

Commission approved "Phase II" dissemination of TRACE transaction data.¹² On the first day of "Phase II" dissemination (March 3, 2003), an additional approximately 3,800 corporate bonds became subject to dissemination, and on April 14, 2003, an additional approximately 120 triple-B-rated corporate bonds were also disseminated as part of "Phase II."¹³ In addition, in June 2003, reporting time for transactions in TRACE-eligible securities was reduced from 75 minutes to 45 minutes effective as of October 1, 2003.¹⁴ In July 2003, the disseminated list of high-yield bonds referred to as the "TRACE 50" was updated.¹⁵

Since the launch of TRACE, NASD has enhanced the system with two major and five minor software releases in response to user needs, conducted routine monitoring of daily reported transaction data for accuracy, and undertaken regulatory activities to surveil the corporate debt market. TRACE incurs ongoing operating costs associated with shared NASD infrastructure and resources as well as direct charges from outsourcing TRACE system support and development. Additionally, TRACE is supported by a dedicated team of NASD staff. For the first twelve months of operation (period ending June 30, 2003), these expenses

have totaled approximately \$12.4 million including partial recovery of the original investment made in the development of TRACE.¹⁶

As detailed in this filing, revenues are derived from a combination of System Fees to access TRACE, Transaction Reporting Fees for trade reporting, and Market Data Fees for access and display of aggregated TRACE data. For the first twelve months of operation (period ending June 30, 2003), TRACE generated revenues of approximately \$12.4 million reflecting approximately \$2.0 million, \$8.9 million, and \$1.5 million for System Fees, Transaction Reporting Fees, and Market Data Fees, respectively.

The proposed fees are also divided into the same three general categories: (1) System fees paid by member firms based on the technology method chosen by the member to report corporate bond transactions; (2) transaction reporting fees paid by members to file trade reports and cancel or correct trade reports; and (3) market data fees paid by members and non-members that use or distribute the data collected through the TRACE system and disseminated by NASD. NASD is hereby seeking permanent approval of the fees relating to the TRACE system. However, NASD remains committed to reviewing and reassessing TRACE fees over time.

System Fees

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. The member determines the reporting method they would like to use based on such factors as volume, size, and cost.

Web Browser Access Fees

In response to requests from the industry, in January 2003, NASD introduced a modified web browser and adjusted the fees accordingly.¹⁷ The modified web browser separated reporting capabilities from query features that allow access to TRACE transaction data. NASD began offering two web browser service levels on January 1, 2003: (1) Level I Trade Report Only Web Browser access permits a member to report TRACE transaction data to NASD over the internet, but does

not allow access to real-time TRACE data, and (2) Level II Full Service Web Browser access permits reporting of TRACE transaction data to NASD over the internet and allows access to real-time transaction data through a query function. The original charge for Level I service is \$25 per month, per user ID, and the charge for Level II service is \$85 per month, per user ID.

NASD is proposing to reduce the Level I charge from \$25 per month, per user ID, to \$20 per month, per user ID, and to reduce the Level II charge from \$85 per month, per user ID, to \$80 per month, per user ID. The modified web browser allows participants to satisfy their reporting obligations to NASD at a base level cost of \$20 per month, per user ID. Participants that wish to have access to additional services such as real-time data query, pay \$80 per month, per user ID. In this way, NASD believes that cost of delivering this service will be more equitably distributed to members that directly use this additional technology for their business.

In March 2003, NASD submitted a rule filing to the Commission proposing to (1) temporarily reduce the Level I Full Service Web Browser Access Fee, and (2) temporarily waive the BTDS Professional Real-Time Data Display Fee for a one-month period to be announced by NASD. NASD originally sought these temporary reductions to provide subscribers a "trial month" to explore the services. However, third-party vendors have raised concerns with NASD staff that the imposition of one "trial month" will be difficult for them to administer and may not have the desired effect of bringing on new TRACE data subscribers. Therefore, NASD is proposing to eliminate these temporary reductions.

CTCI Fees and Third-Party Vendor Fees

The charge for CTCI service and for reporting data through third-party vendors will remain the same—\$25 per month. NASD had originally provided participants the option of reporting TRACE data to NASD through a secure, private data network. However, no subscribers registered for this service and in a rule filing submitted to the SEC on December 16, 2002, NASD proposed to eliminate this service and the corresponding fee as of January 1, 2003. NASD proposes to make this change permanent.

NASD believes that the TRACE system fees are reasonable and non-discriminatory because members may select the technology link that best suits their particular needs. The Web Browser Access Fees have been significantly

bonds is updated periodically based on criteria identified in Rule 6250(a)(2).

¹² In "Phase II" NASD began to disseminate transaction information on two additional categories of securities. On March 3, 2002, NASD began to disseminate transaction information on any TRACE-eligible security that is Investment Grade; is rated by Moody's Investors Service, Inc. as "A3" or higher, and by Standard & Poor's, a division of McGraw Hill Co., Inc., as "A -" or higher; 5 and has an original issue size of \$100 million or greater. In addition, a security that is required to be disseminated under the criteria above, on or after the effective date of this provision, will continue to be subject to dissemination unless the security is downgraded below "Baa3/BBB. A specified group of TRACE-eligible securities rated Baa/BBB, at the time of designation, were also approved for dissemination by the SEC. Originally, 90 securities were designated. See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (File No. SR-NASD-2002-174). However, in March 2003, NASD proposed to increase the number of "triple-B-rated" securities to approximately 120. See Securities Exchange Act Release No. 47566 (March 25, 2003), 68 FR 15490 (March 31, 2003) (File No. SR-NASD-2003-41). The 120 "triple-B-rated" securities were designated after the SEC approved SR-NASD-2003-41, and transaction information on the designated securities began to be disseminated on April 14, 2003.

¹³ See Securities Exchange Act Release No. 47566 (March 25, 2003), 68 FR 15490 (March 31, 2003) (File No. SR-NASD-2003-41).

¹⁴ See Securities Exchange Act Release No. 48056 (June 18, 2003), 68 FR 37886 (June 25, 2003) (File No. SR-NASD-2003-78).

¹⁵ The list of TRACE 50 bonds is updated periodically based on criteria identified in Rule 6250(a)(2).

¹⁶ Under this approach the original investment costs are recovered over a 48-month period.

¹⁷ See Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR-NASD-2002-176).