

transaction, the broker-dealer: (1) Delivers to the customer a written statement containing specific information concerning the terms, obligations, risks and charges of the loan; (2) obtains from the customer sufficient financial information to determine that the entire transaction is suitable for the customer; and (3) retains on file and makes available to the customer a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by the rule is necessary to execute the Commission's mandate under the Securities Exchange Act of 1934 ("Exchange Act") to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 50 respondents that require an aggregate total of 600 hours to comply with the rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is \$ 24.00 (based on an annual salary of \$ 32,050 for clerical labor plus an additional 35% to account for overhead costs, totaling \$43,268), resulting in a total compliance cost of \$14,400 (600 hours @ \$24.00 per hour).

On July 7, 1975, effective July 16, 1975 (*see* 41 FR 28948, July 14, 1975), the Commission adopted Rule 15Ba2-5 (17 CFR 240.15Ba2-5) under the Exchange Act to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the same information required by Form MSD or Form BD. The statement is necessary to ensure that the Commission and the public have

adequate information about the fiduciary.

There is approximately 1 respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated 1 annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is \$20, resulting in a total cost of compliance for the respondent of approximately \$80 (*i.e.*, 4 hours x \$20).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: May 15, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-12767 Filed 5-21-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation S-T, OMB Control No. 3235-0424, SEC File No. 270-375.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of

Management and Budget for extension and approval.

Regulation S-T sets forth the filing requirements relating to the submission of documents in electronic format on the Electronic Data Gathering Analysis and Retrieval ("EDGAR") system.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: May 15, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45943; File No. SR-NASD-2002-46]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Rule 6200 Series or the TRACE Rules

May 16, 2002.

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 April 3, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The NASD submitted Amendment No. 1 to the

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

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

proposed rule change on May 13, 2002.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NASD is proposing to amend the Rule 6200 Series of the Rules of the NASD, which series provide for the reporting and dissemination of transaction information in eligible corporate debt securities ("TRACE rules"): (1) To extend the reporting period from one hour to one hour and fifteen minutes; (2) to incorporate standards in Rule 6250 regarding Non-Investment Grade securities;<sup>4</sup> (3) to require members to provide information at an earlier time under Rule 6260; (4) to clarify existing provisions in the TRACE rules, especially Rule 6210(a) regarding "TRACE-eligible securities" and certain reporting provisions in Rule 6230(c) and (d); and (5) to make other minor modifications to the existing requirements before the initiation of TRACE. Below is the text of the proposed rule change. Proposed new language is in *italics*; 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 the Association's By-Laws and Rules unless otherwise specified.

(a) The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private corporations; and: (1) registered with the Securities and Exchange Commission; or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased or sold pursuant to Rule 144A of the Securities Act of 1933.

<sup>3</sup> In Amendment No. 1, the NASD revised the language of the proposed rule change regarding the time frame in which the managing underwriter must deliver CUSIP information to the TRACE Operations Center, and a member's obligations in instances in which the member is not required to report yield data to the NASD. See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 13, 2002 ("Amendment No. 1").

<sup>4</sup> The term "Non-Investment Grade" is defined in the TRACE rules at Rule 6210(i).

The term "TRACE-eligible security" excludes *debt issued by government-sponsored entities*, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. *For purposes of the Rule 6200 Series, the term "money market instrument" means a debt security that at issuance has a maturity of one year or less.*

(b) The term "Trade Reporting and Compliance Engine" or "TRACE" shall mean the automated system developed [owned and operated] by the NASD that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities. [and which may submit "locked-in" trades to National Securities Clearing Corporation for clearance and settlement and provide participants with monitoring and risk management capabilities to facilitate a "locked-in" trading environment.]

(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 convertible debt 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) The term "time of execution" for a transaction in a TRACE-eligible security shall be the time when the parties to the transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. The time of execution for transactions involving TRACE-eligible securities that are trading "when issued" on a yield basis shall be when the yield for the transaction has been agreed to by the parties to the transaction. *For a transaction in a TRACE-eligible security in which the actual yield for the transaction is established by determining the yield from one or more designated securities (e.g., a "benchmark security" such as a U.S. Treasury security maturing in 5 years, or a combination of such "benchmark securities") and adding the agreed upon "yield spread" (e.g., 150 basis points above the benchmark security), the "time of execution" occurs when the yield has been agreed to by the parties to the transaction.*

(e) The term "parties to the transaction" shall mean the *introducing broker-dealer, if any, and the executing broker-dealer*. [executing broker/dealer, introducing broker/dealer, and clearing brokers, if any.]

