subject to dissemination under NASD Rule 6250, which represents approximately 75% of the current average daily trading volume of Investment Grade TRACE-eligible securities.[17] The proposed rule change substantially exceeds the anticipated increase in dissemination in the second phase of TRACE, ''Phase II,'' described in the original regulatory scheme approved by the SEC.[18] In addition, the proposed amendments are crafted to disseminate transactions in a diverse test group of 90 of the lowest rated Investment Grade TRACE-eligible debt securities to obtain additional empirical data about the impact that dissemination may have on the liquidity of a market or a market sector.

In NASD Rule 6210(e), NASD is proposing to add the term, ''customer,'' to the defined term, ''party to the transaction.'' Under the TRACE Rules, a non-NASD-member customer of a broker-dealer, when buying or selling a security, is considered a ''party to the transaction.'' In addition, for purposes of the Rule, ''customer'' includes a broker-dealer that is not an NASD member.[19] NASD believes, and the Commission agrees, that NASD Rule 6210(e) would be clearer if the term ''customer'' is included in the definition of ''party to the transaction,'' and the Rule clearly states that broker-dealers that are not NASD members are included in the term ''customer.''

As previously noted, the Commission received two comment letters, from TBMA and Advantage Data, on the proposed rule change.[20] Although TBMA generally supported the latest amendments, it proposed one change. TBMA noted that as the proposal was originally filed by NASD with the Commission, it provided that NASD could exempt a member from particular provisions of the TRACE rules for good cause shown, pursuant to NASD's Rule 9600 Series. NASD later amended the proposal to delete this provision. TBMA requested that the exemptive provision be reinstated. After considering TBMA's Letter, the Commission believes that the absence of exemptive authority with respect to TRACE reporting does not make these rules inconsistent with the statute.

Advantage Data's Letter raised a number of specific concerns, including concerns about NASD's mandated use of CUSIP data in TRACE reporting, the ongoing review of NASD's handling of TRACE reporting, the implementation of a permanent fee structure for TRACE, certain delays in disseminating TRACE information and the ownership of derived data. Advantage Data states that vendors and investors should be able to receive TRACE information without having to receive CUSIP data licensed by Standard & Poor's Corporation, and that Advantage Data would like to be allowed to receive TRACE information without receiving CUSIP data via a redistribution vendor. However, the proposal does not appear to prohibit redistribution vendors from removing CUSIP data from the BTDS (TRACE) data feed and providing TRACE data to users and other vendors without the requirement to have a CUSIP subscription.

Advantage Data's Letter also contends that the proposed BTDS Vendor Agreement currently requires a four-hour delay for disseminating delayed TRACE information and that the NASD claims ownership of the TRACE information and ''any derivation thereof'' in the proposed Vendor Agreement. These concerns relate to the vendor agreements rather than to the TRACE Rules. The TRACE vendor agreements were not included as part of this filing. Therefore, the Commission is not approving or disapproving the vendor agreements.

The Commission does consider concerns raised in comments about the vendor agreements in determining whether the proposed rules will operate in a manner consistent with the statute. The Commission does not believe that the impact of the vendor agreement provisions challenged by Advantage Data on the operation of the rules is sufficient to make the proposed rules inconsistent with the statute. The CUSIP license requirement is a relatively narrow limitation on receipt of the data.[21] The dissemination delay and ownership assertions are ancillary to the TRACE service proposed in the filing, with little collateral effect on its operation.

Advantage Data's Letter further states that it does not believe that the TRACE fee structure should be made permanent because it expects that the fees collected by NASD will dramatically increase in the years to come. This proposal does not address the TRACE permanent fee structure. Finally, Advantage Data's Letter raised questions about NASD's ongoing handling of TRACE. The Commission expects to continue its review of NASD's operation of TRACE in the context of future proposed rule filings filed by NASD as well as the Commission's ongoing oversight of NASD as a self-regulatory organization.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2002–174), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2945 Filed 2–5–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47300; File No. SR–NASD–2003–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Eliminate SuperMontage Fees for Cancellation and Cancel/Replace of Quotes/Orders

January 31, 2003.

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 January 30, 2003, the National Association of Securities Dealers, Inc. (''NASD''),

[17] Trading volume is the total par value of all Investment Grade TRACE-eligible securities traded (and reported) each day.

[18] *See* Securities Exchange Act Release No. 43873 (January 23, 2001); 66 FR 8131 (January 29, 2001) (''Approval Order''). In the Approval Order, the SEC approved NASD Rule 6250, which provided that initially, transaction information on publicly offered, Investment Grade bonds with an initial issuance size of $1 billion or greater, and the FIPS 50, would be distributed immediately. The SEC also discussed NASD's plans to phase in the dissemination of additional securities. Under the phase-in schedule, the Bond Transaction Reporting Committee (''BTRC''), an advisory committee of industry representatives, was to advise the NASD Board of Governors regarding liquidity issues. By the end of Phase I, the BTRC was obligated to recommend to the NASD Board ''dissemination protocols for investment grade bonds, starting with the largest issuance size, that, when combined together, make up the top 50% (by dollar volume) of such bonds.'' 66 FR 8131, 8134. Dissemination of these securities was to begin in Phase II. File No. SR–NASD–99–65.

[19] NASD Rule 0120(g) provides generally that the term ''customer'' shall not include a broker or dealer.

[20] *See supra*, note 5.

