

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48056; File No. SR-NASD-2003-78]

Self-Regulatory Organizations; Order Granting Accelerated Approval To Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rule 6230 To Reduce TRACE Reporting Period

June 18, 2003.

I. Introduction

On May 2, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 6230 to reduce the Trade Reporting and Compliance Engine ("TRACE") reporting period from 75 minutes to 45 minutes. Notice of the proposed rule change was published for comment in the *Federal Register* on May 20, 2003.³ The Commission received one comment letter regarding the proposal.⁴ This order grants accelerated approval to the proposed rule change.

II. Background

On January 23, 2001, the Commission approved the TRACE Rules to establish a corporate bond trade reporting and transaction dissemination facility and to eliminate Nasdaq's Fixed Income Pricing System ("FIPS").⁵ Subsequently, on March 5, 2001, the Commission approved amendments to the TRACE Rules requiring trade reports in transactions between two NASD members to be filed by each member.⁶ In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE

Rules had become effective on filing.⁷ On June 28, 2002, the Commission approved a proposed rule change to establish fees for the use of TRACE on a pilot basis for six months,⁸ and also approved proposed amendments to the TRACE Rules to make technical changes to the TRACE Rules and clarify certain provisions of those Rules prior to implementation of TRACE.⁹

The TRACE Rules became effective on July 1, 2002. On that day, members began to report transactions in TRACE-eligible securities, and the TRACE system began the dissemination of certain reported information. On November 22, 2002, the Commission issued a notice stating that NASD was reducing certain TRACE fees for the fourth quarter of 2002.¹⁰ On December 19, 2002, the Commission issued a notice stating that an extension of the pilot program for TRACE fees to February 28, 2003 and a modification of the pilot effective January 1, 2003 had become effective on filing.¹¹

On January 31, 2003, the Commission approved a proposed rule change relating to increasing dissemination of debt securities transaction information under the TRACE rules.¹² On March 4, 2003, the Commission issued a notice stating that another extension of the pilot program for TRACE fees to June 30, 2003 and a modification of the pilot had become effective on filing.¹³ On March 25, 2003, the Commission issued a notice of filing and immediate effectiveness of a proposed rule change by NASD to disseminate up to thirty additional corporate bonds under the TRACE rules.¹⁴

III. Description of the Proposal

NASD Rule 6230(a) currently requires a member that is a party to a transaction in a TRACE-eligible security to report the transaction information to TRACE

within 75 minutes of the time of execution.¹⁵

NASD is proposing to reduce the period to report from 75 minutes to 45 minutes. In new Rule 6230(a), the general requirement to report transaction information within 75 minutes of the time of execution is restated as 45 minutes. In addition, NASD is proposing to amend the next-day reporting exceptions in Rules 6230(a)(1) through (4) to require that the report be filed within 45 minutes of the time the TRACE system opens instead of the current 75 minutes. These amendments would go into effect October 1, 2003. The proposal is discussed in greater detail in the Commission's notice soliciting public comment on the proposal.¹⁶

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of section 15A(b)(6) of the Act.¹⁷ Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the Act in that it is 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.¹⁸

The Commission believes that reducing the reporting period from 75 minutes to 45 minutes would result in important trade information reaching the market in a timelier manner, thus improving price transparency under TRACE. The Commission also believes that the proposed rule change will

¹⁵ Limited exceptions to the general requirement are stated in Rule 6230(a)(1) through (4), which provide for reporting a transaction the next business day that the TRACE system is open in certain circumstances. Specifically, in Rule 6230(a)(1), a member currently *may elect* to report a transaction the next business day that the TRACE system is open at any time within 75 minutes after the TRACE system opens, if the member executed the trade the prior business day less than 75 minutes before the TRACE system closed. (Currently, on a business day, the TRACE system is open from 8 a.m. Eastern Time to 6:30 p.m. Eastern Time to receive reports.) In Rule 6230(a)(2) through (4), members are directed how to report trades that occur (1) after TRACE system hours, (2) before TRACE system hours, or (3) on a weekend or a holiday. In each case, the member must report the transaction the next business day that the TRACE system is open within 75 minutes of the opening.

¹⁶ See *supra*, note 3.

¹⁷ 15 U.S.C. 78o-3(b)(6).

¹⁸ In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ See Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR-NASD-2001-91).