(f) The term "TRACE Participant" shall mean any NASD member that reports transactions to the TRACE system, *directly or indirectly*. [uses the TRACE system.]

(g) The term "Introducing Broker" shall mean the NASD member [firm] that has been identified in the TRACE system as a party to the transaction, but does not execute or clear [trades] the transaction.

(h) No change.

(i) The term "Non-Investment Grade" shall mean any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below *Investment Grade*), [investment grade], or otherwise does not meet the definition of Investment Grade in paragraph (h) above.

#### 6220. Participation in TRACE

(a) Mandatory Member Participation—No Change.

(b) Participant Obligations in TRACE [(1) Access to TRACE]

Upon execution and receipt by the Association of the TRACE Participant application agreement, a TRACE Participant may commence input [and validation] of trade information in TRACE-eligible securities. TRACE Participants may access the service via an NASD-approved facility during the hours of operation.

[(2) Clearing Obligations]

[If at any time a TRACE Participant fails to maintain a clearing arrangement, it shall be removed from the TRACE system until such time as a clearing arrangement is re-established and notice of such arrangement is provided to the Association. If, however, the Association finds that the TRACE Participant's failure to maintain a clearing arrangement is voluntary, the withdrawal will be considered voluntary and unexcused. This section shall not apply to TRACE Participants whose trading activity obviates the need for maintaining a clearing relationship.]

#### 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 minutes of the time of execution, except as otherwise provided below, or the transaction report will be "late." The member must 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*

[(A) Members that are required to report transaction information pursuant to paragraph (b) below shall, within one hour] *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 one hour and fifteen minutes of the time of execution. If a transaction is executed on a business day less than one hour and fifteen minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within 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. [transmit through TRACE during system hours, or if TRACE is unavailable due to system or transmission failure, by telephone to the TRACE Operations Center, reports of transactions in TRACE-eligible securities executed between 8:00 a.m. and 6:30 p.m. Eastern Time. Transactions not reported within one hour after the time of execution shall be designated as late; provided, however, that if inadequate time remains prior to system close to allow a timely report, the member may report the transaction the next day at system open designated "as/of."]*

[(B) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.]

(2) *Transactions Executed At or After [Transaction Reporting Between] 6:30 P.M. Through 11:59:59 P.M. Eastern Time [p.m. and 8:00 a.m. Eastern Time]*

[(A) Reports of t] *Transactions in TRACE-eligible securities executed [after] on a business day at or after 6:30 p.m. Eastern Time [and before 12:00 a.m.] through 11:59:59 p.m. Eastern Time [shall] must be reported the next business day within one hour and fifteen minutes after the TRACE system opens. The member must indicate "as/of" and provide the actual transaction*

*date.[on the next day and be designated "as/of."]*

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

[(B)] *[Reports of t] Transactions in TRACE-eligible securities executed [after] on a business day at or after 12:00 a.m. Eastern Time [and before 8:00] through 7:59:59 a.m. Eastern Time [shall] must be reported the [that] same day within one hour and 15 minutes after the TRACE system opens.[beginning at 8:00 a.m. Eastern Time within the maximum time frame mandated.]*

(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 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) *Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.*

(6) *A member may be required to report as soon as practicable to the Market Regulation Department on a paper form, the transaction information required under Rule 6230 if electronic submission into TRACE is not possible. Transactions that can be reported into TRACE, including transactions executed on a Saturday, Sunday or holiday as provided in (a)(4) above, and trades that can be submitted on the trade date or on a subsequent date on an "as/of" basis, shall not be reported on a paper form.*

(b) Which Party Reports Transaction—No Change.

