

## NASDAQ OMX Announces SEC Approval of Enhanced Post-Trade ACT Functionality for NASDAQ Exchange Members



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

### What you need to know:

- The Securities and Exchange Commission (SEC) has approved [SR-NASDAQ-2008-033](#).
- As announced in [Head Trader Alert #2008-084](#), this approval allows NASDAQ to offer its members the following new functionality via NASDAQ's ACT System:
  - Riskless non-Tape reports.
  - Explicit Fee on clearing eligible reports, including riskless reports and the NASDAQ "NDQ" Step-Out Function.
  - Capacity "I" Intra-Broker value on NASDAQ riskless reports.
- As announced in [Technical Update #2008-012](#), these functions are available today on ACT protocols as well as on the [NASDAQ Workstation](#) and [WeblinkACT 2.0](#).

### Who you should contact:

- [NASDAQ OMX Market Sales](#) at +1 800 846 0477
- [Donald Bollerman](#) at +1 212 401 8780

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### What post-trade functions are available to NASDAQ Exchange members?

Through existing Automated Confirmation Transaction System (ACT<sup>SM</sup>) interfaces, NASDAQ<sup>®</sup> offers its members the following:

- **NASDAQ Riskless Reports** – For clearing or messaging/recording through the ACT infrastructure, available for U.S. equities regardless of the market of the original trade.
- **NASDAQ "NDQ" Step-Outs** – Clearing accounting entries and securities transfers, which are never clearance of original trades.
- **NASDAQ Explicit Fee** - Allows brokers to apply charges on a per share basis to counter-parties on clearing eligible reports submitted, including riskless reports and NDQ step-outs. The collection of these fees is realized upon normal trade settlement.
- **NASDAQ Sales Fee Transfer** – Transfer charges on covered sales related to Markets' servicing obligations to the Securities and Exchange Commission (SEC) under Section 31a of the Act of 1934. This function is available stand alone (without the movement of shares) or in conjunction with NDQ step-outs. This function is available to NASDAQ members regardless of the market of execution of the original trades.
- **Capacity I** – Intra-broker is made available to compliment Agency, Principal and Riskless Principal as firm capacity on NASDAQ post-trade functions for use only when a firm needs to submit a riskless report between two MPIDs or business units within a single Broker/Dealer. "I" will be received on Contract Sheets as "F" = Firm in 'Order Capacity'. This value will be available on the NASDAQ Workstation<sup>®</sup> and WeblinkACT 2.0 on November 17, 2008.

## What are the required agreements for each function?

There are three agreements to be considered — Give-Up, Four Party and Sales Fee Transfer are required as follows. All agreements can be submitted via fax to [NASDAQ Subscriber Services](#) at +1 212 231 5426.

- **Riskless Reports, with or without clearing:**
  - Match/Compare – No Agreements
  - Locked-in – [Give-Up agreement](#) on record in the ACT System
- **Step-Outs:**
  - Match/Compare – No Agreements
  - Locked-in – [Give-Up agreement](#)  
Please note most firms prefer not to process step-outs as locked-in, but rather through the ACT comparison process because there is a movement of shares without a trade execution or riskless report against which to reconcile. NASDAQ recommends firms ask their Back Office or Clearing Broker if they have any questions about step-outs.
- **Step-Out with Sales Fee Transfer:**
  - The movement of fees related to Section 31 as a consequence of NDQ Step-Outs does not require a separate agreement.
  - Firms indicate yes/no with the Report Flag on the submission.
- **Sales Fee Transfer:**
  - The [Sales Fee Transfer Agreement](#) is required between Clearing Firms for this function.
- **Explicit Fee:**
  - The [Four Party Agreement](#) between Executing Brokers and their Clearing Firms is required for this function.

## What benefit can firms realize by using NASDAQ Post-Trade functions on ACT?

NASDAQ Exchange post-trade functions have all the same supporting values The Street expects with ACT usage:

- **Ease of Fee Facilitation** – ACT is ubiquitous, a common interface between most Broker/Dealers participating in U.S. equity trading today.
  - Sales Fee Transfer concludes as part of the monthly collection process of the NASDAQ Exchange Sales Fee.
  - Explicit Fees are realized as part of contract value upon Trade Settlement.
- **Transparency** – NASDAQ Exchange functions via ACT flow through to all the traditional user visibility points:
  - NASDAQ Workstation/Weblink ACT Trade Scans
  - ACT Unsolicited Messages (UMs) with all applicable detail
  - Equity Trade Journal
  - XNAS identification on Clearing Contract sheets
- Consideration in NASDAQ [Credit Risk Management](#).
- Presence of records on NASDAQ's Equity Trade Journal.
- Existing Give-Up Agreements on record in ACT are honored.
- ACT Match/Compare Confirmation.
  - Note there is no "20 minute rule" for comparisons of NASDAQ post-trade functions on ACT.

## Has there been any update on the Explicit Fee?

Yes, National Securities Clearing Corporation (NSCC) has indicated they expect to soon announce an expected date and field position specifications for the expansion of

Contract Sheet records, and consequently expect Clearing Firms' systems to accommodate additional fields related to Explicit Fee.

NASDAQ will produce two additional fields for submission of records to NSCC. In addition to **"Price"**, transaction price less fee (reported price), ACT will also submit:

- **"Total Contract Amount"** - the total settlement value of the contract inclusive of the Explicit Fee
- **"Total Explicit Fee Amount"** - the fee price times shares

As previously announced in [Head Trader Alert #2007-151](#), some firms are using Explicit Fee today for certain FINRA/NASDAQ Trade Reporting Facility™ (TRF™) submissions as allowed by rule. Widespread adoption is expected to be promoted by enhancements to Over the Counter (OTC) and NASDAQ Contract Sheets.

### Why would firms want to apply an Explicit Fee on an NDQ Step-Out?

Step-Outs are most commonly used to satisfy the instruction of buy-side firms to transfer all or a portion of a previously executed position to other brokers, allowing that "step-in" broker to charge the customer a commission.

NASDAQ has observed a rising interest from firms for the ability for executing brokers to step-out positions to a broker who is charging a commission or fixed fee to a customer, with the executing broker charging a fee to the step-in broker in this case.

This scenario and the related needs have been most frequently presented to NASDAQ in the context of the "Wrap" space, where the Wrap Broker charges its customer a flat fee for the management of a portfolio.

NASDAQ Step-Out with Explicit Fee excels at satisfying the need to transparently express broker-to-broker fees discretely on executions in the Wrap space.

NASDAQ encourages Brokers to check with their Clearing Firms, Contra-Parties and their Clearing Firms as to expectations of their readiness pending changes to the Contract Sheets.

### Where can I get additional information?

- Refer to the approval notice [SR-NASDAQ-2008-033](#).
- Refer to the following alerts:
  - [Technical Update #2008-012](#)
  - [Head Trader Alert #2008-084](#)
  - [Technical Update #2008-28](#)
  - [Head Trader Alert #2007-150](#)
  - [Head Trader Alert #2007-151](#)
- Refer to the [Pricing](#) and the [WeblinkACT 2.0](#) pages on the NASDAQ Trader website.
- Refer to the following documents:
  - [Give-Up Agreement](#)
  - [Sales Fee Transfer Agreement](#)
  - [Four Party Agreement](#)
  - [CTCI](#) and [FIX](#) Trade Reporting Specifications
- Contact [NASDAQ OMX Market Sales](#) at +1 800 846 0477 or [Donald Bollerman](#) at +1 212 401 8780.

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