

respects with the requirements of rule 14a-3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

#### D. Section 19(b) of the Act

1. Section 19(b) of the Act and rule 19b-1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b-1(c), under certain circumstances, excepts a UIT investing in "eligible trust securities" (as defined in rule 14a-3) from the requirements of rule 19b-1. Because the Trust Series do not limit their investments to "eligible trust securities," the Trust Series do not qualify for the exemption in paragraph (c) of rule 19b-1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares, or sales of closed-end Fund shares, Exchange Fund shares, or other portfolio Securities, to be distributed to Unitholders along with the Trust Series' regular distributions. Applicants state that, in all other respects, the Trust Series will comply with section 19(b) and rule 19b-1. Applicants assert that the abuses that section 19(b) and rule 19b-1 were designed to prevent do not exist with regard to the Trust Series. Applicants state that any gains from the redemption or sale of Fund shares or other portfolio Securities would be triggered by the need to meet Trust Series' expenses or by requests to redeem Units, events over which the Sponsor and the Trust Series have no control.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Units of a Trust Series will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

3. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. The Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a-3, except that the Trust Series will not restrict their

portfolio investments to "eligible trust securities."

5. No Trust Series will terminate within thirty days of the termination of any other Trust Series that holds shares of one or more common Funds.

6. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that Unitholders who elect to receive Fund shares will incur any applicable rule 12b-1 fees.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-12609 Filed 5-19-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 68 FR 25071, May 9, 2003.

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**ANNOUNCEMENT OF ADDITIONAL MEETING:** Additional Meeting.

**A Closed Meeting was held on Thursday, May 15, 2003 at 5:30 p.m.**

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting held on Thursday, May 15, 2003 was: Litigation Matter.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the Closed Meeting. Certain staff members who had an interest in the matter also attended the Closed Meeting.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: May 15, 2003.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 03-12796 Filed 5-16-03; 4:10 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47856; File No. SR-NASD-2003-78]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rule 6230 To Reduce TRACE Reporting Period

May 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 2003, 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. For the reasons discussed below, NASD is requesting that the Commission grant accelerated approval of the proposed rule change.

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

NASD is proposing to amend Rule 6230 to reduce the period to report a transaction in a TRACE-eligible debt security from 75 minutes to 45 minutes. Rule 6230 is one of the Trade Reporting and Compliance Engine ("TRACE") rules. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

#### 6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

##### 6230. Transaction Reporting

##### (a) When and How Transactions Are Reported

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within [one hour and fifteen]45 minutes of the time of execution, except as otherwise provided below, or the transaction report will be "late." The member must

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NASD corrected a typographical error in the text of the proposed rule change in a telephone conversation between Sharon K. Zakula, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Mary N. Simpkins, Special Counsel, Division of Market Regulation, Commission, on May 13, 2003.

transmit the report to TRACE during the hours the TRACE system is open ("TRACE system hours"), which are 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

(1) Transactions Executed During TRACE System Hours

Transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be reported within 45[one hour and fifteen] minutes of the time of execution. If a transaction is executed on a business day less than 45[one hour and fifteen] minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within 45[one hour and fifteen] minutes after the TRACE system opens. If reporting the next business day, the member must indicate "as/of" and provide the actual transaction date.

(2) Transactions Executed at or After 6:30 P.M. Through 11:59:59 P.M. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time must be reported the next business day within 45[one hour and fifteen] minutes after the TRACE system opens. The member must indicate "as/of" and provide the actual transaction date.

(3) Transactions Executed at or After 12:00 A.M. Through 7:59:59 A.M. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day within 45[one hour and fifteen] minutes after the TRACE system opens.

(4) Transactions Executed on a Non-Business Day

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, at any time during that day (determined using Eastern Time), must be reported the next business day within 45[one hour and fifteen] minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be "12:01:00 a.m. Eastern Time" (stated in military time as "00:01:00"); and the modifier, "special price," must be selected. In

addition, the transaction must not be designated "as/of". When the reporting method chosen provides a "special price" memo field, the member must enter the actual date and time of the transaction in the field.

(5) Through (6) No Change.

