

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50627; File No. SR-NASD-2004-163]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Extension of Pilot for Bond Trade Dissemination Service ("BTDS") Professional Delayed-Time Data Display Fee

November 3, 2004.

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 October 27, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed

with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. The NASD has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 Rule 7010(k)(3)(A)(ii) to extend the pilot program for the Bond Trade

Dissemination Service ("BTDS") Professional Delayed-Time Data Display Fee for the Trade Reporting and Compliance Engine ("TRACE"), prior to its expiration on October 31, 2004, for nine months through July 31, 2005. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

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7010. System Services

- (a) through (j) No change.
 - (k) Trade Reporting and Compliance Engine
- 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.	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, exempt.	BTDS Professional Delayed-Time Data Display—\$15/month per terminal. BTDS Internal Usage Authorization—\$500/month per application/service for Real-Time and Delayed-Time Data. BTDS External Usage Authorization—\$1,000/month per application/service for Real-Time and Delayed-Time Data.
CTCI/Third Party—\$25/month/per firm	Cancel/Correct—\$1.50/trade	BTDS Non-Professional Real-Time Data Display—\$1/month per terminal.
	"As of" Trade Late—\$3/trade	

(1) through (2) No change.
(3) Market Data Fees
Professionals and non-professionals may subscribe to receive Real-Time and Delayed-Time TRACE data disseminated by NASD in one or more of the following ways for the charges specified. Members, vendors and other redistributors shall be required to execute appropriate agreements with NASD.

(A) Professional Fees.
Professionals may subscribe for the following:
(i) No change.
(ii) For a pilot period commencing February 1, 2004, and lasting [until October 31, 2004,] *through July 31, 2005*, BTDS Professional Delayed-Time Data Display Fee of \$15 per month, per terminal charge for each interrogation or display device receiving Delayed-Time TRACE transaction data; provided, that subscribers to the BTDS Professional Real-Time Data Display Fee described above shall not be charged this additional fee. 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.

- (iii) through (iv) No change.
- (B) through (D) No change.
- (l) through (u) 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

Currently, NASD charges a BTDS Professional Delayed-Time Data Display Fee of \$15.00 per month, per terminal, for each interrogation or display device receiving Delayed-Time TRACE transaction data under Rule 7010(k)(3)(A)(ii). The fee was established for a pilot period, which will expire on October 31, 2004. NASD is proposing to extend the pilot program and the \$15.00 fee for the BTDS Professional Delayed-Time Data Display through July 31, 2005. NASD is not proposing to revise the fee during the extended pilot period.

NASD is proposing to extend the pilot program because it intends to undertake a comprehensive review of TRACE fees and wants to evaluate the BTDS Professional Delayed-Time Data Display Fee as part of this review.

As discussed below, NASD is filing the proposed rule change for immediate

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The NASD asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

effectiveness, with an implementation date of October 29, 2004.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁶ 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 is proposing to extend the pilot program for the BTDS Professional Delayed-Time Data Display Fee through July 31, 2005, because NASD intends to undertake a comprehensive review of TRACE fees and wants to evaluate the BTDS Professional Delayed-Time Data Display Fee as part of this review.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has asked the Commission to waive the 30-day operative delay. The

Commission hereby grants this request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the nine-month extension of the pilot program for the BTDS Professional Delayed-Time Data Display Fee allows professional market participants to continue to access TRACE data at a discounted rate during a transitional period during which more TRACE data will become available.⁹ NASD has also requested that the Commission waive the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission).¹⁰ The Commission hereby grants NASD's request to waive the pre-filing requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹¹

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-2004-163 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-2004-163. 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

⁹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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. 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 File Number SR-NASD-2004-163 and should be submitted on or before November 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50625; File No. SR-NYSE-2004-41]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Thereto To Amend Section 303A of the NYSE Listed Company Manual Relating to Corporate Governance

November 3, 2004.

I. Introduction

On August 3, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-NYSE-2004-41) to amend certain provisions of Section 303A of the NYSE

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).