[21] Of course, if the vendor agreements are viewed by commenters as creating an unreasonable denial of access to TRACE services, that claim can be raised in a review process under Section 19(d) of the Act. 15 U.S.C. 78s(d).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to eliminate certain of the fees for the cancellation and cancel/replace of Quotes/Orders in Nasdaq's SuperMontage system. Nasdaq will implement the rule change on February 3, 2003.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry	
Non-Directed Orders (excluding Preferenced Orders)	No charge.
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge.
Other Preferenced Orders	$0.02 per order entry.
Directed Orders	$0.10 per order entry.
Order Execution	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order	$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share).
Credit to member providing liquidity	$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share).
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share).
Directed Order	$0.003 per share executed.
Non-Directed or Preferenced Order entered by a member that accesses a Quote/Order of such member.	No charge.
Order Cancellation	
Non-Directed *and Preferenced* Orders [(excluding Preferenced Orders)].	[$0.01 per order cancelled] *No charge.*
[Preferenced Orders]	[$0.01 per order cancelled].
Directed Orders	$0.10 per order cancelled.
[Entry and Maintenance of Quotes/Orders by Nasdaq Quoting Market Participants]	
[Initial entry of Quote/Order]	[No charge].
[Change of Quote/Order due to order execution through SuperMontage].	[No charge].
[Cancel/replace of Quote/Order to increase size]	[No charge].
[Cancel/replace of Quote/Order to change price]	[$0.01].
[Cancel/replace of Quote/Order to decrease size manually]	[$0.01].
[Cancellation of Quote/Order]	[$0.01].
[Cancellation of Quote/Order due to order purge or timeout]	[$0.0075].

(j)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to eliminate: (i) The fee for the cancellation and cancel/replace of Quotes/Orders in SuperMontage and (ii) the fee for canceling non-directed and preferenced orders entered into SuperMontage.

Nasdaq first introduced a ''quotation update'' fee in February 2002 in connection with its SuperSOES system, to encourage efficient quoting and to help ensure that system capacity could keep pace with the growth of quotation update volume.[5] With the introduction of SuperMontage, Nasdaq refined the quotation update fee by applying it only for updates that remove liquidity without an execution occurring or that change the price of a Quote/Order.[6]

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 45342 (January 28, 2002), 67 FR 5019 (February 1, 2002) (SR–NASD–2001–96).

[6] *See* Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44).

Thus, the fee has not been assessed for changes to SuperMontage Quotes/Orders that add liquidity or that occur when an order execution occurs.

Nasdaq has recently made several enhancements to the capacity of its network systems. Specifically, hardware upgrades and improvements in system architecture have resulted in a doubling of quote update processing capability since the time when the fee was first introduced. In addition, the decision of several electronic communications networks not to participate in SuperMontage will result in a decrease in Nasdaq's quote update traffic. As a result of these factors, Nasdaq has determined that the elimination of the quote update fee is unlikely to result in a volume of quotation updates that will strain the capacity of Nasdaq's systems. Accordingly, Nasdaq is eliminating the fee in order to lower the overall cost of market participants' use of SuperMontage. Nasdaq is also eliminating the fees for cancellation of non-directed and preferenced orders entered into SuperMontage, to allow a further reduction of market participants' costs.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] including Section 15A(b)(5) of the Act,[9] which requires that the rules of the NASD 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 the NASD operates or controls.

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

Nasdaq 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 foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder.[11] At any time within 60 days of the filing of such 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.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–10 and should be submitted by February 27, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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[7] The elimination of order cancellation fees is correlative to the elimination of the fee for cancellation of Quotes/Orders, since Nasdaq's billing systems are not currently programmed to distinguish between cancellation messages that relate to orders entered as non-directed or preferenced orders and those that are entered as Quotes/Orders.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47301; File No. SR–NASD–2002–173]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc. To Establish a 90-Day Pilot Program To Allow NNMS Order Entry Firms To Enter Non-Marketable Limit Orders Into SuperMontage Using the SIZE MMID

January 31, 2003.

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 December 2, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, as described in Items I and II below, which Items have been prepared by Nasdaq. The NASD amended its proposal on December 23, 2002,[3] January 29, 2003,[4] and January 30, 2003.[5] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Edwards S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 20, 2002, replacing the original Form 19b-4 in its entirety (''Amendment No. 1''). In Amendment No. 1, Nasdaq clarified that NNMS Order Entry Firms would be allowed to enter multiple orders (with or without reserve size) at single or multiple price levels and be subject to automatic execution functionality of the system. Nasdaq also explained that any order entered by a NNMS Order Entry Firm that created a locked/crossed market would be processed like other locking/crossing quotes/orders as set forth in Rule 4710(b)(3). Furthermore, Nasdaq made corrections to its rule text and requested accelerated approval of the proposed rule change on a 90-day pilot basis.

[4] *See* letter from Edwards S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated January 29, 2003, replacing in its entirety the original Form 19b-4 and Amendment No. 1 (''Amendment No. 2''). In Amendment No. 2, Nasdaq represented that additional programming to distinguish NNMS Order Entry Firms from Nasdaq Quoting Market Participants for internalization purposes would be implemented on or before April 28, 2003. Furthermore, Nasdaq provided additional rational for its request for accelerated approval by the Commission, and made corrections to its rule text.

[5] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated January 30, 2003 (''Amendment No. 3''). In Amendment No. 3, Nasdaq made conforming changes to its definitions in Rule 4701 and made corrections in Rule 4710(b)(1)(B) to incorporate the changes made under the proposed rule change, as amended.