(b) Through (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 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 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.<sup>4</sup>

NASD is proposing to reduce the period to report from 75 minutes to 45 minutes. In 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. Specifically, in Rule 6230(a)(1), a member *could elect to*

<sup>4</sup> 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.

report the next business day if a transaction occurs within 45 minutes before the TRACE system closing. If the member elects to report the following business day that the TRACE system is open, the member *must report* the transaction within 45 minutes after the TRACE system opens. In addition, in Rule 6230(a)(2) through (4), a member would be required to report transaction information for specified transactions the next business day that the TRACE system is open and would be required to do so within 45 minutes after the system's opening.

The proposed rule change, if approved, would result in important trade information reaching the market in a timelier manner, furthering NASD's goals with respect to improving transparency under TRACE, and enhancing specific TRACE reporting provisions. The goal to reduce the reporting period in TRACE has been understood by the industry for several years and has been noted as a goal in rule filings with the SEC since 1999, as well as in the SEC's first order approving the full set of the TRACE Rules.<sup>5</sup>

The SEC approved the current 75-minute period after several phases of discussion about the appropriate reporting period.<sup>6</sup> In early TRACE discussions occurring in 1998 and 1999, NASD staff recommended that the industry prepare for a 15-minute reporting period. In response to industry feedback, NASD revised its proposal to include a 60-minute period, with the caveat that NASD intended to reduce the reporting period to 15-minutes after TRACE became operational and members had acquired experience with reporting.<sup>7</sup>

Prior to the July 1, 2002 TRACE effective date, the SEC staff requested NASD to coordinate with the National Securities Clearing Corporation ("NSCC") regarding the TRACE reporting initiative. Certain member firms utilizing NSCC for reporting municipal bond transactions to the Municipal Securities Rulemaking Board ("MSRB") requested that NASD and

<sup>5</sup> Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8135 (January 29, 2001) (order approving SR-NASD-99-65).

<sup>6</sup> Securities Exchange Act Release No. 46144 (June 28, 2002), 67 FR 44907 (July 5, 2002) (order approving SR-NASD-2002-46).

<sup>7</sup> Currently, NASD staff intends to recommend a further reduction in the TRACE reporting period to 15 minutes that would be effective mid-year 2004. The reduction in the TRACE reporting period would be consistent with the Municipal Securities Rulemaking Board's published plan to implement a 15-minute transaction reporting requirement for municipal securities that would take effect on July 1, 2004.

NSCC develop a TRACE reporting option so that members could utilize the same NSCC functionality for reporting transactions in TRACE-eligible securities. Because of NSCC operational issues, it became clear that firms would be precluded from reporting through NSCC unless NSCC improved its "batch processing" to allow for more submissions per day, and NASD adopted a slightly longer reporting period. As a result the SEC approved the NASD's proposal to extend the reporting period to 75 minutes for the initial period of reporting under TRACE. The basis for extending the period to 75 minutes was that NASD planned to reduce the reporting period substantially after TRACE became operational. Consistent with the NASD's goal of a reduced reporting period, NSCC has publicly committed to support the proposed 45-minute reporting requirement.

The NASD proposal to reduce the reporting period at this time to 45 minutes is supported by statistical evidence from TRACE data. The data indicates that the industry generally has achieved technological readiness to implement the proposed rule change. For example, in the fourth quarter of 2002, eighty-three percent (83%) of all trades reported to TRACE were reported within 45 minutes of execution. NASD will work with firms that are currently not able to report trades within 45 minutes generally between the date of the SEC's approval of the proposed rule change, if so approved, and October 1, 2003, the planned date of implementation, to assist such firms to be ready and able to comply with a 45-minute reporting period on October 1, 2003.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>8</sup>, 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 heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, and will improve transparency by reducing the period between the time of

execution of a transaction and the dissemination of the transaction information, for securities subject to dissemination, for the protection of customers and 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

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. NASD believes that accelerated approval will benefit investors and member firms as follows. Member firms will receive prior notification, by several months, of a clear, fixed, certain deadline to implement a modest reduction in the reporting period. Firms will have sufficient notice to enable firms' operational staffs to make any necessary systems changes or enhancements to comply with the reduced reporting period on October 1, 2003. As noted above, NASD is aware that some firms may have greater operational and technical difficulties in making the operational enhancements to support a 45-minute reporting period. NASD is interested in working with these firms, and believes that an accelerated approval and a fixed implementation date would encourage such firms to begin addressing 45-minute reporting concerns earlier in 2003.

