

listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.

(d) through (i) No Change.

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6230. Transaction Reporting

(a) through (d) No Change.

(e) Transactions [Not Required To Be Reported] *Exempt From Reporting*.

The following types of transactions shall not be reported:

(1) Transactions that are part of a primary distribution by an issuer.[]

(2) Transactions in *TRACE-eligible* securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and transactions in [convertible debt] *TRACE-eligible* securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.[]; and]

(3) No Change.

(f) No Change.

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I. 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

"*TRACE-Eligible Security*." NASD proposes to amend Rule 6210(a) to clarify two terms in the definition, "*TRACE-eligible security*." First, NASD proposes to replace "registered with the Securities and Exchange Commission" in Rule 6210(a) with "registered under the Securities Act of 1933" to clarify the intended scope of that term.

Second, NASD proposes to clarify that *TRACE-eligible* securities include the debt securities of all U.S. and foreign private issuers generally, by substituting the word "issuers" for "corporations."

Although most issuers of securities are organized as corporations, this amendment makes clear that the debt securities of issuers that use another form of business organization are *TRACE-eligible* securities, provided that all the other conditions set forth in Rule 6210(a) are met.

Trade Reporting Exemption for Nasdaq-Listed Debt Securities. NASD has determined that the exemption from trade reporting in Rule 6230(e)(2), relating to debt securities listed and quoted on Nasdaq, is inappropriately narrow. The proposed amendment to Rule 6230(e)(2) will clarify and expand the exemption for certain transactions in *TRACE-eligible* debt securities that are listed on Nasdaq. NASD is also proposing conforming changes to Rule 6210(c).

Currently, Rule 6230(e)(2) provides, in relevant part, that a transaction in a *TRACE-eligible* security is exempt from reporting if the transaction is in a convertible debt security that is listed and quoted on Nasdaq, the transaction is reported to Nasdaq, and the transaction information is disseminated publicly. The proposed amendment to Rule 6230(e)(2) will exempt a member from reporting to *TRACE* a transaction in *any* *TRACE-eligible* security that is listed and quoted on Nasdaq, rather than only convertible debt securities, provided that the other two requirements for the exemption are also present (*i.e.*, the transaction is reported to Nasdaq and the transaction information is disseminated publicly).

The purpose of the provision is to exempt from the *TRACE* reporting requirements a transaction in a *TRACE-eligible* security if the transaction in the Nasdaq-listed and -quoted security is already subject to regulatory reporting, and the information reported is being made available to the public through dissemination.³ At the time that the provision relating to Nasdaq was adopted, the provision was limited to Nasdaq-listed and -quoted *convertible debt securities* because it was believed that these were the only debt securities at issue. As the market in equity-linked debt securities has developed, NASD believes that the language of the exemption should be broader to clarify that the same types of transactions in these and similar securities that may be listed and quoted on Nasdaq should also be exempt from reporting. NASD also proposes to make conforming changes to

³ Rule 6230(e)(2) also includes an exemption from reporting for transactions in *TRACE-eligible* securities that are listed on a national securities exchange, when the transactions are executed on and reported to the exchange, and transaction information is disseminated publicly.

the defined term, "reportable *TRACE* transaction," in Rule 6210(c).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ which requires, among other things, that NASD's 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, if approved, will provide NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with appropriate capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, for the protection of investors and in the public interest.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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. Persons making written submissions should file six copies thereof with the

⁴ 15 U.S.C. 78o-3(b)(6).