

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52700; File No. SR-NASD-2005-120)

October 28, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Dissemination of Information on TRACE-Eligible Securities Transactions

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 October 14, 2005, 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, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to 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 of the Trade Reporting and Compliance Engine (“TRACE”) rules to disseminate immediately upon receipt transaction information on TRACE-eligible securities (except transactions effected pursuant to Rule 144A of the Securities Act of 1933 (“Rule 144A transactions”)). The text of the proposed rule change is available on NASD’s Web site (<http://www.nasd.com>), at NASD’s principal office, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to amend Rule 6250 to eliminate all delays in the dissemination of information on transactions in TRACE-eligible securities (“TRACE information”). The proposed amendments to NASD Rule 6250 provide that TRACE information on all transactions (except on Rule 144A transactions) be disseminated immediately upon receipt of the transaction report. The proposed rule change represents the last stage of a series of NASD regulatory actions to gradually increase transparency, by phases, for all transactions in TRACE-eligible securities (except Rule 144A transactions) for the benefit of all market participants.³ The proposed amendments also meet the Commission’s expectations as set forth in its September 2004 approval order for the third phase of TRACE dissemination (“Phase III”) (“Phase III Approval Order”).⁴ In the Phase III Approval Order, the Commission stated that it expected NASD to submit a proposal eliminating the remaining delays in TRACE information dissemination not later than November 1, 2005.

Background

Prior to the approval of the initial TRACE Rule 6200 Series, NASD structured TRACE

³ Information on Rule 144A transactions in TRACE-eligible securities is not disseminated because securities sold pursuant to Rule 144A are subject to restrictions on transfer and are not freely tradable in the public secondary market.

⁴ See Securities Exchange Act Release No. 50317 (September 3, 2004), 69 FR 55202 (September 13, 2004).

to phase in the dissemination of TRACE information gradually. As of July 1, 2002, when TRACE became operational, it was agreed that public dissemination of TRACE information on these corporate bond transactions would be implemented over three phases.⁵

Bond Transaction Reporting Committee. In addition, before TRACE became operational on July 1, 2002, NASD formed the Bond Transaction Reporting Committee (“BTRC”) to advise NASD on liquidity issues and how dissemination of TRACE information should be increased over time to improve transparency in the corporate bond market.⁶ The BTRC reviewed TRACE statistical data and econometric analyses as well as other information prior to developing recommendations for improving and broadening TRACE transparency. The increases in transparency that took place in Phases II and III, as discussed in greater detail below, as well as this final phase providing for full immediate dissemination of TRACE information on all transactions (except Rule 144A transactions) were all recommended by the BTRC.

Phase I. During Phase I, which began on July 1, 2002, TRACE information (except on Rule 144A transactions) was disseminated immediately for the larger and generally higher-credit quality issues -- Investment Grade debt securities having an initial issue of \$1 billion or greater -- and 50 liquid Non-Investment Grade (“high-yield”) securities disseminated under the Fixed Income Pricing System (“FIPS”) that were transferred to TRACE.⁷ Under these criteria, NASD

⁵ NASD proposed that dissemination of TRACE information be implemented in phases as the TRACE Rules were developed. See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (order approving NASD’s proposed rules creating TRACE, the corporate bond trade reporting and transaction dissemination facility) (“SEC 2001 Approval Order”). In the SEC 2001 Approval Order, the SEC discussed and approved the NASD’s proposal to increase transparency in phases. See id. at 8133.

⁶ The role and composition of the BTRC is explained fully in the SEC 2001 Approval Order. See id.

⁷ The terms “Investment Grade” and “Non-Investment Grade” as used herein are defined, respectively, in NASD TRACE Rules 6210(h) and 6210(i). The FIPS 50 were 50 Non-

disseminated TRACE information on approximately 550 securities by the end of 2002.

Phase II. The SEC approved the Phase II proposal on January 31, 2003.⁸ Phase II dissemination expanded the universe of transparent transactions to include all transactions (except Rule 144A transactions) in the following two groups of Investment Grade securities: (1) any TRACE-eligible security that is Investment Grade (i.e., is rated by Moody's⁹ as "A3" or higher, and by S&P's¹⁰ as "A-" or higher) and has an original issue size of \$100 million or greater ("Single A Transactions"); and (2) 120 TRACE-eligible securities rated "Baa/BBB" at the time of designation, with the bonds being identified in three subgroups to represent the "Baa/BBB" credit spectrum (i.e., "Baa1/BBB+," "Baa2/BBB," and "Baa3/BBB-") ("Triple B Transactions").¹¹ In addition, dissemination would continue with respect to the Investment

Investment Grade securities designated under the now rescinded FIPS Rules for limited price dissemination.

⁸ See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (order approving the Phase II proposal). On March 17, 2003, NASD proposed minor modifications to the Phase II proposal, which were effective upon filing. See Securities Exchange Act Release No. 47566 (March 25, 2003), 68 FR 15490 (March 31, 2003).

