

assessment through a formal appeal process. FICC believes that, consistent with the practice of the GSD, the fine process will be more effective and equitable and will provide participants with additional due process if an initial less formal dispute process is also included in MBSD's rules. The initial dispute process will be utilized by participants prior to availing themselves of the formal appeal process. A participant that becomes subject to a fine will have the opportunity within seven calendar days to dispute the fine by explaining in writing any mitigating circumstances that contributed to the participant's infraction and to request a fine waiver. Based on such written documentation provided by the participant, management will have the discretion to waive a fine if it believes that sufficient mitigating circumstances have been shown by the participant. If management waives a fine, it will have to inform the Membership and Risk Management Committee ("Committee") at the next regularly scheduled Committee meeting and will have to explain its reasons for doing so. The Committee will then have the opportunity to overrule management's action with respect to the waiver. If management chooses to not waive a fine or if its waiver is overruled by the Committee, the participant will have the right to pursue the formal hearing process currently provided for in the MBSD's Rules.

FICC will also make parallel changes with respect to the fine dispute process to the MBSD's EPN rules.

In addition, FICC proposed certain technical changes to the MBSD's Schedules of Charges to (i) delete references to "MBSCC" and replace them with references to "MBSD" and (ii) eliminate obsolete fees which are no longer being charged by the MBSD.

**III. Discussion**

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions.<sup>4</sup> The

Commission finds that FICC's proposed rule change is consistent with this requirement because it is designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by (i) encouraging participants to make timely payments of cash obligation items and margin to MBSD and (ii) clearly setting forth in MBSD's rules the informal procedures for disputing fines which should provide members with a more efficient and less burdensome method for the possible resolution of disputed fines before a full hearing takes place.

**IV. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of 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 (File No. SR-FICC-2004-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-68 Filed 1-11-05; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50977; File No. SR-NASD-2004-189]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting and Compliance Engine ("TRACE") Fees and Implementation Date of Stage Two of Dissemination of TRACE Transaction Information**

January 6, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 28, 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,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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) to terminate the Bond Trade Dissemination Service ("BTDS") Professional Delayed-Time Data Display Fee pilot program and the BTDS Non-Professional Real-Time Data Display fee, relating to Trade Reporting and Compliance Engine ("TRACE") transaction data fees, and to amend the implementation date of certain amendments to NASD Rule 6250, relating to TRACE transaction data dissemination and approved by the SEC in SR-NASD-2004-094 (designated as "Stage Two" of the implementation of SR-NASD-2004-094) from February 1, 2005 to February 7, 2005. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*  
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, except

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

System fees	Transaction reporting fees	Market data fees
CTCI/Third Party—\$25/month/per firm .....	Cancel/Correct—\$1.50/trade ..... “As of” Trade Late—\$3/trade .....	[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. BTDS Non-Professional Real-Time Data Display— <i>No charge</i> [\$1/month per terminal].

(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, *as applicable*. 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) *Reserved*. [For a pilot period commencing February 1, 2004, and lasting 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) Non-Professional Fees

[The charge to be] *There shall be no charge* paid by a non-professional for [each terminal] receiving all or any portion of Real-Time TRACE transaction data disseminated through TRACE. [shall be \$1.00 per month, per terminal.]

(C) through (D) No change.

(I) through (u) 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, 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 to amend Rule 7010(k) to terminate the BTDS Professional Delayed-Time Data Display Fee pilot program and the BTDS Non-Professional Real-Time Data Display fee. Both fees are for TRACE transaction information. In addition, NASD is proposing to change the implementation date of Stage Two of SR–NASD–2004–094. Implementation of Stage Two will make operative certain amendments to NASD Rule 6250 that provide for the delayed dissemination of information on designated transactions in TRACE-eligible securities.

TRACE Fees

a. BTDS Professional Delayed-Time Data Display Fee Pilot Program

NASD currently has in place a pilot program that charges for TRACE transaction information provided to professionals on a delayed basis. The charge for this pilot program is the BTDS Professional Delayed-Time Data Display Fee of \$15 per month and is imposed per terminal for each interrogation or display device receiving the delayed data. The pilot program commenced on February 1, 2004.<sup>5</sup>

NASD has recently begun a comprehensive review of TRACE fees. As part of this review, NASD has determined to terminate the BTDS Professional Delayed-Time Data Display

<sup>5</sup> The pilot program was recently extended to July 31, 2005. See Securities Exchange Act Release No. 50627 (November 3, 2004); 69 FR 65005 (November 9, 2004) (File No. SR–NASD–2004–163, filed for immediate effectiveness on October 26, 2004).

