

managing underwriter of any newly issued TRACE-eligible security must obtain and provide information *by e-mail or facsimile* to the TRACE Operations Center as required under paragraph (b). If a managing underwriter is not appointed, the group of underwriters must comply with paragraph (b).

(b) For such TRACE-eligible securities, the managing underwriter must provide to the TRACE Operations Center, *by email or facsimile*: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; and (6) a brief description of the issue (e.g., senior subordinated note, senior note); and, (7) information, as determined by NASD, that is required to determine if a TRACE-eligible security must be disseminated under Rule 6250 (e.g., size of issue and rating), or if any of items (2) through (7) has not been determined, such other information as NASD deems necessary. The managing underwriter must obtain the CUSIP number and provide it and the information listed as (2) through (7) not later than 5 p.m. on the business day preceding the day that the registration statement becomes effective, or, if registration is not required, the day before the securities will be priced. If an issuer notifies a managing underwriter, or the issuer and the managing underwriter determine, that the TRACE-eligible securities of the issuer shall be priced, offered and sold the same business day in an intra-day offering under Rule 415 of the Securities Act of 1933 or Rule 144A of the Securities Act of 1933, the managing underwriter shall provide the information not later than 5 p.m. on the day that the securities are priced and offered, provided that if such securities are priced and offered on or after 5 p.m., the managing underwriter shall provide the information not later than 5 p.m. on the next business day. The managing underwriter must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.

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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.

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

1. Purpose

NASD Rule 6260 currently requires a member that is the managing underwriter of the initial offering of a TRACE-eligible security to notify NASD and provide certain descriptive information about the security at the time of the initial offering of the security ("new issue notification"). Specifically, Rule 6260(b) currently requires that the new issue notification include: (a) The CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; and (6) a brief description of the issue (e.g., a senior subordinated note, a senior note). In addition, the rule provides, if such information has not been determined, the member must provide such other information as NASD deems necessary. The purpose of Rule 6260 is to require members that are acting in a capacity of managing underwriter or are otherwise designated in the course of an offering of a TRACE-eligible security to notify NASD by certain times set forth in the rule so that the TRACE system is able to capture, and, when applicable, disseminate transaction information as soon as secondary trading begins.

NASD is proposing to amend Rule 6260(a) and (b) to explicitly require that members provide information relating to dissemination eligibility in the new issue notification. The additional information to be required is the information needed to determine if a new TRACE-eligible security is subject to dissemination.

The current "phasing-in" of dissemination was developed in response to industry concerns that dissemination might adversely affect the bond markets.³ Certain market participants urged that dissemination occur over time, by phasing in the requirement for specifically defined groups of securities with certain characteristics. To properly administer dissemination, NASD must obtain and assess information about a TRACE-eligible security to determine if dissemination is required under Rule 6250 at the same time that NASD obtains identifying information about a

new TRACE-eligible security to properly and timely enter the security into the TRACE system.

The proposed additional information requirements in Rule 6260 are directly related to the increasing complexity of the dissemination requirements in effect and anticipated under Rule 6250.⁴ Recently, the SEC approved amendments to Rule 6250 that established additional criteria for determining dissemination.⁵ NASD must review the additional criteria, such as the original issue size and the ratings of a new TRACE-eligible security, to determine if the transaction information for a security must be disseminated under Rule 6250.⁶ This information is

⁴ On July 1, 2002, when TRACE began, under Rule 6250, NASD was required to disseminate transaction information on only two categories of TRACE-eligible securities: (1) Investment Grade securities having an initial issuance size of \$1 billion or greater; and (2) 50 Non-Investment Grade securities designated by NASD according to a variety of criteria set forth in the Rule. See Rule 6250(a)(1) and (2), respectively.

⁵ On January 31, 2003, the SEC approved amendments to Rule 6250, requiring NASD to disseminate transaction information on two additional categories of debt securities. Under new paragraph (a)(3) of Rule 6250, NASD disseminates transaction information on any TRACE-eligible security that is Investment Grade, is rated by Moody's Investors Service, Inc. as "A3" or higher, and by Standard & Poor's, a division of McGraw Hill Co., Inc. as "A-" or higher, and has an original issue size of \$100 million or greater. Under new paragraph (a)(4), NASD disseminates transaction information on approximately 120 TRACE-eligible securities designated by NASD that are rated "Baa/BBB" at the time of designation. See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (order approving SR-NASD-2002-174), and Securities Exchange Act Release No. 47566 (March 25, 2003), 68 FR 15490 (March 31, 2003) (notice of filing and immediate effectiveness of SR-NASD-2003-41).

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⁶ For example, to administer the current dissemination provisions of Rule 6250, when a member provides NASD a new issue notification, generally NASD would expect the member to include both the original issue size of the offering and the rating of the security.

³ See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8133-8135, 8141-8142 (January 29, 2001) (order approving SR-NASD-99-65).