

transaction data.<sup>22</sup> Professionals subscribing for the BTDS Professional Real-Time Data Display Fee of \$60 per month, per terminal, to receive Real-Time TRACE transaction data would not pay this charge for Delayed-Time data in addition to the \$60 fee for Real-Time data. 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. NASD is also proposing to clarify that charges for BTDS Internal Usage and BTDS External Usage apply to Real-Time and/or Delayed-Time TRACE transaction data.

In addition, NASD proposes to clarify the definition of "non-professional." Since the start of TRACE, numerous individuals have questioned whether they qualify as a "non-professional." To clear up confusion, NASD is proposing to add language to the definition to state that a natural person can qualify as a "non-professional" only if they receive TRACE market data primarily for personal, non-commercial use.

In the original fee proposal, NASD had provided for a daily list fax service that would provide subscribers with daily additions, deletions, and modifications to the list of TRACE-eligible securities. The charge for this service was \$15 per month, per fax number/addressee. One user subscribed for this service and it was no longer cost effective for NASD to continue providing the service. As a result, NASD proposed in a rule filing submitted to the SEC on December 16, 2002 to eliminate this service and the corresponding fee as of January 1, 2003.<sup>23</sup> NASD proposes to make this change permanent.

NASD believes the market data fees are reasonable and non-discriminatory. The fees are charged only to market professionals that wish to subscribe for these optional services. NASD believes that this use-based approach appropriately aligns costs with member usage and is consistent with equitable distribution of fees.

#### *Other Requests for Data*

From time to time, members, vendors, and other persons request certain ad hoc services or uses of the TRACE system and transaction data that are not otherwise covered by Rule 7010(k).

NASD believes that providing such services to the industry, academia, or others is useful and proposes to collect charges when fulfilling these requests. Charges would be commensurate with the higher of (a) NASD's associated costs or (b) similar products or services available in the marketplace.

#### **Permanent Approval of Fees**

NASD is seeking permanent approval of the TRACE fee structure prior to the expiration of the pilot program for TRACE fees that is scheduled to expire on January 31, 2004. NASD believes that the proposed fee structure for TRACE is reasonable and non-discriminatory. In its original approval of the TRACE fees pilot, the Commission stated that it believes that the fees allow users great flexibility in how they will interact with the system, and are scaled according to objective criteria applied across-the-board to all categories of users.<sup>24</sup>

NASD believes the fee structure is equitable and the charges are based on actual usage of the system. For example, trade reporting fees are based on a sliding scale that varies depending on the size of the transaction reported, with fees ranging from \$0.475 (for the smallest trades) to \$2.375 (for the largest trades). System fees allow participants to select the most cost-effective reporting method and web browser fees are based on usage (users of the real-time transaction query feature pay more for the additional service). Similarly, market data fees are lower for users who limit their use of the TRACE transaction data to internal distribution, and relatively higher for users who use or distribute the data externally.

For these reasons, NASD believes the fees set forth above are reasonably related to the costs of developing the facility and to meeting the estimated operating expenses of the TRACE system. The fees are also designed to fund the regulatory activities necessary to surveil the market. In addition, NASD staff believes that it has responded promptly to the concerns of members by reducing TRACE fees.

As part of the initiative by the Commission to create price transparency in the corporate bond market, the NASD has worked diligently to develop the TRACE system. NASD staff continues to work closely with the Bond Transaction Reporting Committee, which is jointly staffed by members designated by NASD and The Bond Market Association. In addition, NASD staff has met formally and informally

with members of the industry and listened to their questions and concerns. Overall, NASD believes the TRACE fee structure is reasonable and non-discriminatory, and that the proposed fees are necessary to achieve a practical, market-driven system for processing and disseminating reliable and uniform corporate bond data. NASD is committed to taking a proactive role in supervising the corporate bond market and promoting investor confidence in the fairness of the corporate bond market generally.

NASD remains committed to reviewing and reassessing the appropriateness of TRACE fees over time to ensure that the fees are reasonable and equitable for participants in the TRACE system.

Based on the above, the NASD believes the proposed rule change is consistent with the provisions of section 15A(b)(5)<sup>25</sup> of the Act in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility or system which the association operates or controls.

#### **2. Statutory Basis**

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act<sup>26</sup>, which requires, among other things, that NASD's 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. In addition, NASD believes that the proposed rule change is consistent with section 15A(b)(5) of the Act, 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 that NASD operates or controls. NASD is seeking permanent approval of the TRACE fee structure and believes that the proposed fee structure is reasonable.

#### *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.

<sup>22</sup> Transaction data for TRACE-eligible securities disseminated by NASD after this time frame will be provided free of charge.

<sup>23</sup> See Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR-NASD-2002-176).

<sup>24</sup> See SEC Approval Order File No. SR-NASD-2002-63, Securities Exchange Act Release No. 46145 (June 28, 2002).

<sup>25</sup> 15 U.S.C. 78o-3(b)(5).

<sup>26</sup> 15 U.S.C. 78o-3(b)(6).