

December 5, 2003

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2003-182 – Proposed Amendments to “TRACE-Eligible Security” and An Exemption to Trade Reporting

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Sharon K. Zackula, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985; e-mail sharon.zackula@nasd.com, or Elliot Levine, Chief Counsel and Senior Advisor, Market Operations and Information Services, at (202) 728-8405; e-mail elliott@nasd.com. The fax numbers of the Office of General Counsel and Market Operations and Services, are, respectively, (202) 728-8264 and (202) 858-4083.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

cc: Stephen Williams
Gordon Fuller
Mary Simpkins

File No. SR-NASD-2003-182
Consists of 16 Pages
December 5, 2003

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to: (1) amend Rule 6210(a) to clarify certain terms used in the definition, “TRACE-eligible security”; (2) amend NASD Rule 6230(e)(2) to expand the trade reporting exemption to qualifying transactions in any TRACE-eligible security that is listed and quoted on the Nasdaq Stock Market, Inc. (“Nasdaq”); and (3) make conforming amendments to the defined term, “reportable TRACE transaction,” in Rule 6210(c). Rules 6210 and 6230 are part of the Trade Reporting and Compliance Engine (“TRACE”) rules. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6210. Definitions

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

(a) 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 issuers[corporations]; and: (1) registered under the Securities Act of 1933 [with the Securities and Exchange Commission] or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased and sold pursuant to Rule 144A of the Securities Act of 1933. 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) No Change.

(c) The term “reportable TRACE transaction” shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly, or transactions in [convertible debt]TRACE-eligible securities that are listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.

(d) through (i) No Change.

* * * * *

6230. Transaction Reporting

(a) through (d) No Change.

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

The following types of transactions shall not be reported:

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

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

debt]TRACE-eligible securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.]; and]

(3) No Change.

(f) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of NASD (“Board”) and authorized for filing with the SEC pursuant to a delegation of authority granted by the Board: (i) at the NASD’s Board meeting on January 23, 2003, to the General Counsel of NASD Regulatory Policy and Oversight (“RPO”) (or his officer designee) to file, without further specific Board authorization, proposed administrative, technical, conforming, and non-substantive rule changes to amend NASD Rules; and (ii) at its meeting on July 31, 2003, to the same persons, to file, without further specific Board authorization, proposed rule changes to amend NASD rules to provide for exemptive relief (the “Delegation of Authority”). Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the Delegation of Authority, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The staff will advise the Board of any action taken pursuant to the Delegation of Authority. No other action by NASD is necessary for the filing of the proposed

rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

(b) Questions regarding this rule filing may be directed to Sharon K. Zackula, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985, or Elliot Levine, Chief Counsel and Senior Advisor, Market Operations and Information Services, at (202) 728-8405.

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

(a) Purpose

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

Second, NASD proposes to clarify that TRACE-eligible securities include the debt securities of all U.S. and foreign private issuers generally, by substituting the word “issuers” for “corporations.” Although most issuers of securities are organized as corporations, this amendment makes clear that the debt securities of issuers that use another form of business

organization are TRACE-eligible securities, provided that all the other conditions set forth in Rule 6210(a) are met.

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

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

The purpose of the provision is to exempt from the TRACE reporting requirements a transaction in a TRACE-eligible security if the transaction in the Nasdaq-listed and -quoted security is already subject to regulatory reporting, and the information reported is being made available to the public through dissemination.¹ At the time that the provision relating to Nasdaq was adopted, the provision was limited to Nasdaq-listed and -quoted *convertible debt securities*

¹ Rule 6230(e)(2) also includes an exemption from reporting for transactions in TRACE-eligible securities that are listed on a national securities exchange, when the transactions are executed on and reported to the exchange, and transaction information is disseminated publicly.

because it was believed that these were the only debt securities at issue. As the market in equity-linked debt securities has developed, NASD believes that the language of the exemption should be broader to clarify that the same types of transactions in these and similar securities that may be listed and quoted on Nasdaq should also be exempt from reporting. NASD also proposes to make conforming changes to the defined term, “reportable TRACE transaction,” in Rule 6210(c).

(b) Statutory Basis

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 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 the appropriate capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, for the protection of investors and in the public interest.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: _____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

December 5, 2003

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2003-182)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to “TRACE-Eligible Security” and An Exemption to Trade Reporting

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 , 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: (1) amend Rule 6210(a) to clarify certain terms used in the definition, “TRACE-eligible security”; (2) amend NASD Rule 6230(e)(2) to expand the trade reporting exemption to qualifying transactions in any TRACE-eligible security that is listed and quoted on the Nasdaq Stock Market, Inc. (“Nasdaq”); and (3) make conforming amendments to the defined term, “reportable TRACE transaction,” in Rule 6210(c). Rules 6210 and 6230 are part 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6210. Definitions

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

(a) 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 issuers[corporations]; and: (1) registered under the Securities Act of 1933 [with the Securities and Exchange Commission] or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased and sold pursuant to Rule 144A of the Securities Act of 1933. 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) No Change.

(c) The term "reportable TRACE transaction" shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly, or transactions in [convertible debt]TRACE-

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

(d) through (i) No Change.

* * * * *

6230. Transaction Reporting

(a) through (d) No Change.

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

The following types of transactions shall not be reported:

(1) Transactions that are part of a primary distribution by an issuer₂[:]

(2) Transactions in TRACE-eligible securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and transactions in [convertible debt]TRACE-eligible securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly₂[: and]

(3) No Change.

(f) No Change.

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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

(a) Purpose

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

Second, NASD proposes to clarify that TRACE-eligible securities include the debt securities of all U.S. and foreign private issuers generally, by substituting the word “issuers” for “corporations.” Although most issuers of securities are organized as corporations, this amendment makes clear that the debt securities of issuers that use another form of business organization are TRACE-eligible securities, provided that all the other conditions set forth in Rule 6210(a) are met.

Trade Reporting Exemption for Nasdaq-Listed Debt Securities. NASD has determined that the exemption from trade reporting in Rule 6230(e)(2), relating to debt securities listed and quoted on Nasdaq, is inappropriately narrow. The proposed amendment to Rule 6230(e)(2) will

clarify and expand the exemption for certain transactions in TRACE-eligible debt securities that are listed on Nasdaq. NASD is also proposing conforming changes to Rule 6210(c).

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

The purpose of the provision is to exempt from the TRACE reporting requirements a transaction in a TRACE-eligible security if the transaction in the Nasdaq-listed and -quoted security is already subject to regulatory reporting, and the information reported is being made available to the public through dissemination.³ At the time that the provision relating to Nasdaq was adopted, the provision was limited to Nasdaq-listed and -quoted *convertible debt securities* because it was believed that these were the only debt securities at issue. As the market in equity-linked debt securities has developed, NASD believes that the language of the exemption should be broader to clarify that the same types of transactions in these and similar securities that may be listed and quoted on Nasdaq should also be exempt from reporting. NASD also proposes to make conforming changes to the defined term, “reportable TRACE transaction,” in Rule 6210(c).

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

(b) Statutory Basis

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 NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change, if approved, will provide NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with appropriate capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, for the protection of investors and in the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

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

A. by order approve such proposed rule change, or

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

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-XXXX-XX. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 the file number in the caption above and should be submitted by [insert date 21 days from the date of publication.]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland
Deputy Secretary