Explicit Fee Reference Guide

NASDAQ OMX®

What is Explicit Fee?

Explicit Fee is a transfer or application of mutually-agreed upon charges between two broker-dealers in advance of a transaction. This function allows a trade to be reported at the sale price, exclusive of the fee, and to be cleared at a price, inclusive of the fee. The difference between the two prices represents the value of the agreed to Explicit Fee.

Explicit Fee functionality is allowed on certain clearing-eligible trades reported through NASDAQ's ACT^{SM} System, facilitating the application of a fee expressed on a per share basis between two broker/dealers who are party to the trade. The collection of those fees occurs as a result of the clearing and settlement process.

Why do firms use Explicit Fee?

Explicit Fee provides the following benefits:

- **Ease of use** — ACT is ubiquitous in the U.S. equity space. Connectivity is available programmatically through NASDAQ's FIX and CTCI application interfaces and through the NASDAQ WeblinkACT 2.0 Workstation.

    o Results in standardized formats for post-trade facilities.

- **Accelerated and assured fee collection** — Explicit fees are part of the total contract value submitted to the National Securities Clearing Corporation (NSCC) for clearing. Fee collection occurs as part of normal trade settlement (Regular Way (T+3) being the most common Settlement Instruction), thereby eliminating the need for time-consuming and costly collection processes that generally occur on a 30-day or greater billing cycle.

- **Transparency** — Trade price and clearing price are available on all ACT input, output and storage messages, and the fee amount and direction are also readily available.

    o Fees are displayed on the NASDAQ Workstation/WeblinkACT Trade Scans as part of trade details.

    o Output messages from ACT in the "G" format include both the trade price and clearing price fields.

    o Since February 2009, trade price, fee amount and final contract amount are available discretely on NSCC OTC Contract Sheets and Machine Readable Output (MRO) files.

What types of trades are eligible for the Explicit Fee function?

Under The NASDAQ Stock Exchange® (NASDAQ®) rules, Explicit Fee is allowed on non-tape, or "riskless", eligible transactions reported to ACT by members. This function **is allowed** on "Step-Outs". FINRA members may also use Explicit Fee when submitting tape and non-tape reports to the FINRA/NASDAQ Trade Reporting Facility^{SM} (TRF^{SM}), in accordance with [FINRA Rule 7230A(h).](#) FINRA members should refer to applicable [FINRA rules](#) and [guidance](#) for determining the circumstances under which Explicit Fee may be used. Members may also refer to the [July 3, 2007 FINRA Member Alert](#) for more information.

Note: NASDAQ rules provide for certain non-Last Sale (tape) trades to be submitted by members of the exchange on the ACT System, including "Riskless Principal," "Riskless Agency" and "Step-Outs." Use of these functions on ACT under NASDAQ rules does not answer any other Self-Regulatory Organization's trade reporting obligations. For more information on these post-trade functions, refer to [Equity Trader Alert #2008-84](#).

What are the differences between Explicit Fee via NASDAQ and via the FINRA/NASDAQ TRF?

There are several differences participants must be aware of which are highlighted below.

- Participants must be a NASDAQ member in order to utilize the NASDAQ Explicit Fee function, and likewise a FINRA member to submit to the FINRA/NASDAQ TRF.
- NASDAQ submissions are not subject to the 20 minute rule as the FINRA/NASDAQ TRF submissions may be when using the Compare/Accept (ACT Match/Compare) service.
- FINRA/NASDAQ TRF allows inclusion of an Explicit Fee on NMS securities only.

Note: Firms should refer to [FINRA's Trade Reporting FAQs section 301](#) and [FINRA Regulatory Notice 07-38](#) relating to the submission of "Step Outs" to the FINRA/NASDAQ TRF.

Under NASDAQ rules, "Step-Outs" do not limit the original market of execution of shares comprising any positions to be stepped out via the NASDAQ Step-Out function via ACT. For more information, please refer to the following Alerts:

- [Equity Trader Alert 2008-19](#)
- [Equity Trader Alert 2007-222](#)
- [Equity Technical Update 2007-28](#)
- [Equity Trader Alert 2007-150](#)

How does the Explicit Fee work in practice?

