

However, in response to recommendations made by the Securities Industry/Regulatory Council on Continuing Education (the "Council"), MSRB submitted a proposed rule change to eliminate all currently effective exemptions from required participation in Regulatory Element programs.<sup>8</sup> The Council believes that there is great value in exposing all registered industry participants to the full benefit of Regulatory Element programs.

The effective date of the MSRB proposed rule change is dependent upon the effective date of a similar proposed rule change filed by NASD<sup>9</sup> because NASD administers the Regulatory Element computer-based education program. NASD has stated that it will announce the effective date of its proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. NASD stated that the effective date will be (1) not more than 30 days following publication of the Notice to Members announcing Commission approval, (2) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository (Web CRD), or (3) April 4, 2005, whichever date is the latest to occur. The effective date of the MSRB proposed rule change will be the same as the effective date of the NASD's proposed rule change.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,<sup>11</sup> which requires, among other things, that the MSRB's 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. The Commission believes that the

disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

<sup>8</sup> The Council recommended at its December 2003 meeting that SRO Rules (e.g., MSRB Rule G-3(h)), be amended to eliminate existing exemptions from the Regulatory Element and to require all "grandfathered" and "graduated" persons to fully participate in future standardized CE programs, according to the Rule's prescribed schedule.

<sup>9</sup> See Securities Exchange Act Release No. 50204 (August 16, 2004), 69 FR 51873 (August 23, 2004) (SR-NASD-2004-098).

<sup>10</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78o-4(b)(2)(C).

proposed rule change should help to ensure that all registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry issues. Further, the Commission believes that the proposed rule change will reinforce the importance of compliance with just and equitable principles of trade by exposing all registered industry participants to the full benefits of the Regulatory Element programs, which include a new Regulatory Element module that focuses specifically on ethics.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-MSRB-2004-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E4-2818 Filed 10-22-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50558; File No. SR-NASD-2004-148]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to TRACE Rule 6250

October 18, 2004.

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 October 1, 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.<sup>5</sup> The Commission is publishing this notice to

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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).

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

<sup>5</sup> The NASD asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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 6250 to continue to disseminate transaction information for certain TRACE-eligible securities during Stage One of the implementation of SR-NASD-2004-094,<sup>6</sup> notwithstanding that the securities do not meet the frequency standards for such dissemination set forth in Rule 6250(b)(1)(C)(ii). Below is the text of the proposed rule change. Proposed new language is in italics.

\* \* \* \* \*

#### 6250. Dissemination of Transaction Information

(a) through (c) No change.

(d) *Dissemination of Transaction Information for Certain Non-Investment Grade TRACE-Eligible Securities*

*Until such time as the effective date of (1) Rule 6250(a), (2) the portion of proposed Rule 6250(b)(1)(C)(i) not effective as of October 1, 2004, and (3) Rule 6250(b)(2) (being the effective date of "Stage Two"), information for transactions in Non-Investment Grade TRACE-eligible securities that were subject to dissemination under the Rule 6200 Series prior to October 1, 2004, but that do not meet the frequency standards set forth in Rule 6250(b)(1)(C)(ii), will continue to be disseminated immediately upon receipt of the transaction report. Following the effective date of Stage Two, dissemination of such securities will be subject to all provisions of the Rule 6200 Series then in effect, at which time this paragraph (d) of Rule 6250 shall automatically expire by its own terms.*

\* \* \* \* \*

### 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.

<sup>6</sup> See Securities Exchange Act Release No. 50317 (September 3, 2004), 69 FR 55202.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

3. Purpose

The proposed rule change would continue the dissemination of transactions in a very small number (*i.e.*, fewer than 15) of Non-Investment Grade TRACE-eligible securities that are currently subject to dissemination, but that would not be disseminated during the first stage of implementation (although eligible for delayed dissemination) of the recently approved amendments to the Rule 6200 Series that became effective on October 1, 2004 (SR-NASD-2004-094).<sup>7</sup> The proposed rule change would, during the first stage of the two-stage implementation of the dissemination changes taking effect on October 1, 2004, allow NASD to continue to provide transaction information on such TRACE-eligible securities, rather than reduce transparency during such implementation. NASD asserts that this action is in furtherance of the general principles of transparency and the increase in transparency of all TRACE-eligible securities, as discussed by the Bond Transaction Reporting Committee, an advisory committee to the Board of Governors of NASD.

