

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54768; File No. SR-NASD-2006-110)

November 16, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto to Establish a Two-Year Pilot Program Exempting from TRACE Reporting Transactions in Bonds Traded on a Facility of NYSE

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 September 19, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have substantially been prepared by NASD. On September 27, 2006, NASD filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments⁴ on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

NASD is proposing to amend: (1) NASD Rule 6230, to initiate a two-year pilot program exempting certain TRACE-eligible securities from reporting requirements that otherwise would apply; and (2) NASD Rules 6210 and 6230, to reflect the registration of The NASDAQ Stock

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, which replaces and supersedes the original filing in its entirety, made various technical changes to the proposal and replaced a reference in the proposed rule text to NYSE’s Automated Bond System with a reference to “a facility of NYSE.”

⁴ The Commission received one comment on the proposed rule change prior to issuance of this notice and order. See comment from Ron Klein, Chairman, CEO, General Associates, Inc., dated October 16, 2006. The commenter asked various questions regarding the status of the filing, which are resolved by the Commission’s action in this notice and order.

Market LLC as a national securities exchange. Below is the text of the proposed rule change, as amended. Proposed new language is underlined; proposed deletions are in [brackets].

* * * * *

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

* * * * *

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in NASD's By-Laws and Rules unless otherwise specified.

(a) No Change.

(b) No Change.

(c) The term "reportable TRACE transaction" shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly[, or transactions in TRACE-eligible securities that are 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)-(j) No Change.

* * * * *

6230. Transaction Reporting

(a) through (d) No Change.

(e) Transactions 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 TRACE-eligible securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly].
- (3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (e.g., to allow the seller to make a gift).
- (4) For the duration of a two-year pilot program, effective upon the later of either: 1) approval of this rule by the Commission, or 2) execution by NASD and the New York Stock Exchange (“NYSE”) of a data sharing agreement addressing data related to transactions covered by this Rule, transactions in TRACE-eligible securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400 and 1401 and reported to NYSE in accordance with NYSE’s applicable trade reporting rules and disseminated publicly by NYSE.

(f) No Change.

* * * * *

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 III

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 is proposing to amend its Rule 6230 to exempt from Trade Reporting and Compliance Engine ("TRACE")⁵ reporting requirements, for a period of two years, transactions in TRACE-eligible securities⁶ executed on a facility of the New York Stock Exchange ("NYSE") in accordance with NYSE Rules 1400 and 1401, provided that such transactions are reported pursuant to applicable NYSE trade reporting rules and publicly disseminated.⁷ NYSE has sought exemptive relief from the Commission that would facilitate NYSE's trading of certain corporate debt securities that are not listed on NYSE.⁸ NASD has proposed to amend its Rule 6230 to address concerns regarding duplicative trade reporting that would result from the trading of those NYSE-Traded Bonds which otherwise would be subject to both NASD's and NYSE's trade reporting requirements.

NASD Rule 6230(e)(2) currently exempts 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. However,

⁵ See NASD Rule 6210(b).

⁶ See NASD Rule 6210(a).

⁷ See Securities Exchange Act Release Nos. 51999 (July 8, 2005), 70 FR 41067 (July 15, 2005) (SR-NYSE-2004-69) (proposing NYSE Rules 1400 and 1401) ("NYSE Corporate Debt Proposal") and 54767 (November 16, 2006) (SR-NYSE-2004-69) (approving NYSE Corporate Debt Proposal).

⁸ See Securities Exchange Act Release No. 51998 (July 8, 2005), 70 FR 40748 (July 14, 2005) (File No. S7-06-05). Debt securities traded on a facility of NYSE, but not listed on NYSE, are herein referred to as "NYSE-Traded Bonds."

NYSE-Traded Bonds will not be listed on NYSE⁹ and the proposed rule change would expand the exemption from reporting under NASD Rule 6230 to transactions in NYSE-Traded Bonds that are TRACE-eligible securities that are reported to NYSE and disseminated publicly.

NASD notes that the proposed rule change is predicated on NASD's receiving certain information from NYSE relating to transactions in NYSE-Traded Bonds that are TRACE-eligible and NASD's successful integration of this information into its audit trail.¹⁰ The success of the proposed pilot program will be heavily dependent on NASD's ability to effectively continue to provide surveillance for corporate debt trading in the over-the-counter ("OTC") market. NASD will evaluate the effectiveness of the consolidated audit trail during the pendency of the proposed pilot program.

Finally, NASD is proposing to delete references to "Nasdaq" and the "Nasdaq Stock Market, Inc." in NASD Rule 6210 and "Nasdaq" in NASD Rule 6230 to reflect The NASDAQ Stock Market LLC's registration as a national securities exchange.

The proposed rule change will become effective upon the later of either: (1) approval of this proposed rule change by the Commission, or (2) execution by NASD and NYSE of a data-sharing agreement addressing data related to transactions covered by the proposed rule change.

⁹ See NYSE Corporate Debt Proposal, 70 FR at 41067, 41068 (discussing distinction between bonds listed on NYSE and bonds traded on a facility of NYSE).

¹⁰ In this regard, NASD and NYSE are in the process of negotiating a data-sharing agreement wherein, among other things, NYSE will agree to provide NASD, on a T+1 basis, certain information related to transactions in NYSE-Traded Bonds that are TRACE-eligible securities. In turn, NASD intends to consolidate this information into the computer database housing NASD's audit trail. NASD intends to provide NYSE regulatory personnel access, strictly for regulatory purposes only, to that portion of NASD's database reflecting the information submitted by NYSE.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ 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. The proposed rule change is being made to enhance regulatory efficiency and reduce duplicative trade reporting.

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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-NASD-2006-110 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹¹ 15 U.S.C. 78q-3(b)(6).

All submissions should refer to File Number SR-NASD-2006-110. 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-2006-110 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.¹² Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act¹³ in that it is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also

¹² In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78o-3(b)(6).

believes that the proposal is consistent with Section 15A(b)(9) of the Act¹⁴ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Any trade in unregistered corporate debt securities on NYSE will automatically be captured by NYSE's systems. The Commission understands that NYSE will provide data on such trades to NASD for surveillance purposes. Therefore, NASD should be able to obtain necessary surveillance data without subjecting joint NYSE/NASD members to a duplicative reporting requirement. The Commission concludes that it is reasonable and consistent with the Act for NASD to eliminate from its rules the requirement that a trade executed on NYSE also be reported to TRACE.¹⁵

Pursuant to Section 19(b)(2) of the Act,¹⁶ the Commission finds good cause for approving the proposed rule change, as amended, before the thirtieth day after the date of publication of notice of filing thereof. Accelerating approval of this proposed rule change will immediately eliminate double-reporting of certain bond trades and thereby eliminate an unnecessary burden on NYSE members trading corporate bonds pursuant to the terms of an exemption being granted in a related action today by the Commission.¹⁷ The Commission believes that NASD's rule change raises no issues of regulatory concern, because NASD should have access to sufficient regulatory information relating to the exempted bond trades through the information-sharing

¹⁴ 15 U.S.C. 78o-3(b)(9).

¹⁵ The Commission will continue to monitor the growth of intermarket competition in the corporate bond markets and, in the event market fragmentation becomes a concern, will consider appropriate means to address the consolidation of market information for corporate bonds.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See Securities Exchange Act Release No. 54766 (November 16, 2006) (File No. S7-06-05).

agreement it will enter with NYSE. Therefore, the Commission does not believe it is necessary or appropriate to delay approval and implementation of this proposal pending a notice-and-comment period.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NASD-2006-110), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Nancy M. Morris
Secretary

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).