(c) Transaction Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) CUSIP number or NASD symbol;  
(2) Number of bonds as required by paragraph (d) below;

(3) Price of the transaction *(or the elements necessary to calculate price, which are contract amount and accrued interest)* as required by paragraph (d) below;

(4) A symbol indicating whether the transaction is a buy[, ] or a sell[ or cross];

(5) Date of Trade Execution (as/of trades only);

(6) Contra-party's identifier;

(7) Capacity—Principal or Agent (with riskless principal reported as principal) as required by paragraph (d) below;

(8) Time of trade execution;

(9) Reporting side executing broker as "give-up" (if any);

(10) Contra side Introducing Broker in case of "give-up" trade;

(11) Stated commission;

(12) Such trade modifiers as required by either the TRACE rules or the TRACE users guide; and

(13) *The lower of yield to call or yield to maturity.[Yield as required by SEC Rule 10b-10.] A member is not required to report yield when the TRACE-eligible security is a security that is in default, a security for which the interest rate is floating; a security for which the interest rate will be or may be increased (e.g., certain "step-up bonds") or decreased (e.g., certain "step-down bonds") and the amount of increase or decrease is an unknown variable; a pay-in-kind security ("PIK"); any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that the Association designates if the Association determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.*

(d) Procedures for Reporting Price, Capacity, Volume

(1) For [agency and] principal transactions, report the price, which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and the accrued interest.) [including the mark-up, mark-down] For agency transactions, report the price, which must exclude the commission. (However, if a price field is not available, report the contract amount and the accrued interest.) [or commission (commission entered separately). Do not include accrued interest.] Then, report the commission, stated in points per bond, with 1 point equal to \$10.00 per bond.

(2) For agency and principal transactions, report the actual number of

bonds traded[.], with \$1,000 par value equal to 1 bond. If a bond has a par value of less than \$1,000 ("baby bond") or the par value is not an even multiple of \$1,000, report the fractional portion of \$1,000 in decimals. [Baby bonds (those with a face value of less than \$1,000) should be reported as a decimal.]

(3) For in-house cross transactions, a member must report two transactions, which are the member's purchase transaction and the member's sale transaction.[report as follows: Agency cross—report once as an agency trade; Principal cross—report twice, once as an individual principal buy and once as an individual principal sell.]

*(4)(A) Special Price Modifier*

If a transaction is not executed at a price that reflects the current market price, select the modifier, "special price." When the reporting method chosen provides a "special price memo" field, state why the transaction was executed at other than the current market price in the "special price memo" field (e.g., when a debt security is traded conventionally and in the current market does not have a due bill and/or a warrant attached, but in the transaction to be reported is traded with a due bill and/or warrant attached, the price of the transaction is a "special price"). Do not select the modifier, "special price," where the transaction price is determined using a weighted average price.

*(B) Settlement Modifiers*

If a transaction is to be settled other than the regular way, report the settlement terms by selecting the appropriate modifier. If the parties agree to settlement on the same day the transaction is executed (i.e., cash settlement), select the modifier, ".c." If a trade will be settled the next day, select the modifier, ".nd." If a trade will be settled other than on the date of trade, the next day, or T+3, select the modifier, ".sNN," and enter the appropriate number of days (e.g., if a trade will be settled in 5 business days, the reporting party will enter ".s05" in the data field).

*(C) Weighted Average Price Modifier*

If the price of the transaction is determined using a weighted average price method, select the modifier, ".w." If one of the settlement modifiers and the weighted average price modifier apply to the transaction, select the modifier, ".w" for weighted average price, and do not report the applicable settlement modifier.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be required to be reported:

(1) Transactions that are part of a primary distribution by an issuer;

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

(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).

(f) Compliance With Reporting Obligations—No Change.

6240. Termination of TRACE Service—No Change.

6250. Dissemination of Corporate Bond Trade Information

(a) *General Dissemination Standard*  
Immediately upon receipt of transaction reports received at or after[between] 8:00 a.m. [and 6:30] through 6:29:59 p.m. Eastern Time, the Association will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. Eastern Time) relating to transactions in:

(1) a TRACE-eligible security having an initial issuance size of \$1 billion or greater that is Investment Grade at the time of receipt of the transaction report; and

(2) a TRACE-eligible security that is [denominated] designated for dissemination according to the following criteria and is Non-Investment Grade at the time of receipt of the transaction report. [as a "Fixed Income Pricing System (FIPS)" security under NASD Rules relating to FIPS securities immediately prior to the time that such rules are rescinded.]

(A) The staff of NASD will designate fifty of the most actively traded Non-Investment Grade securities that are TRACE-eligible securities for dissemination under this rule, based on (i) the security's volume; (ii) the security's price; (iii) the security's name recognition; (iv) the research following of the security; (v) the security having a minimum number of bonds outstanding; (vi) the security being traded routinely by at least two dealers; and (vii) the security contributing to a representation of diverse industry groups in the group of securities designated for dissemination.