The function allows parties to trade at one price and clear at another; the Explicit Fee is the difference between the trade price and the clearing price. The fee is expressed on entry and processed by the system as a value per share.

ACT can accommodate up to six decimal places in both the trade price and clearing price fields, allowing for sub-penny per share fee application.

Firms can realize collection of fees on a trade using this function as either the Seller or the Buyer, and as either the Reporting Party or the Counter Party.

- When a Seller is realizing collection, the clearing price will be higher than the trade price.
- When a Buyer is realizing collection, the clearing price will be lower than the trade price.

To understand the process completely, it is meaningful to consider each of the general processes below:
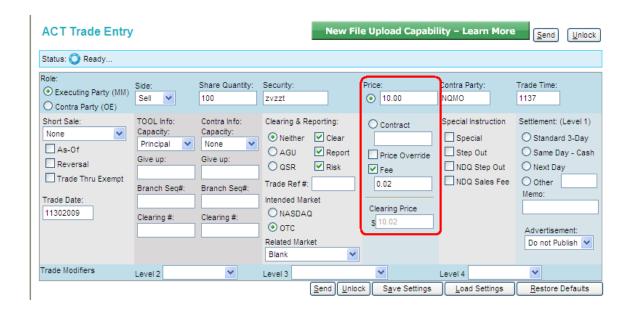
Trade Entry

ACT Trade Entry is submitted with the trade price in the "Price" field, and the price inclusive of the fee in the "Clearing Price" field. ACT Trade Entry is available via three mechanisms: [CTCI](#) and [FIX](#) programmatic interfaces and the NASDAQ Weblink ACT Workstation.

- In both CTCI and FIX, the values submitted are trade price and clearing price in the following fields:

Description	CTCI Field Name	FIX Field Name
Trade Price	Decimal Price	AvePx
Clearing Price	Clearing Price	Clearing Price

- In the NASDAQ Weblink ACT Workstation, the input fields are "Price" and "Fee" on the ACT "Trade Entry" screen.
    - The Trade Entry screen will calculate clearing price and display on the workstation in real time.

Counter Party Response

- Explicit Fee fields; Trade Price and Clearing Price are part of the match criteria for Match/Compare trades on ACT where two parties are submitting their sides to "meet on ACT", or where one party submits and the other accepts.
- The Clearing Price field (or "Fee" on the Workstation) is available on both Executing Party (EP) (f.k.a. MM) Trade Entry and Contra-Party (CP) (f.k.a. OE) Trade Entry message layouts.
- Explicit Fee is also allowed on trades reported as "Locked-in" under an AGU agreement. AGU agreements may be already standing between firm Market Participant Identifiers (MPIDs) under a Uniform Trade Reporting Agreement (previously "AGU" or "Attachment 2").

Acknowledgements

- The Clearing Price field is included on ACT Unsolicited Messages (UMs) generated by the system as per standard functionality.
- Allege and Acknowledgement (TGAL/TGEN/TGLK and the "C" version of each message type for clearing firms) messages are sent back to the Executing Party and Contra-Party.

Trade Dissemination and Recording

- For trades that are Last Sale eligible, which includes Explicit Fee, the trade price is the price disseminated to the Consolidated Tapes.
- Both the Trade Price and Clearing Price are included in the permanent regulatory record.
- Trade Price, Clearing Price and the Fee Value are available in the NASDAQ WeblinkACT Trade Detail window.

Clearing Submission

- For trades which include Explicit Fee, ACT submits three price/dollar values to NSCC for clearing:
    - "Price" is the trade price per share.
    - "Total Explicit Fee Amount" is the value of the fee multiplied by number of shares.
    - "Total Contract Amount" is the value of clearing price multiplied by the number of shares.

