

March 10, 2004

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 – Consent to Extension of Time and Additional Response to Comments on Proposed Amendments to “TRACE-Eligible Security”**

Dear Ms. England:

In SR-NASD-2003-182, NASD proposes changes to Rule 6210 and Rule 6230, which are part of the Trade Reporting and Compliance Engine rules (“TRACE Rules”). NASD hereby consents to an extension of time for Securities and Exchange Commission (“SEC”) action on SR-NASD-2003-182 to March 29, 2004. NASD also is responding to certain comments submitted to the SEC in response to the publication of the rule filing.<sup>1</sup> Although, in a letter dated February 13, 2004,<sup>2</sup> NASD previously responded to the comments contained in two comment letters,<sup>3</sup> NASD is providing a supplemental response to comments regarding NASD’s proposal to amend a phrase in the defined term, “TRACE-eligible security,” that is set forth in Rule 6210(a).

Definition of “TRACE-Eligible Security”

NASD proposes to amend the phrase, “United States and/or foreign private corporations,” in the defined term, “TRACE-eligible security,” to read, “United States and/or foreign private issuers.” NASD proposes to delete the word, “corporations,” and replace it with “issuers” solely to clarify that the securities of issuers using forms of business organizations other than the corporate

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<sup>1</sup> See Securities Exchange Act Release No. 48926 (December 15, 2003), 68 FR 71207 (December 22, 2003).

<sup>2</sup> Letter from Marc Menchel, Executive Vice President and General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, U.S. Securities and Exchange Commission, dated February 13, 2004.

<sup>3</sup> Letter from Michele C. David, Vice President and Assistant General Counsel, The Bond Market Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated January 16, 2004 (“TBMA Letter”); email letter from Paul Scheurer to [rule-comments@sec.gov](mailto:rule-comments@sec.gov), dated January 12, 2004 (“Scheurer Letter”). NASD previously responded in full to comments contained in the Scheurer Letter. The supplemental comments contained in this letter address comments in the TBMA Letter.

form are included in the definition of TRACE-eligible securities. Simply stated, it has long been the position of NASD -- a position that is widely known by market participants -- that TRACE-eligible securities are not limited to debt securities issued by incorporated entities.

It was always NASD's intention that the universe of TRACE-reportable securities would include securities issued not only by corporations, but also by entities such as limited partnerships and trusts. In addition, from the earliest stages of the development of TRACE, market participants and regulators alike understood that securities that were FIPS-eligible, including securities that were issues of capital trusts, equipment trusts, other types of trust, and limited partnerships, among others, would become TRACE-eligible securities. This understanding is manifested by the fact that, presently, there is widespread reporting of debt securities issued by entities that are not corporations. Moreover, from the initiation of TRACE, members have in fact reported debt securities that are issued by capital trusts, equipment trusts, trusts, and limited partnerships, as well as other entities, to TRACE. Although the current universe of TRACE-eligible securities is composed largely of securities issued by corporate issuers because it is the predominate form of large business operations, a number of securities in the universe of TRACE securities are securities issued by a limited partnership, a capital trust, an equipment trust, and other types of trusts, among others.

The proposed rule change is intended to clarify in the rule what is well understood in the industry -- that the debt securities of non-corporate issuers, such as limited partnerships, capital trust, equipment trusts, *are* included in the universe of TRACE-eligible securities. Our view is that the proposed amendment does not narrow the classes of debt instruments excluded from the definition of "TRACE-eligible security" in Rule 6210(a). Stated another way, any security that currently is not reportable to TRACE, because of a specific exclusion in Rule 6210(a), will remain non-reportable.

Notwithstanding the above, a commenter expressed concern that the purpose and effect of the proposed amendment was to require members to now report to TRACE a variety of "structured" or "asset-backed" securities that are not currently being reported to TRACE. NASD is neither seeking to amend the exclusion for asset-backed securities with this proposed rule change nor to define whether specific debt instruments come within the definition of those classes of debt securities excluded for the purpose of TRACE reporting. Consequently, to the extent that the commenter is requesting greater certainty as to whether a specific debt security falls within the definition of those classes of securities excluded from TRACE reporting, such inquiry is beyond the subject matter and scope of this proposed amendment.

Upon effectiveness of the proposed amendment it would simply be clear that the extent to which a debt security issued by a United States or foreign private business organization came within the definition of "TRACE-eligible security" would turn, not on the form of that business organization, but, rather, solely on whether such debt securities fell within the any of the classes of

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debt securities denominated for exclusion under the definition. Consequently, an asset-backed security issued by a business trust organization, for example, would not be a "TRACE-eligible security" because such a class of debt securities is expressly excluded from the definition, although other debt securities, issued by a business trust, which are not of a class excluded by the definition, would be reportable under the TRACE rules.

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

Very truly yours,

Marc Menchel  
Executive Vice President and  
General Counsel  
Regulatory Policy and Oversight

cc: Stephen L. Williams  
Gordon K. Fuller  
Mary N. Simpkins