(B) A Non-Investment Grade security will not be designated, and may be immediately withdrawn from designation, for dissemination under this rule if the security: (i) has matured; (ii) has been called; (iii) has been upgraded to Investment Grade; or (iv) has been downgraded to an extent that the security's trading characteristics do not warrant designation for dissemination.

(b) *Transactions Excluded From Market Aggregate, Last Sale*

All trade reports in TRACE-eligible securities that are approved for dissemination and submitted to TRACE at or after 8:00 a.m. Eastern Time and prior to 5:15 p.m. Eastern Time will be included in the calculation of market aggregates and last sale except:

(1) trades reported on an "as/of" basis,

(2) "when issued" trades executed on a yield basis,

(3) trades in baby bonds with a par value of less than \$1,000, [or]

(4) trades in which the price is determined by a weighted average price[.]; and

(5) trades in which the price is a "special price," as indicated by the use of the special price modifier.

(c) *Dissemination of Certain Trades Executed on A Business Day*

(1) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 6:30 p.m. Eastern Time [and before 12:00 a.m.]through 11:59:59 p.m. Eastern Time, and are[that are] reported pursuant to Rule 6230(a)(2)[Rule 6230(a)(2)(A)] on the next business day and designated "as/of" [will not be included in daily market aggregates and] will be disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt. The reported information will not be included in the calculation of the day's market aggregates.

[(d)] (2) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 12:00 a.m. Eastern Time [and before 8:00]through 7:59:59 a.m. Eastern Time, and are reported pursuant to Rule 6230(a)(3) on the[that] same day beginning at 8:00 a.m. Eastern Time [pursuant to Rule 6230(a)(2)(B)] will be disseminated upon receipt. The reported information will be included in the calculation of the day's market aggregates, except as otherwise provided in Rule 6250(b)(1) through (5).[included in that day's market aggregates and disseminated upon receipt.]

(d) *Dissemination of Trades Executed on Non-Business Days*

*Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a non-business day at any time during the day, and are reported pursuant to Rule 6230(a)(4) on the next business day will be disseminated upon receipt. The reported information will not be included in the calculation of the day's market aggregates.*

6260. [Lead] *Managing Underwriter [Information] Obligation To Obtain CUSIP*

In order to facilitate trade reporting of secondary transactions in TRACE-eligible securities, the member that is the [lead] *managing* underwriter of any newly issued TRACE-eligible security shall *obtain the CUSIP number for the TRACE-eligible security and provide it to the TRACE Operations Center not later than 5:00 p.m. on the business day preceding the day that the registration statement will become effective, or, if registration is not required, the day that the securities will be priced initially.*[provide to the TRACE Operations Center the CUSIP number of any debt issue no later than on the effective date of the offering.] *If a managing underwriter is not appointed, the group of underwriters has an obligation to obtain and provide the CUSIP number to the TRACE Operations Center within the time required. A member must make a good faith determination that a security is a TRACE-eligible security before submitting the CUSIP number for such security to the TRACE Operations Center.*

\* \* \* \* \*

## 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

##### Introduction

The proposed amendments to the Rule 6200 Series<sup>5</sup> are intended to extend the reporting period from one hour to one hour and 15 minutes, to incorporate certain FIPS standards in Rule 6250, to require members to provide new CUSIP numbers to TRACE at an earlier time under Rule 6260, to clarify existing provisions in the Rule 6200 Series, especially Rule 6210(a) regarding "TRACE-eligible securities" and certain reporting provisions in Rule 6230(c) and (d), and to make other minor modifications to the existing requirements. Many of these changes are in response to industry requests for additional guidance and extended response times.

##### Extension of the Reporting Period to One Hour and 15 Minutes

The most significant proposed change is the NASD's proposal to extend the maximum time frame for reporting a transaction. The NASD is proposing to extend the reporting period from one hour to one hour and 15 minutes. Rule 6230(a). The proposed amendment will allow certain portions of the industry to engage a major industry participant as an agent for TRACE reporting. The proposed change will allow the NASD and members to achieve certain short-term operational efficiencies as reporting is initiated. In the future, the

