

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).

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).

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).