-NASD-2002-63).

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 filed, for immediate effectiveness, a rule filing to reduce certain TRACE fees for the 4th quarter of 2002.⁵ On December 16, 2002, NASD filed for immediate effectiveness, a rule filing to extend the pilot program for TRACE fees to February 28, 2003 and modify certain fees effective January 1, 2003.⁶ On February 27, 2003, NASD filed, for immediate effectiveness, a rule filing to extend the pilot program for TRACE fees to June 30, 2003.⁷ On June 17, 2003 NASD filed, for immediate effectiveness, a rule filing to extend the pilot for TRACE fees to January 31, 2004.⁸

Operational Information

Since TRACE reporting began on July 1, 2002, approximately 1,800 NASD member firms have registered for TRACE reporting. Currently, approximately 28,000 corporate debt issues are subject to TRACE reporting requirements. Dissemination, however, currently occurs for approximately 4,700 of these corporate debt issues as TRACE transaction data is being disseminated in phases.⁹ In January 2001, the Commission initially approved "Phase I" dissemination of TRACE transaction data.¹⁰ On the first day of "Phase I" dissemination (July 1, 2002), approximately 550 corporate bonds became subject to dissemination.¹¹ In January 2003, the

⁵ See Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (File No. SR-NASD-2002-167).

⁶ See Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR-NASD-2002-176).

⁷ See Securities Exchange Act Release No. 47444 (March 4, 2003), 68 FR 11602 (March 11, 2003) (File No. SR-NASD-2003-25).

⁸ See Securities Exchange Act Release No. 48110 (July 7, 2003), 68 FR 40315 (June 30, 2003) (File No. SR-NASD-2003-97).

⁹ NASD continues to review proposals to increase the number of TRACE-eligible securities that will be subject to dissemination.

¹⁰ Specifically, under Rule 6250, transactions in two types of securities were subject to the TRACE dissemination requirements that took effect on July 1, 2002: (1) Those transactions in a TRACE-eligible security having an initial issuance size of \$1 billion or greater that is Investment Grade at the time of receipt of the transaction report as set forth in Rule 6250(a)(1); and (2) those transactions in 50 TRACE-eligible debt securities that are actively traded, rated Non-Investment Grade, and meet other criteria set forth in Rule 6250(a)(2). See Securities Exchange Act Release No. 46144 (June 28, 2002), 67 FR 44907 (July 5, 2002) (File No. SR-NASD-2002-46).

¹¹ This group of bonds includes what was previously referred to as the FIPs 50 and which are now referred to as the TRACE 50. The list of 50