<sup>5</sup> The Rule 6200 Series providing for reporting and dissemination of transaction information in eligible debt securities ("TRACE rules") was approved by the SEC on January 23, 2001. Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (approval order) (File No. SR-NASD-1999-65). The Commission approved additional amendments to the TRACE rules on March 5, 2001. Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (approval order) (File No. SR-NASD-2001-04). In addition, on January 3, 2002, the Commission issued a notice stating that certain other amendments to the TRACE rules had become effective on filing. Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (notice of filing and immediate effectiveness of proposed rule change) (File No. SR-NASD-2001-91). As noted above, the TRACE rules will not become effective until July 1, 2002. On that day, members must begin to report transactions in TRACE-eligible securities, and the TRACE system will begin the dissemination of certain reported information. (The Rule 6200 Series that is currently in effect establishes the reporting requirements for members engaged in trading high yield securities, describes the Fixed Income Pricing System ("FIPS"), and requires the dissemination of certain transaction information through FIPS ("FIPS rules").) When the TRACE rules take effect on July 1, 2002, the FIPS rules will be rescinded and the FIPS system will cease operating.

NASD expects to reduce the reporting period substantially.

#### Inclusion of FIPS Standards for Designating Certain Securities for Dissemination

The NASD is proposing to incorporate in Rule 6250(a)(2) the actual standards in the FIPS rules currently used to designate certain securities as "FIPS securities" (which then subjects certain transaction information in such securities to dissemination), and to delete the specific reference in Rule 6250 to "FIPS securities."<sup>6</sup> The NASD proposes this amendment because the standards now in use in the FIPS rules are intended to be the applicable standards under the TRACE rules.

The Association will use the standards, as needed, to designate Non-Investment Grade securities for dissemination under TRACE. On July 1, 2002, the first day of TRACE, approximately 50 securities will already be designated for dissemination because they were previously designated FIPS 50 securities. If, after the FIPS rules are rescinded, there are fewer than 50 Non-Investment Grade (high yield) securities for which transaction information is being disseminated, the NASD will designate additional Non-Investment Grade securities, up to 50, to be disseminated. The NASD will do so using the standards set forth in the FIPS rules, which the NASD proposes to incorporate in the TRACE rules.<sup>7</sup>

The actual standards in the current Rule 6200 Series were not included previously in the TRACE rules because when TRACE was filed originally, the Association planned to release bonds for dissemination on a substantially different timetable and plan. In that environment, standards for designating only 50 Non-Investment Grade securities for dissemination were unnecessary. Under the current rules for

<sup>6</sup> Fifty FIPS securities are selected as representative of the most liquid high yield securities. Certain price and volume information for the 50 securities that are designated is disseminated on an hourly basis and at the end of the day. The list of designated securities is updated and published approximately every four months.

<sup>7</sup> On July 1, 2002, those securities that were designated the FIPS 50 securities prior to the termination of FIPS will be subject to dissemination under TRACE Rule 6250. However, from time to time after July 1, 2002, a security designated may cease trading or may no longer meet the standards for dissemination (e.g., a security that was designated as a FIPS 50 security may mature or may be upgraded to an Investment Grade security, or the issuer may file for bankruptcy or otherwise default on its obligations). When this occurs, the Association staff will replace the security with another Non-Investment Grade security using the standards incorporated in the TRACE rules to maintain dissemination of transaction information relating to 50 Non-Investment Grade securities.

dissemination of certain TRACE-eligible securities transactions, however, the Association believes that it should have transparent standards or criteria for maintaining the list of 50 Non-Investment Grade securities that will be subject to dissemination, and, therefore, is proposing that the standards be incorporated in the TRACE rules.

#### Requirement To Timely Provide CUSIP Numbers

The Association is proposing to reduce the period during which an underwriter of a security must obtain and notify TRACE of the CUSIP number(s) of newly issued or distributed securities. Rule 6260 currently requires that the lead underwriter provide to the "TRACE Operation Center" the CUSIP number of any debt issue no later than on the effective date of the offering. The NASD proposes to shorten the period to not later than the end of the business day prior to the effective date of the offering, or, if registration is not required, the end of the business day prior to the day the securities will be priced initially. In addition, in those offerings in which there is no lead or managing underwriter, the group of underwriters has an obligation to obtain and provide the CUSIP number to the TRACE Operations Center within the period described above.

#### "TRACE-Eligible Security"

The Association has received a number of queries concerning the scope of the exclusions to the term, "TRACE-eligible security," in Rule 6210(a). Generally, unless a debt security is excluded from the definition set forth in Rule 6210(a), a transaction in the security must be reported to TRACE by any member that is a party to the transaction. To further clarify which securities are subject to the TRACE rules, the Association proposes to amend Rule 6210(a) to specifically exclude from the definition of "TRACE-eligible security" a debt security issued by a government-sponsored entity ("GSE").