As discussed below, NASD is filing the proposed rule change for immediate effectiveness, and the implementation date will be October 1, 2004.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that NASD rules must 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 proposed rule change will promote transparency in the debt securities markets for the benefit of customers and other market participants in furtherance of the public interest and for the protection of investors.

*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 (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has asked the Commission to waive the 30-day operative delay. The Commission hereby grants this request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will enable NASD to continue to provide transaction information on certain TRACE-eligible securities that have previously been subject to dissemination, but that would not be disseminated during the first stage of implementation of recently approved amendments to the Rule 6200 Series that became effective on October 1, 2004 (SR-NASD-2004-094).<sup>11</sup> NASD has also requested that the Commission waive the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission).<sup>12</sup> The Commission hereby grants NASD's request to waive the pre-filing requirement.<sup>13</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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> See *supra*, note 6.

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

<sup>13</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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>14</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-2004-148 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-2004-148. 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-2004-148 and

<sup>14</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

should be submitted on or before November 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E4-2820 Filed 10-22-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50559; File No. SR-NYSE-2004-48]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Create New NYSE Rule 416A ("Member and Member Organization Profile Information Updates and Quarterly Certifications Via the Electronic Filing Platform") and To Amend NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"), Adding New NYSE Rule 416A to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

October 19, 2004.

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 August 19, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 Exchange. On October 12, 2004, NYSE amended the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Proposed new NYSE Rule 416A ("Member and Member Organization Profile Information Updates and Quarterly Certifications Via the Electronic Filing Platform") would require members and member organizations to promptly update their

organizational information via the Electronic Filing Platform ("EFP"), and to make quarterly certifications that their organizational information is complete and accurate. The proposed corresponding amendment to NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules") would allow the Exchange to sanction members' and member organizations' less serious violations of new NYSE Rule 416A pursuant to the minor fine provisions of NYSE Rule 476A. The text of the proposed rule change is available at NYSE and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE 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

NYSE Rule 416 requires each Exchange member and member organization to submit to the Exchange information it deems essential for the protection of investors and the public interest. In 2001, the Exchange developed a new systems application for the EFP<sup>4</sup> to facilitate the electronic entry and processing of such information.

NYSE Information Memo No. 01-11, dated June 19, 2001, introduced the membership profile application of the EFP to members and member organizations, and provided a list of the data they were expected to promptly update. Exchange members and member organizations were informed that, in addition to ongoing updates, they would also be required to use the EFP semiannually (every December and June) to verify the accuracy of their membership profile information.

During the following year, the EFP was modified to enable the submission of additional required contact information (e.g. an anti-money

laundering contact, and the heads of block/institutional trading, derivatives desks, and retail and program trading). NYSE Information Memo No. 02-41, dated August 30, 2002, increased from semiannual to quarterly the required frequency of members' and member organizations' review and verification of EFP profile information. It also expanded the list of required membership profile information to include EFP contact persons, member and member organization affiliates, and correspondent broker-dealers and clearing firms.

#### Need for Proposed Rule 416A

Given the importance of maintaining an up-to-date repository of regulatory information, and of communicating critical information quickly, particularly during emergencies, it has become increasingly necessary for members' and member organizations' profile information to be current and accurate. Despite Information Memos Nos. 01-11 and 02-41, some Exchange members and member organizations have failed to consistently update their profile information, or to conduct the required quarterly reviews and verifications.

Proposed Rule 416A requires each member and member organization to furnish the Exchange with all of the profile information required by the EFP, to promptly (within 30 days) update its required membership profile information after any change in such information, to designate to the Exchange an appropriate senior officer (or his or her designee) as its membership profile contact person, and to make quarterly electronic certifications that it has reviewed its required membership profile information, and that such information is complete and accurate.

Maintaining a current database of membership information allows the Exchange to better conduct its oversight of members and member organizations. Proposed Rule 416A is necessary to ensure that all members and member organizations promptly update their membership profile information via the EFP, and are vigilant in performing the required quarterly reviews and verifications of the completeness and accuracy of that information.

The Exchange believes that the benefits of proposed Rule 416A outweigh its costs. In a recent order granting approval of a similar National Association of Securities Dealers ("NASD") rule, the Commission addressed a comment regarding the cost of NASD's proposed rule, and found that the rule was reasonable based upon

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

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

<sup>3</sup> See October 8, 2004 letter from Mary Yeager, Assistant Secretary, Exchange, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.

<sup>4</sup> The EFP is an extranet built by the NYSE to support authenticated, encrypted, two-way communications between the NYSE and its membership. It is currently being used for applications such as branch office approvals, short interest reporting, and fingerprints.