Fee and service because the demand for the service was limited.

b. BTDS Non-Professional Real-Time Data Display Fee

NASD currently charges a minimal fee of \$1.00 per month/per terminal for its BTDS Non-Professional Real-Time Data Display service, which allows non-professionals to view TRACE data on a real-time basis.<sup>6</sup> NASD is proposing to eliminate the \$1.00 BTDS Non-Professional Real-Time Data Display Fee for individual investors who are users of this real-time TRACE market data.

Wider distribution of TRACE data is a cornerstone of a broader effort to better educate individual investors about the corporate bond market. NASD proposes to eliminate the fee to remove any financial barriers to the broad-based distribution of TRACE data and encourage Web sites and other media outlets to widely redistribute real-time data to individual investors.

Implementation Date of Stage Two of SR–NASD–2004–094

NASD proposes to amend the implementation date of Stage Two of SR–NASD–2004–094. Stage Two requires the implementation of certain amendments to NASD Rule 6250 that provide for the delayed dissemination of information on designated transactions in TRACE-eligible securities.<sup>7</sup>

NASD proposes to change the implementation date of Stage Two from February 1, 2005, to February 7, 2005. Specifically, NASD will implement on February 7, 2005: (1) Rule 6250(a)(1) and (2); (2) the portion of Rule

<sup>6</sup> A “non-professional” is defined in Rule 7010(k)(3)(C)(ii) and is limited by definition to natural persons. In addition, generally the term excludes any principal, partner, employee, or other person acting in any capacity in the financial services industry, and any person engaged in or intending to engage in any redistribution of TRACE data.

<sup>7</sup> SR–NASD–2004–094 was approved for implementation in two stages. The implementation date of Stage One was October 1, 2004. See Securities Exchange Act Release No. 50317 (September 3, 2004), 69 FR 55202 (September 13, 2004) (File No. SR–NASD–2004–094) (“SEC Approval Order”). See also NASD Notice to Members 04–65 (September 2004).

6250(b)(1)(C)(i) not effective as of October 1, 2004;<sup>8</sup> and (3) Rule 6250(b)(2). Changing the implementation date will allow NASD to implement Stage Two on a Monday, rather than a Tuesday, which will reduce operational implementation issues.

The implementation date for Stage Two of SR-NASD-2004-094 will be February 7, 2005. NASD will announce all implementation dates of the proposed rule change in *Notices to Members* to be published no later than 30 days following Commission notice of filing of the rule change for immediate effectiveness. The implementation dates regarding proposed amendments to TRACE fees will be no more than 120 days after publication of the related Notice to Members.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,<sup>9</sup> 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, and the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that NASD rules 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. NASD believes that the elimination of the BTDS Professional Delayed-Time Data Display Fee will equitably allocate fees

<sup>8</sup> Rule 6250(b)(1)(C)(i) provides for the immediate dissemination of transactions in TRACE-eligible securities that are rated BB (or the equivalent rating of one or more nationally recognized statistical rating organizations) or lower and are executed other than during the New Issue Aftermarket-10, if the size of the transaction is \$1 million or less. (The term "New Issue Aftermarket-10" is defined in Rule 6250(a)(2).) During Stage One, NASD partially implemented Rule 6250(b)(1)(C)(i) by disseminating such transactions but only if larger transactions (*i.e.*, "\$1 million plus" transactions) in the same TRACE-eligible security were also subject to dissemination during Stage One. ("\$1 million plus" transactions in the same TRACE-eligible security were disseminated only if the TRACE-eligible security traded an average of one or more times per day, as provided in Rule 6250(b)(1)(C)(ii).) Transactions in TRACE-eligible securities described in Rule 6250(b)(1)(C)(i) that would otherwise be subject to immediate dissemination, but occurred in a security that is traded an average of less than one time per day and in which "\$1 million plus" transactions are subject to dissemination delays under Rule 6250(b)(2)(A) or Rule 6250(b)(2)(B), were not disseminated during Stage One, but will begin to be disseminated when Stage Two is implemented. See SEC Approval Order. See also NASD Notice to Members 04-65 (September 2004).