**Money Market Instrument.** In addition, for purposes of Rule 6210(a), the Association clarifies that "money market instrument" means an instrument that at issuance has a maturity of one year or less. For purposes of the TRACE rules, the term excludes those instruments that were originally issued with longer maturities, but may be treated by certain market participants as short term instruments in certain trading contexts as the instruments approach maturity. For example, a five year security would not

be considered a "money market instrument" for purposes of TRACE if there were only 6 months remaining until the instrument matured.<sup>8</sup>

#### Other Changes

A series of additional, minor proposed changes are explained briefly below, including the Association's proposed clarification of certain defined terms.

#### Rule 6210 Proposed Changes

**Rule 6210(b), "Trade Reporting and Compliance Engine."** Previously, the NASD modified the name of the TRACE system to "Trade Reporting and Compliance Engine."<sup>9</sup> The NASD amended the name to more accurately reflect the compliance purposes that TRACE will further and to eliminate references to the functions that are no longer part of the TRACE initiative. In this proposed rule filing, the Association is also deleting those functions that are no longer within TRACE from the definition, "Trade Reporting and Compliance Engine." Rule 6210(b).

**Rule 6210(c), "Reportable TRACE Transaction."** The Association has proposed amendments to the term, "reportable TRACE transaction," to make clear that a limited class of transactions in certain debt securities will not be subject to reporting (and dissemination) under TRACE. These are transactions in debt 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 securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly. The NASD is also proposing parallel changes to Rule 6230(a)(2). The NASD does not intend to capture transactions in debt securities that are listed, currently subject to reporting for regulatory purposes to another self-regulatory organization ("SRO"), and disseminated by such SRO. This is consistent with the underlying purpose of TRACE, which is to increase transparency in those debt securities transactions for which there is currently no regulatory reporting mechanism and no dissemination.

<sup>8</sup> The term, "TRACE-eligible security," as currently approved, excludes sovereign debt. Also, the Association intends to exclude any debt security that is issued by a supranational organization, such as the World Bank, the International Monetary Fund, and the European Bank for Reconstruction and Development.

<sup>9</sup> See SR-NASD-2001-91.

#### Rule 6210(d), "Time of Execution."

The NASD proposes additional language to the definition of "time of execution" to clarify when the time of execution of a transaction occurs for securities that are priced off, or for which yield is determined by, reference to a benchmark security. The NASD proposes that the time of execution for these securities transactions shall be deemed to occur when the yield for the security is agreed upon by the parties to the transaction. For example, if the parties agree to determine the specific yield of Security A based upon a spread that is 150 points "off" (above) or "through" (below) the yield of a comparable U.S. Treasury security, and agree to measure the yield of the comparable U.S. Treasury security at 3:30 p.m. on the day of the transaction, the parties will be expected to agree upon the yield of Security A at 3:30 p.m. when the information becomes available. As of that time, the parties have knowledge of all of the elements of the trade necessary to calculate the dollar price of the trade and are obligated to report the trade within 1 hour and 15 minutes.

#### TRACE Time Frames

The TRACE rules recognize that transactions in TRACE-eligible securities may occur at any time during a 24 hour period. The times set forth in Rule 6230 and related rules have been clarified. Generally, the business day is broken into three periods for purposes of the reporting provisions in Rule 6230 and the dissemination provisions in Rule 6250. The three periods of a business day are: (a) At or after 8:00 a.m. through 6:29:59 p.m. Eastern Time (the period during a business day that the TRACE system will be "open" and receiving reports); (b) at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time; and (c) at or after 12:00 a.m. Eastern Time (midnight) through 7:59:59 a.m. Eastern Time. Holidays and weekends are treated separately, as discussed further below. Requirements for reporting generally, designation of "late" trades and "as/of" trades, and the timetables for dissemination are governed generally by these three periods. See, e.g., proposed changes to the structure of Rule 6230 in paragraphs (a)(1), (2) and (3).

