

NASDAQ Announces Non-Tape Riskless Reports and Explicit Fee for NASDAQ Exchange Members



Please Route To: Head Traders; Technical Contacts; Compliance Officers; Clearing Contacts

What you need to know:

- Pending Securities and Exchange Commission (SEC) approval of Release No. 34-58101; File No. SR-NASDAQ-2008-033, NASDAQ plans to offer the following functions for NASDAQ Exchange members on the NASDAQ ACT System:
 - Submission of Non-Tape Riskless reports.
 - Expansion of the use of NASDAQ's Step-Out Function, originally announced in [Head Trader Alert 2007-150](#).
 - The adoption of "Explicit Fee" field for use in conjunction with NASDAQ Riskless Reports and NASDAQ Step-Outs.
 - The availability of Broker Capacity "I" on NASDAQ Riskless Reports, to represent a movement of shares "intra-broker", such as between two MPID's of a single firm.
- An enhanced Market Maker Entry Function G has been created to support the new functions. For availability and specifications, please see [Technical Update #2008-009](#).

Who you should contact: Contact [NASDAQ Trading Operations](#) at +1 212 231 5100.

What is changing within the ACT System?

Pending approval by the Securities and Exchange Commission (SEC) of its filing of Release [No. 34-58101](#); [File No. SR-NASDAQ-2008-033](#), NASDAQ® plans to offer the following functions for NASDAQ Exchange members on the NASDAQ ACTSM System:

- **Riskless Reports** - In defining what constitutes a riskless transfer, NASDAQ has decided to follow the general standard for riskless principal transactions articulated in Financial Industry Regulatory Authority ("FINRA") [Rule 4632\(d\)\(3\)\(B\)](#). FINRA also requires that the NASDAQ member have an order in hand and has given the party providing the order the same price as the NASDAQ member obtained in the public marketplace, prior to the submission of post-trade riskless transfer entry, either as principal or agent, into ACT.
 - Please note that these riskless submissions into ACT:
 - Are *voluntary and do not satisfy* any separate reporting obligation that may also be applicable.
 - May be for clearing or no clearing.
 - Are never used for Tape Reporting.
 - Are never eligible for FINRA/NASDAQ Trade Reporting FacilityTM (TRFTM) Efficiency Pricing, which was announced in [Head Trader Alert 2008-078](#).
 - NASDAQ will continue to honor [Give-Up](#) (AGU) agreements on record in the ACT System for NASDAQ members.
- **Step Out Function:** Expansion of the use of NASDAQ's Step-Out Function, originally announced in Head Trader Alert 2007-150.
- **Market Maker Entry Function G** and related message types will support the new functions and will be made available via NASDAQ ACT Protocols and NASDAQ [WeblinkACT 2.0](#).

What is changing with NASDAQ's Explicit Fee field?

NASDAQ's Explicit Fee field functions similarly to the Explicit Fee field in the FINRA/NASDAQ TRF and is available in conjunction with both NASDAQ riskless and step-out submissions. Its use provides NASDAQ member firms the ability to apply

fees to which they agree to on their riskless clearing and step-out submissions via ACT under The NASDAQ Stock Exchange.

If a NASDAQ member is processing a riskless or step-out submission on the Exchange, for which that member wishes to apply to its counter party an Explicit Fee, it does so by entering a "clearing price" in addition to the transaction price on submission.

These submissions otherwise follow the same rules as other ACT transactions regarding Locked-in and Match/Compare trade status resolution.

For these trades, the clearing price will be passed on to National Securities Clearing Corporation (NSCC).

Firms must have the [four-party agreement](#) (executing brokers and their clearing brokers) in place.

What are the challenges to adoption of Explicit Fee?

Today, the NSCC Input Format supports only one field for "Price" on submission into, and delivery from, the OTC and NASDAQ Exchange Contract Sheets. Accordingly, clearing firms and systems tend to have just the one field available for price.

This raises concerns regarding clearing firms' ability to properly reconcile trades vs. contracts, and to properly record required information concerning the price of trades for regulatory purposes, a function which clearing firms tend to provide.

These concerns are the reason the four-party agreement is required rather than relying solely on AGU Agreements for Locked-in Reports, or ACT's Comparison process to match submissions.

What is the solution to the Explicit Fee Challenge?

The Industry has been working with NSCC and NASDAQ to pursue an expansion of records and systems to accommodate additional fields related to Explicit Fee. While a few clearing firms have begun production use of the existing Explicit Fee function, NASDAQ is unable to make any recommendations at this time.

NASDAQ would like to point out to firms, however, that ACT Unsolicited Messages (UMs) carry both the 'price' and 'clearing price'. NASDAQ suggests firms contact their clearing firms if they are interested in utilizing the NASDAQ Explicit Fee function.

What is Function G?

A new Market Maker Trade Entry message has been defined to offer new NASDAQ exchange trade reporting capabilities and firms' compliance with the pending FINRA rule change [announced](#) November 5, 2007.

Function G will support both NASDAQ exchange functions and FINRA/NASDAQ TRF submissions.

The process of submitting TRF reports will differ primarily in the new fields available that become optional but not required in the expanded Entry message.

Please see [Technical Update #2008-009](#) for the full description and use of Function G.

What is Capacity "I"?

Capacity "I" can be used when a member wants to perform a non-tape, riskless transfer between two broker units of that member's firm. "I" discreetly identifies the record as "intra-broker" facilitation.

NASDAQ requires that both parties' capacity be "I" when the value is used.

Does this filing change anything else about agreements?

Yes, this [filing](#), if approved, relieves the need for the "[Sales Fee Transfer Agreement](#)", the movement of Sales Fees and related fees consequent to the use of the NASDAQ Step-Out function in ACT as described in Head Trader Alert 2007-150.

The Sales Fee Transfer Agreement is still required for the use of the Sales Fee Transfer Function, which is independent of the step-out function. The Sales Fee Transfer Agreement may not facilitate the movement of shares, just Sales Fee and related fees as described in Head Trader Alert 2007-150.

This filing also relieves the requirement for NASDAQ members to utilize the NASDAQ Step-Out function only in the context of AGU Agreements and locked-in submissions. Members may also match submission via ACT's common process.

NASDAQ will continue to honor AGU agreements on record in the ACT System for NASDAQ members submitting riskless submissions. ACT's Match/Compare process is also available.

Can I comment on the proposed rule filing?

Yes. NASDAQ encourages customers to review our rule filing and to submit comments. NASDAQ is committed to minimizing post-trade expenses for our customers and welcomes robust dialogue about market structure, market process and efficiency.

What do I need to do?

- Obtain the updated programming [specifications](#) from the NASDAQ Trader[®] website.
- Test Function G through the [NASDAQ Testing Facility \(NTF\)](#)
- Complete and submit any applicable agreements to NASDAQ Subscriber Services or FINRA.

Where can I find additional information?

- Contact [NASDAQ Trading Operations](#) at +1 212 231 5100.
- Refer to NASDAQ's [rule filing](#) on the SEC website.
- See [Head Trader Alert 2007-150](#) for information regarding step-outs.
- Visit the [FINRA/NASDAQ TRF page](#) on the NASDAQ Trader[®] website.

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