⁹ Moody's Investors Service, Inc. ("Moody's") is a nationally recognized statistical rating organization ("NRSRO"). Moody's is a registered trademark of Moody's Investors Service. Moody's ratings are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.

¹⁰ Standard & Poor's ("S&P"), a division of the McGraw-Hill Companies, Inc., is an NRSRO. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

¹¹ Baa, Baa1, Baa2, and Baa3 are ratings of Moody's; BBB+, BBB, and BBB- are ratings of S&P.

Grade bonds and the group of 50 liquid Non-Investment Grade TRACE-eligible securities subject to dissemination during Phase I.

Phase II was implemented in two stages. On March 3, 2003, NASD began disseminating TRACE information on the Single A Transactions, and, on April 14, 2003, NASD began disseminating TRACE information on the Triple B Transactions. As Phase II was implemented, the number of disseminated bonds increased to approximately 4,200 bonds.

Phase III. The SEC approved NASD's Phase III proposal on September 3, 2004.¹² Phase III provided for immediate dissemination of TRACE information on all TRACE-eligible securities transactions (except on Rule 144A transactions) except for: (1) new issues rated Baa/BBB or below, which would be subject to delayed dissemination of two or ten business days immediately following issuance; and (2) larger transactions (over \$1 million) in Non-Investment Grade TRACE-eligible securities, where the security traded on average less than one time per day over a specified period, which would be subject to delayed dissemination of two or four business days.

Phase III was implemented in two stages. Stage One was implemented on October 1, 2004, and TRACE information on substantially all TRACE-eligible securities transactions that were subject to immediate dissemination under the Phase III rule amendments began to be disseminated on that day. Stage Two, implementing dissemination of TRACE information on TRACE-eligible securities transactions subject to delayed dissemination, took effect on February 7, 2005. Under Phase III as fully implemented, approximately 99% of all transactions and 95% of par value in the TRACE-eligible securities market are disseminated immediately.

In its Phase III Approval Order, the SEC noted that the TRACE information

¹² See Phase III Approval Order.

dissemination delays for certain high-yield transactions and new issue transactions rated Baa/BBB or below “may unnecessarily restrict the availability of this transaction information to investors in this market.”¹³ Moreover, the Commission noted that two studies commissioned by NASD to address the relationship between transparency and liquidity “found no conclusive evidence that TRACE transparency has adversely affected liquidity.”¹⁴ “Accordingly, the Commission expects that, not later than November 1, 2005 (nine months after the effective date of Stage Two), the NASD will submit a proposed rule change eliminating the delays in TRACE information dissemination.”¹⁵

BTRC Recommendations Regarding Proposed Rule Change. In its Phase III proposed rule filing, NASD stated that it intended to review the trading and liquidity in TRACE-eligible securities during the implementation of Stages One and Two of Phase III.¹⁶ In addition, as part of this review process, NASD stated that, not later than nine months from Stage Two implementation, NASD would ask the BTRC to reconvene to review the rule and make recommendations to the NASD Board of Governors. Consistent with this stated intention, after Phase III was fully implemented, the BTRC met several times to review TRACE statistical data, econometric analyses and other information, and to discuss the impact of Phase III transparency on liquidity in the corporate bond market. As a result of this review process, neither the BTRC nor NASD found conclusive evidence that Phase III transparency adversely affected corporate bond market liquidity. On September 12, 2005, the BTRC recommended that information on all transactions in TRACE-eligible securities (except Rule 144A transactions) be disseminated

¹³ Phase III Approval Order, 69 FR at 55204.

¹⁴ Id. (footnote omitted).

¹⁵ Id.

¹⁶ Phase III Approval Order, 69 FR at 55203.

immediately upon NASD's receipt of the transaction report. In addition, the BTRC recommended that NASD and the SEC continue to monitor the part of the fixed income market made up of transactions in TRACE-eligible securities and, if NASD or the SEC identify evidence that immediate dissemination has a negative impact on the liquidity of the fixed income markets, the BTRC encourages NASD and the SEC to re-consider immediate dissemination of TRACE information.

Proposed Rule Change

Based on NASD's experience with TRACE of more than three years, specifically the experience gained from its measured, gradual implementation of full transparency, it is NASD's strong belief that immediate dissemination of TRACE information on all TRACE transactions (except Rule 144A transactions) is warranted. This belief is consistent with the BTRC's recommendation of September 12, 2005 as well as the Commission's expectation set forth in the Phase III Approval Order. Accordingly, NASD proposes that TRACE information on all transactions in TRACE-eligible securities (except Rule 144A transactions) be disseminated immediately upon receipt of the transaction report. In addition, NASD intends to continue to monitor the effects of transparency on the corporate bond market.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval. The effective date will be not later than 30 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section

15A(b)(6) of the Act,¹⁷ 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 improve transparency in the corporate debt market and facilitate price discovery for the benefit of investors and all participants in the debt securities markets 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 would 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. 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 NASD 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. Comments

¹⁷ 15 U.S.C. 78o-3(b)(6).

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-2005-120 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-120. 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-2005-120 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).