#### Reporting Transactions Executed on Weekends and Holidays

In proposed Rule 6230, the Association is proposing an additional paragraph, new paragraph (a)(4), to clarify how to report transactions that are executed during a weekend or on a holiday. At the initiation of TRACE, the



TRACE system will not be able to recognize, and would reject a transaction report that included, a calendar date that is a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed. In addition, the system would reject a date in the "as/of" field for the same reason. Therefore, the actual date of transactions that are executed on a non-business day cannot be captured electronically at this time. Until the system is revised, the Association proposes to require members to report transactions that are executed on a non-business day as follows under proposed Rule 6230(a)(4). A member must report the transaction on the first business day following the actual date of the transaction, and the transaction must be reported within one hour and fifteen minutes of the opening of the TRACE system. The transaction date must be reported as the first business day after which the transaction occurred (the same day of the report). The time of execution must be reported as "00:01:00" (Eastern Time) (which is the military time for "12:01:00" a.m. Eastern Time). This will distinguish these limited number of weekend and holiday transactions from transactions actually occurring on the business day. The modifier, "special price," must be selected. In addition, when the reporting method chosen provides a "special price memo" field, the member must enter the actual date and time that the transaction occurred. Rule 6230(a)(4).

The Association is also proposing parallel clarifying changes regarding the dissemination of such trades in proposed Rule 6250(d).

#### Other Clarifications to Rule 6230 Reporting Provisions

The Association made several clarifying changes to Rule 6230 in addition to the changes regarding the reporting extension and periods that are discussed above. Several questions and issues arose with respect to reporting price, mark-ups, mark-downs, and commissions. The changes have been proposed to respond to an operational issue raised by the industry and reduce the industry's costs of participating in TRACE, to clarify the provisions, and answer various questions.

**Rule 6230(c)(3), Alternative "Price" Reporting.** First, in order to address basic software differences identified in certain external systems in widespread use in the industry, the NASD has agreed to provide an alternative to the reporting of "price" in Rule 6230(c)(3). The proposed change to Rule 6230(c)(3), if approved, will allow a member to

report either the "price of the transaction" or "the elements necessary to calculate price, which are contract amount and accrued interest." This change will increase the efficiencies and reduce the costs of complying with TRACE for a substantial number of TRACE participants.

**Rule 6230(d)(1), Reporting Price, Capacity and Volume.** In addition, the NASD proposes several clarifying changes to Rule 6230(d). None of these changes are substantive. In Rule 6230(d)(1), the NASD proposes changes to describe more clearly how to report principal transaction prices (*i.e.*, the price reported must include the mark-up or mark-down) and agency transaction prices (*i.e.*, the price must exclude a commission, if any, and the commission must be reported in a second, separate field). In addition, where a party will use an external system that does not allow for the reporting of price (as described above), the NASD has clarified the language in paragraph (d)(1) to make it consistent with the proposed changes to Rule 6230(c)(3).

**Rule 6230(d), "Special Price," "Weighted Average Price," and "Cash," "T + 1" and Other Settlement Modifiers.** In Rule 6230(d)(4)(A) through (C), the NASD has clarified that a member must report transactions using modifiers, if applicable, to report certain aspects of a transaction. The modifiers are used to designate a special price, pricing determined by using weighted average pricing, and settlement that will occur other than regular way.

**Special Price.** In Rule 6230(d)(4)(A), the Association has specified that a member must indicate on a trade report when a non-market price, *i.e.*, a "special price," applies to the trade (other than when a weighted average price applies to the trade, which is indicated using a different modifier). In addition, the reporting party must explain in the memo field, when available, why the transaction was executed at other than a current market price. For example, if a debt security is traded conventionally and in the current market with neither a due bill nor a warrant attached, but, in the relevant transaction, is traded with a due bill and/or warrant attached, the price of the transaction is a "special price," which reflects the special conditions of the trade.

**Weighted Average Price.** If the price of a transaction is determined using a weighted average price method, the Association proposes that a member must indicate this with the modifier ".w." in Rule 6230(d)(4)(C). The member is required to select the modifier ".w." and may not select the

"special price" modifier. The weighted average price modifier has priority over the modifiers indicating settlement other than regular way, which are discussed below. If both the weighted average price modifier and one of the settlement term modifiers are applicable to the transaction, the weighted average price modifier must be selected when reporting the transaction.

