

June 26, 2002

By Messenger and Electronic Mail

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

Re: **Amendment No. 3 to File No. SR-NASD-2002-46**
Proposed Amendments to NASD Rule 6200 Series ("TRACE Rules")

Dear Ms. England:

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 ("Exchange Act"), NASD is filing with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 3 to SR-NASD-2002-46 relating to the new Rule 6200 Series (or "TRACE Rules") regarding the reporting, and dissemination of, certain transactions in debt securities.¹ In Amendment No. 3, NASD proposes to amend Rule 6260 to: (1) extend the deadline for a member to notify NASD of the Committee on Uniform Securities Identification Procedures numbers ("CUSIP numbers") of new securities in Rule 6260 if the member is engaged in certain intra-day underwritings that occur on or after 5:00 p.m. and (2) require members to provide certain descriptive information relating to the security when providing the CUSIP number to the NASD.

Proposed Amendment to Rule 6260

Current Rule 6260, as approved by the SEC on January 23, 2001, provides that the lead underwriter of any newly issued TRACE-eligible security "shall provide to the TRACE Operations Center the CUSIP number of any debt issue no later than on the effective date of the offering."

¹ The SEC has approved the new Rule 6200 Series, but the rules have not yet taken effect. The rules will become effective on July 1, 2002. The SEC initially approved the rules on January 23, 2001. File No. SR-NASD-1999-65, Securities Exchange Act Release No. 43873 (Jan. 23, 2001), 66 FR 8131 (Jan. 29, 2001) (approval order). The SEC approved additional amendments to the rules on March 5, 2001 and December 13, 2001. File Nos. SR-NASD-2001-04, Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (approval order) and SR-NASD-2001-91, Securities Exchange Act Release No. 45229 (Jan. 3, 2002), 67 FR 1255 (Jan. 9, 2002) (notice of proposed rule and immediate effectiveness upon filing on December 13, 2001, and approval order).

In Amendment No. 2, NASD proposed to amend Rule 6260 to require the managing underwriter to obtain the CUSIP number and provide it and additional information 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, except in the case of intra-day offerings.*² For intra-day offerings, the underwriter would be required to provide the CUSIP and other information to TRACE Operations Center *by 5:00 p.m. on the day that the securities were priced and offered.*³ In the same amendment, NASD proposed to require an underwriter to supply not only the CUSIP number but also five other specified bits of information: the issuer's name, the coupon rate of the security, the maturity, Rule 144A applicability, and a brief description of the issue (e.g., senior subordinated note, senior note).

NASD proposes to amend the text of Rule 6260(b) as submitted in Amendment No. 2 with respect to intra-day offerings that occur on or after 5:00 p.m. When an intra-day offering occurs on or after 5:00 p.m., the underwriter will be required to provide the CUSIP number and additional information to NASD Market Operations not later than 5:00 p.m. on the next business day. The NASD is proposing this clarifying amendment in lieu of publishing an interpretation. In addition, NASD is proposing to allow the underwriter to provide NASD with information other than the six listed items in Rule 6260(b) to comply with the notification requirement,

² In Amendment No. 1, the NASD proposed to move the deadline for providing CUSIPs *to the day immediately preceding the actual offering day* to address regulatory concerns that the audit trail, especially for those bonds that trade infrequently after the initial offering, would contain substantial gaps if the underwriter was not required to provide the CUSIP until the end of the first day of trading, with the result that all first day trading would not be reported. This provision was published in Securities Exchange Act Release No. 45943 (May 16, 1992); 67 FR 36049 (May 22, 2002).

In the original filing of SR-NASD-2002-46, in response to industry concerns, NASD proposed that Rule 6260 be modified to require the managing underwriter (or, if no managing underwriter was appointed, the group of underwriters) to provide the CUSIP numbers for newly issued TRACE-eligible securities *not later than 5:00 p.m. on the first business day following the day the registration statement became effective (or, if registration was not required, the day that the securities were first priced.* See SR-NASD-2002-46, filed on April 2, 2002. This provision was superseded because NASD and other regulators expressed concern that an additional 24-hour delay in capturing trades would create gaps in the audit trail that might impede proper surveillance of the debt securities markets. Ultimately, these concerns outweighed NASD's desire to provide market participants an additional 24 hours to provide CUSIP numbers to NASD (and the limited circumstances wherein such additional time was actually required in order to comply with Rule 6260).

³ Intra-day offerings were described in Amendment No. 2 as offerings of securities previously registered under Rule 415 of the Securities Act of 1933 ("Securities Act") and sold on an intra-day basis or offerings of unregistered securities that may be offered and then resold on an intra-day basis under Rule 144A of the Securities Act. 17 C.F.R. 230.415; 17 C.F.R. 230.144A.

because industry participants have stated that some of the required information, such as coupon rate and maturity, may not have not been fixed at the time the underwriter obtains the CUSIP number for the security and would provide it to the NASD. In light of this, NASD proposes to allow underwriters to submit alternative types of information, as specified by the NASD, if necessary. (The proposed amendments to Rule 6260(b) are indicated by double underlining.)

(b) For such TRACE-eligible securities, the managing underwriter must provide to the TRACE Operations Center: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; and (6) a brief description of the issue (e.g., senior subordinated note, senior note), or if such information has not been determined, such other information as the NASD deems necessary. The managing underwriter must obtain the CUSIP number and provide it and the information listed as (2) through (6) not later than 5:00 p.m. on the business day preceding the day that the registration statement becomes effective, or, if registration is not required, the day before the securities will be priced. If an issuer notifies an underwriter, or the issuer and the underwriter determine, that the TRACE-eligible securities of the issuer shall be priced, offered and sold the same business day in an intra-day offering under Rule 415 of the Securities Act of 1933 or Rule 144A of the Securities Act of 1933, the member shall provide the information not later than 5:00 p.m. on the day that the securities are priced and offered, provided that if such securities are priced and offered on or after 5:00 p.m., the member shall provide the information not later than 5:00 p.m. on the next business day. A member must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.[provide to the TRACE Operations Center the CUSIP number of any debt issue no later than on the effective date of the offering.]

Statutory Basis and Burden on Competition. The statutory basis for the proposed rule change, and the NASD's determination as to the burden on competition, are same as are stated in Amendment No. 2.

Accelerated Approval of Amendment No. 3. NASD requests that the Commission find good cause pursuant to Section 19(b)(2) of the Exchange Act to approve proposed Amendment No. 3 prior to the 30th day after publication in the Federal Register. The proposed amendments are minor changes to proposed Amendment No. 2; the NASD's request for accelerated approval of Amendment No. 2 and the bases for granting such request are applicable to these minor amendments to Rule 6260.

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Consent to Extension. At the request of the staff of the SEC, the NASD hereby consents to an extension of two days of the period for Commission action under Section 19(b)(2) of the Exchange Act on the proposed rule change.

If you have any questions, please contact Sharon K. Zackula, Assistant General Counsel, Office of General Counsel, NASD, at (tel) 202-728-8985; (fax) 202-728-8264; or (e-mail) sharon.zackula@nasd.com.

Very truly yours,

T. Grant Callery
Senior Vice President and
General Counsel

cc: Stephen Williams
Gordon Fuller
Mary Simpkins