Contract Sheets

- As announced in **DTCC Important Notice on February 2, 2009**, NSCC enhanced the OTC Contract Sheets by adding two fields to NSCC OTC Intra-Day data file and the OTC and NASDAQ End-of-Day print image contract output:
    - "Total Explicit Fee Amount"
    - "Total Contract Amount

Back Office

- NASDAQ ACT UMs for Clearing firms (CGAL/CGEN/CGLK) include both the Trade Price and Clearing Price.
- These records are generated as standard functionality on ACT messages and are available for clearing firms for all of their executing broker correspondents through the ACT System.
- ACT Control Numbers which are passed back on all ACT UMs, are included in trade submission to NSCC and are returned to Clearing Firms in the "Executing ID" field, position 266-280, on the NSCC OTC 02023183 MRO 400 BYTE Intra-day Output file.
- Since the enhancement by NSCC in February of 2009 detailed above, all necessary information is available to allow for complete transparency and reconciliation of Explicit Fee transactions.

When might firms use the Explicit Fee function?

Firms could use the Explicit Fee function in the scenarios below:

Fee for execution:

- Broker1 calls Broker2 to BUY 100 shares of XYZ.
- Broker2 marks the market at $10 and wants to charge a fee of $0.02 per share.
- Broker1 agrees to the price and the fee.
- Broker2 reports a Tape-eligible SELL vs. Broker1 of 100 XYZ at a trade price of $10 and a clearing price of $10.02.
- *If Broker2 was buying from Broker1 and wished to charge a $0.02 fee, the clearing price would have been entered as $9.98.*

Fee on "Riskless" flip:

- Broker3 calls Broker4 to BUY 1000 shares of ABCD on Exchange X and is willing to pay up to $25.
- Broker4 agrees to introduce the order on Exchange X and wants to charge a fee of $0.02 per share.
- Broker3 agrees.
- Broker4 BUYS 1000 shares on the Street at a price of $25.
- Broker4 then reports a "Riskless" non-Tape eligible SELL vs. Broker3 of 1000 ABCD at a trade price of $25 and a clearing price of $25.02

In defining what constitutes a riskless transfer, NASDAQ requires the NASDAQ member have an order in hand (and have 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. See also FINRA Rule 6380A(d)(3)(B).

Remuneration on "Step-Out" Function with Explicit Fee:

- Broker5 receives instructions from its Customer to "Step-Out" 25% of a previously executed position to Broker6.
- Broker5 had previously acquired a long position of 100,000 shares of LMNQ at various market centers around the Street at an average price of $73.
- Broker5 wants to recover $0.01 of its cost of trade on the step out.
- Broker6 agrees.
- Broker5 submits its "Step-Out SELL" 25,000 shares of LMNQ at a trade price of $73 and a clearing price of $73.01.

What do I need to use Explicit Fee?

In addition to connectivity to ACT, agreements must be in place between each broker pair and their clearing firms in order to apply Explicit Fee. The Four Party Transaction Fee Agreement, as well as any Give-Up relationships intended are checked and enforced systemically by ACT.   All agreements can be submitted via fax to NASDAQ Subscriber Services at +1 212 231 5426.

FINRA members must comply with FINRA Rule 7230A(h), including execution of the agreements specified in that Rule and guidance. Members may also refer to the July 3, 2007 FINRA Member Alert for more information.

Brokers should check with their clearing firms or clearing/back office departments to make sure they are capable of supporting Explicit Fee functionality.

What are the costs of using Explicit Fee via ACT?

The use of Explicit Fee is $0.03 per side (per trade per party).

Why is now a good time to update systems to use Explicit Fee?

Most firms will have some coding changes to make in order to comply with FINRA rule changes effective March 2010 as described in Equity Technical Update 2009-22; specifically upgrading systems to use Trade Input Message Function G and the corresponding unsolicited message (UM) series. Function G series Trade Entry and UM messages fully support Explicit Fee and its related fields.

Since Function G includes the Clearing Price field, this is an opportunity for firms to plan for the use of NASDAQ Explicit Fee functionality.

Where can I find additional information?

- Refer to Equity Trader Alert #2010-6.
- Refer to the February 2, 2009 DTCC Important Notice.
- Refer to the trade reporting specifications for CTCI and FIX.

- Refer to the **Four Party Transaction Fee Agreement**.
- Refer to the **Uniform Service Bureau/Executing Broker** or **Give-Up Agreement**.
- Contact **Transaction Services U.S. Market Sales** at +1 800 846 047.
- Contact **NASDAQ Subscriber Services** at +1 212 231 5426.