**Settlement Other Than Regular Way.** If a transaction is to be settled other than regular way, the Association proposes the member must report the settlement term by selecting the appropriate modifier, as set forth in Rule 6230(d)(4)(B). If the transaction will settle the same day (*i.e.*, same day cash settlement), the member must use the modifier ".c"; if the transaction will settle the next day, the member must use the modifier ".nd"; or, if the transaction will settle other than on the same day, the next day or T+ 3, the member must use the modifier ".sNN" and enter the appropriate number of days (*e.g.*, ".s05" indicates that settlement will occur 5 business days after the transaction is executed). Finally, as noted above, if one of the settlement modifiers and the weighted average price modifier apply to the transaction, the member must select the modifier, ".w.," for weighted average price, and the applicable settlement modifier is not reported.

**Rule 6230(c)(13), Yield.** The industry sought additional guidance on how to report yield as required in Rule 6230(c)(13). The Association proposes clarifying changes to Rule 6230(c)(13) to eliminate the ambiguity of the prior provision. The Association proposes that a member report the lower of yield to call or yield to maturity.

Reporting the yield is mandatory. However, in response to questions, the Association has identified a number of instances where it is appropriate to provide an exception to the mandatory yield reporting requirement. The exception is stated in the proposed amendment. For example, a member is not required to report yield when the TRACE-eligible security is a security that is in default, a security for which the interest rate is floating or the interest rate will be or may be increased (*e.g.*, certain "step-up bonds") or decreased (*e.g.*, certain "step-down bonds") and the amount of increase or decrease is an unknown variable, the security is a pay-in-kind ("PIK"), or any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable. The NASD has not assumed that the Association may identify, before each occurrence, all the

instances in which it is not appropriate or useful to report yield. Instead, the Association has clarified that in those instances where the reported yield would provide inaccurate or misleading information concerning the price of, or trading in the security, yield is not required to be reported.

There were several other minor amendments to Rule 6230. In paragraph (d)(3) of Rule 6230, the Association proposes to eliminate the reporting of certain transactions as "crosses." A corresponding change is proposed to Rule 6230(c)(4). In addition, in paragraph (d)(2) of Rule 6230, the Association has clarified the term "baby bond" and how to report a fractional par value of a debt instrument.

## 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association'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 NASD believes that the proposed rule change, if approved, will amend rules for the reporting of information on eligible debt securities transactions that will provide the NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate the debt securities markets in order to prevent fraudulent and manipulative acts and practices. The proposed rule change, by requiring reporting of such transaction information, will protect investors and the public interest by, among other things, increasing transparency in the fixed income markets.

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

The 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*

While comments were neither solicited nor received concerning this rule proposal, several commenters on SR-NASD-99-65 indicated that the NASD should consider proposing reporting rules that would allow the members of the fixed income markets to use, with modifications, some of the

reporting arrangements and linkages in place for the reporting of municipal securities transactions. In light of these comments, the Association is proposing that the one hour reporting period set forth in Rule 6230(a) be amended to one hour and 15 minutes and an alternative method for reporting "price" be provided in Rule 6230(c)(3) and (d)(1). The proposed extension of the reporting period and the alternative for reporting "price" will allow certain firms that have communication links to a registered clearing agency to report to TRACE using the reporting processes that are in place through the registered clearing agency. Otherwise, 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, as amended, or
- B. Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 the NASD. All submissions should refer to file number SR-NASD-2002-46 and should be submitted by June 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-12807 Filed 5-21-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45946; File No. SR-OCC-2001-16]

### **Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Clearing Certain Commodity Futures and Options Thereon**

May 16, 2002.

## I. Introduction

On October 24, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2001-16 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 20, 2001.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

## II. Description

1. Introduction  
Pursuant to the proposed rule change being approved, OCC will provide clearance and settlement services for futures on broad-based stock indexes and options on such futures under the same basic rules and procedures currently applicable to the clearance and settlement of other OCC-cleared contracts, including options and security futures.<sup>3</sup> There is no significant difference between the mechanics for

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 45152 (December 12, 2001), 66 FR 65770.

<sup>3</sup> Because such contracts are within the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC"), on October 9, 2001, OCC submitted to the CFTC an application for registration as a derivatives clearing organization ("DCO") under Section 5b(c) of the Commodity Exchange Act ("CEA") and under 17 CFR Part 39 of the CFTC's regulations. The CFTC granted OCC's application for registration on December 10, 2001. The Commission notes that although futures on broad-based stock indexes and options on these futures fall within the exclusive jurisdiction of the CFTC, the Commission retains its authority to inspect and examine OCC with respect to OCC's clearance and settlement of these products by virtue of its status as a registered clearing agency under Section 17A of the Act.