⁸ See Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR-NASD-2002-63).

⁹ See Securities Exchange Act Release No. 46144 (June 28, 2002), 67 FR 44907 (July 5, 2002) (File No. SR-NASD-2002-46).

¹⁰ See Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (SR-NASD-2002-167).

¹¹ See Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR-NASD-2002-176).

¹² See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (File No. SR-NASD-2002-174).

¹³ See Securities Exchange Act Release No. 47444 (March 4, 2003), 68 FR 11602 (March 11, 2003), (File No. SR-NASD-2003-25).

¹⁴ See Securities Exchange Act Release No. 47566 (March 25, 2003), 68 FR 15490 (March 31, 2003) (File No. SR-NASD-2003-41).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 47856 (May 14, 2003), 68 FR 27605.

⁴ See letter from Michele C. David, Vice President and Assistant General Counsel. The Bond Market Association ("TBMA"), to Jonathan G. Katz, Secretary, Commission, dated June 10, 2003 ("TBMA's Letter"). TBMA's Letter is described in Section IV, *infra*.

⁵ See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001), (File No. SR-NASD-1999-65). FIPS, which was operated by Nasdaq, collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds.

⁶ See Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR-NASD-2001-04).

provide regulators with heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices. In addition, the Commission believes that this reduction is an important step in achieving the ultimate goal of reducing the reporting period to 15 minutes after the industry acquires greater experience with reporting.¹⁹

As previously noted, the Commission received one comment letter from TBMA on the proposed rule change.²⁰ TBMA strongly supports the proposal because they believe it will provide timelier and therefore more useful trade information to investors and other market participants that will support and increase the efficiency of the markets for the bonds that are subject to the transparency requirements. TBMA's Letter also noted that they support further efforts to enhance the timeliness of trade reports contingent on further efforts to develop reporting mechanisms that make such efforts feasible. The Commission supports NASD's goals for increasing timeliness of trade reporting and believes that setting goals may provide incentive for market participants to enhance reporting mechanisms if necessary to facilitate those goals. The Commission believes the current reduction "from 75 minutes to 45 minutes—is an important step toward achieving the NASD's goal of 15-minute reporting.

TBMA's Letter also stated that it should be clear that narrowing the time requirements for reporting trade information does not presuppose that all information reported should be disseminated, or that all information that is disseminated should be disseminated on a "real-time" basis. The Commission agrees that the reduction in the reporting interval in this proposal does not presuppose real-time dissemination of reported transaction information on all corporate bonds. The issues of further reductions in reporting intervals and expanded dissemination are expected to be addressed in the context of future filings with the Commission, but those issues are not before the Commission at this time.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,²¹ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice

thereof in the **Federal Register**. The Commission believes that granting accelerated approval will allow member firms to receive prior notification, by several months, of the deadline to implement the reduced reporting period on October 1, 2003.

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 Act²², that the proposed rule change (SR-NASD-2003-78), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48061; File No. SR-NASD-2003-93]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Trading Activity Fee To Adjust the Rates for Covered Equity Securities

June 19, 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 June 11, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 the NASD. 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

The NASD proposes to amend its Trading Activity Fee ("TAF"). The NASD is amending the TAF to adjust the rates for covered equity securities. In addition, the NASD is renumbering certain subsections included in Section 1. The text of the proposed rule change

is below. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to NASD By-Laws

* * * * *

Section 1—Member Regulatory Fees

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

[(i)](A) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness);

[(ii)](B) All other equity securities traded otherwise than on an exchange; and

[(iii)](C) All security futures wherever executed.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

[(i)](A) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;

[(ii)](B) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

[(iii)](C) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

[(iv)](D) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security;

[(v)](E) Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder;

[(vi)](F) Proprietary transactions by a firm that is a member of both NASD and a national securities exchange, effected in its capacity as an exchange specialist or market maker, that are subject to Securities Exchange Act of 1934, Section 11(a) and Rule 11a1-1(T)(a) thereunder; however this exemption does not apply to other transactions permitted by Section 11(a) such as bona fide arbitrage or hedge transactions;

[(vii)](G) Transactions by a firm that is a floor based broker and that is a member of both NASD and a national

¹⁹ See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR-NASD-1999-65).

²⁰ See *supra*, note 4.

²¹ 15 U.S.C. 78s(b)(2).

²² *Id.*

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.