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

among subscribers of TRACE data that desire timely data for commercial use or benefit and will not adversely affect the use and distribution of TRACE data, which provides information on TRACE-eligible securities, protecting investors in the market and furthering the public interest. In addition, NASD believes that the elimination of the BTDS Non-Professional Real-Time Data Display Fee will promote the widespread distribution of transaction information about corporate bonds to the public and provide the public with additional information about investments in debt securities, which is in furtherance of the protection of investors and the public interest. Finally, NASD believes that implementing the changes to Rule 6250 on Monday, February 7, 2005, will minimize any potential operational implementation issues in furtherance of the protection of investors and the public interest.

## 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 from December 28, 2004, the date on which it was filed, and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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.<sup>13</sup>

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-189 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-2004-189. 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 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-2004-189 and should be submitted on or before February 2, 2005.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-89 Filed 1-11-05; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

[Public Notice 4955]

### Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101-162

**SUMMARY:** On December 21, 2004, the Department of State certified, pursuant to Section 609 of Public Law 101-162 ("Section 609"), that Venezuela has adopted a program to reduce the incidental capture of sea turtles in its shrimp fisheries comparable to the program in effect in the United States. On December 21, 2004, the Department of State withdrew certification for Trinidad and Tobago and for Panama pursuant to Section 609 because neither country's program for protecting sea turtles in its shrimp fisheries is determined to be comparable to the program in effect in the United States.

**EFFECTIVE DATE:** January 12, 2005.

**FOR FURTHER INFORMATION CONTACT:**

James Story, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520-7818; telephone: (202) 647-2335.

**SUPPLEMENTARY INFORMATION:** Section 609 of Public Law 101-162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On December 21, 2004, the Department certified Venezuela on the

basis that its sea turtle protection program is comparable to that of the United States. This country joins 14 others certified by the Department in 2004 on the same basis. On December 21, 2004, the Department withdrew certification for Trinidad and Tobago and for Panama because the sea turtle protection program in place for commercial shrimp trawl fisheries in these nations is not comparable in effectiveness to that of the United States.

The Department of State has communicated the certification of Venezuela under Section 609, and the withdrawal of certification for Panama and Trinidad and Tobago, to the Office of Trade Program of Customs and Border Protection, as well as to the governments of the affected nations.

Dated: January 5, 2005.

**David A Balton,**

*Deputy Assistant Secretary for Oceans and Fisheries, Department of State.*

[FR Doc. 05-627 Filed 1-11-05; 8:45 am]

**BILLING CODE 4710-09-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Request To Release Airport Land at San Bernardino International Airport, San Bernardino, CA

**AGENCY:** Federal Aviation Administration, Department of Transportation.

**ACTION:** Notice of Request to Release Airport Land.

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release of approximately 49.90 acres of airport property at San Bernardino International Airport, San Bernardino, California, from all restrictions of the surplus property agreement since the land is not needed for airport purposes. Reuse of the land for commercial/light industrial purposes represents a compatible land use. Disposal of the property will provide an opportunity to acquire additional land that is needed to enhance safety and meet airport design standards.

**DATES:** Comments must be received on or before February 11, 2005.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, Federal Register Comment, 15000

Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Donald L. Rogers, Interim Executive Director, San Bernardino International Airport Authority, Inland Valley Development Agency, 294 S. Leland Norton Way, Suite 1, San Bernardino, CA 92408-0131.

**FOR FURTHER INFORMATION CONTACT:**

Tony Garcia, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, California 90261, telephone (310) 725-3634 and FAX (310) 725-6849. The request to release airport property may be reviewed in person by appointment at this same location or at San Bernardino International Airport, San Bernardino, California.

**SUPPLEMENTARY INFORMATION:** In

accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Pub. L. 10-181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport's interest in surplus property.

The following is a brief overview of the request:

The San Bernardino International Airport Authority (SBIAA) requested a release from surplus property agreement obligations for approximately 49.90 acres of airport land consisting of five parcels at San Bernardino International Airport, San Bernardino, California, originally granted to them for airport purposes by the United States Air Force due to the closure of the former Norton Air Force Base. Three of the parcels are located on the west side, the fourth parcel is located northwest of the airfield and the fifth parcel is located on the east side of the airport property. The parcels are not contiguous or easily accessible to the airfield and are not required for aeronautical purposes. The property's redevelopment for non-aeronautical purposes will comply with local zoning and compatible land-use requirements. The parcels will be disposed of at fair market value based on the land's appraised value. The value of the land will be used to acquire additional land, which is needed for approach and encroachment protection, to enhance airport safety, and to comply with airport design standards. The land disposal and acquisition will provide a direct benefit to the airport and civil aviation.

<sup>14</sup> 17 CFR 200.30-3(a)(12).