In addition, NASD believes that approval of this provision on an accelerated basis to create a date certain for implementation is likely to improve price transparency for the benefit of investors by effectively reducing the reporting period prior to the time this rule change would take effect on October 1, 2003. Specifically, members have indicated that they will begin to modify operations and systems, as necessary, as soon as the membership is certain that the reporting period will be reduced, and to what extent, and is able to ascertain the effective date of the new reporting requirement. As firms reduce

their reporting windows, reported prices will begin to be disseminated more quickly.

Moreover, NASD believes that members have been aware that the NASD would reduce the TRACE reporting period because NASD, the SEC, and the industry have publicly discussed reduction of the reporting period for several years. TRACE has now been operational for almost nine months, and NASD's proposal to reduce the reporting period would not take effect until October 1, 2003, which is 15 months from the date of implementation of TRACE. The Commission is not, at this time, granting accelerated approval of the proposed rule change.

NASD intends to respond to comments filed with the SEC regarding the proposed reduction.

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 Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR-NASD-2003-78 and should be submitted by June 10, 2003.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-12611 Filed 5-19-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47836; File No. SR-NYSE-2003-16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Arbitration

May 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 NYSE. NYSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

The proposed rule change consists of an extension of rule 600(g).

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

In its filing with the Commission, the Exchange 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. The NYSE 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

The proposed rule change is intended to:

- Extend until September 30, 2003,<sup>5</sup> rule 600(g) that was approved by the Commission for a six-month period ending May 12, 2003.<sup>6</sup>

The Exchange's statement of purpose is contained in the Commission's Approval Order. In that Approval Order the Commission stated: "The Exchange's Director of Arbitration will monitor the progress of the above described litigation [*NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California*, No. C 02 3485 (N.D. Cal.)] and determine whether there is a continuing need for the waiver option."<sup>7</sup>

The above litigation, in which the Exchange and NASD Dispute Resolution, Inc. sought a declaratory judgment that the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the "California Standards") are preempted by Federal law, has not been concluded. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.<sup>8</sup> A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.<sup>9</sup> The Exchange's Director of Arbitration has determined that, in the absence of a final judicial determination or legislative resolution of the preemption issue, there is a continuing need for the waiver option.

<sup>5</sup> The Commission recently approved an extension of a similar pilot rule of the National Association of Securities Dealers, Inc. ("NASD"), contained in its Code of Arbitration Procedure, until September 30, 2003. Release No. 34-47631 (April 3, 2003), 68 FR 17713 (April 10, 2003). By proposing to extend its own pilot rule until September 30, 2003, the Exchange seeks to conform the duration of the NASD and Exchange pilot programs.

<sup>6</sup> Release No. 34-46816 (November 12, 2002), 67 FR 69793 (November 19, 2002).

<sup>7</sup> *Id.* at 69794.

<sup>8</sup> *NASD Dispute Resolution, Inc. v. Judicial Council of California*, 232 F. Supp. 2d 1055 (N.D. Cal. 2002).

<sup>9</sup> In another case, *Mayo v. Dean Witter Reynolds, Inc., Morgan Stanley Dean Witter & Co. dba Morgan Stanley Dean Witter, and Does 1-50*, No. C-01-20336 JF, 2003 WL 1922963 (N.D. Cal., April 22, 2003), Judge Jeremy Fogel recently held that application of the California Standards to the Exchange and other self-regulatory organizations is preempted by the Act, the comprehensive system of federal regulation of the securities industry established pursuant to the Act, and the Federal Arbitration Act.

##### 2. Statutory Basis

The Exchange states that the proposed changes are consistent with section 6(b)(5) of the Act<sup>10</sup> in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has stated that because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to rule 19b-4(f)(6)(iii) under the Act,<sup>13</sup> the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).