such bids/offers were exhausted, or (b) the market maker's last displayed bid/offer. If the resulting bid/offer quote would create a locked or crossed market, NNMS would instead re-open the market maker's bid/offer quote at a price that is one penny inferior to the unexchanged contra side of the market. Finally, Nasdaq proposes to suspend from trading on SuperMontage market makers that fail to maintain a clearing relationship. Once the market maker regains a clearing relationship, the suspend status would be lifted, and the market maker would be free to participate again.

Nasdaq submitted Amendment No. 1 on March 5, 2002.[3] The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on April 8, 2002.[4] The Commission received no comments on the proposal. Nasdaq submitted Amendment No. 2 on June 13, 2002.[5]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act,[8] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, should assist market makers in maintaining two-sided quotes and facilitate their continued participation in Nasdaq. By reducing the amount of time, from 3 minutes to 30 seconds, that a quote is in a closed state and by only closing out the side of the quote that has been zeroed out, the revised procedures should help ensure the presence of liquidity providers, while preserving priority for orders that may be represented by the unexhausted side of the quote. Further, Nasdaq, by establishing procedures for refreshing an exhausted quote where there are no available quotes, has addressed any potential instance in which trading interest is not being displayed. This should ensure that quotes may be refreshed in all instances. Finally, Nasdaq's proposal to suspend market makers who fail to maintain clearing relationships from participating in the SuperMontage should encourage market makers to maintain appropriate clearing relationships at all times.

The Commission finds good cause for accelerating approval of Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**, pursuant to section 19(b)(2) of the Act.[9] The Commission finds that Amendment No. 2 merely clarifies the proposed rule change by explaining that references to automatic adjustment of quotes at ''inferior'' prices refer to both bid and offer prices, with an inferior price adjustment on the bid side of the quote resulting in a higher offer price, and that references to a ''clearing relationship'' refer to a clearing relationship between a firm and a registered clearing agency or, alternatively, with a member of such an agency. Accordingly, the Commission believes that granting accelerated approval of Amendment No. 2 is appropriate and consistent with section 15A(b)(6)[10] and 19(b)(2) of the Act[11] in that it should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.

As stated previously in the order approving SuperMontage, the Commission wishes to again emphasize that it fully expects that the NASD will monitor the use of the system defaults by market makers to ensure that they do not become a surrogate for meaningful market making, and that the NASD will reevaluate the penalties against market makers for failure to properly maintain two-sided quotes if there is a decline in the overall quality of market making, particularly during market volatility.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, as amended (File No. SR–NASD–2002–01) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–16847 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 4, 2002 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 45671 (March 28, 2002), 67 FR 16784.

[5] *See* Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Marc F. McKayle, Special Counsel, Division, Commission, dated June 13, 2002 (''Amendment No. 2''). In Amendment No. 2, Nasdaq made two points of clarification: (1) References to automatic adjustment of quotes at ''inferior'' prices refer to both bid and offer prices, with an inferior price adjustment on the bid side of the quote resulting in a lower bid price, and an inferior price adjustment on the offer price resulting in a higher offer price, (2) references to a ''clearing relationship'' refer to a clearing relationship between a firm and a registered clearing agency or, alternatively, with a member of such an agency.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3 (b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46144; File No. SR–NASD–2002–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Rule 6200 Series or the TRACE Rules

June 28, 2002

I. Introduction

On April 3, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to amend the Rule 6200 Series of the Rules of the NASD, which provides for the reporting and dissemination of transaction information in eligible corporate debt securities (''TRACE Rules''). The NASD submitted Amendment No. 1 to the proposed rule change on May 13, 2002.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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'').

Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the **Federal Register** on May 22, 2002.[4] The Commission received one comment letter, from The Bond Market Association (''TBMA''), regarding the proposal.[5]

On June 25, 2002, the NASD filed Amendment No. 2 to the proposed rule change and a response to TBMA's Letter.[6] On June 26, 2002, the NASD filed Amendment No. 3 to the proposed rule change. This order approves the proposed rule change, as amended by Amendment No. 1, accelerates approval of Amendment Nos. 2 and 3, and solicits comments from interested persons on Amendment Nos. 2 and 3.

II. Background

On January 23, 2001, the Commission approved the TRACE Rules to establish a corporate bond trade reporting and transaction dissemination facility and to eliminate Nasdaq's Fixed Income Pricing System (''FIPS'').[7] Subsequently, on March 5, 2001, the Commission approved amendments to the TRACE Rules requiring trade reports in transactions between two NASD members to be filed by each member.[8] 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.[9] Finally, on May 6, 2002, the NASD filed a proposed rule change to establish fees for the use of TRACE.[10] On June 26, 2002, the NASD amended that filing to implement the TRACE fee structure on a pilot basis. The Commission is approving the TRACE fee filing, and granting accelerated approval of the amendment regarding pilot status, concurrently with approval of this proposal.[11]

The TRACE Rules will become effective on 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.

III. Description of the Proposal

The proposed amendments to the TRACE Rules are intended to make technical changes to the TRACE Rules and clarify certain provisions of those Rules prior to implementation of TRACE. Specifically, the proposed amendments: extend the reporting period from one hour to one hour and 15 minutes; incorporate certain FIPS standards in Rule 6250; require members to provide new CUSIP numbers to TRACE at an earlier time under Rule 6260; 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 make other minor modifications to the existing requirements. These amendments are discussed in greater detail in the Commission's notice soliciting public comment on this proposal.[12]

In Amendment No. 1, the NASD proposed to amend Rule 6260 to require that the managing underwriter of any newly issued TRACE-eligible security provide CUSIP data to the TRACE Operations Center by 5:00 p.m. on the business day preceding the day the registration statement will become effective or, if registration is not required, the day the securities will be priced initially (''prior day CUSIP notification'').

In Amendment No. 2, the NASD proposed an exception to prior day CUSIP notification for underwriters that offer securities on an intra-day basis under Rule 415 under the Securities Act of 1933 (''Securities Act'') or Rule 144A under the Securities Act. In such offerings, the managing underwriter must obtain the CUSIP number and provide it to the TRACE Operations Center by 5:00 p.m. on the day the securities are priced and offered. The NASD also proposes to require the underwriter to provide the following descriptive information relating to the security to the TRACE Operations Center in addition to the CUSIP number: (1) Issuer name; (2) coupon rate; (3) maturity; (4) whether Rule 144A applies; and (5) a brief description of the issue. The NASD represents that the additional information will enable it to verify the accuracy of the CUSIP numbers provided by the underwriters.

In Amendment No. 3, the NASD proposed to amend the text of Rule 6260(b) as submitted in Amendment No. 2. When an intra-day offering occurs at or after 5:00 p.m., the underwriter will be required to provide the CUSIP number and additional information to the TRACE Operations Center not later than 5:00 p.m. on the next business day. In addition, the NASD proposed 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, because industry participants have stated that some of the required information, such as coupon rate and maturity, may not have 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, the NASD proposed to allow underwriters to submit alternative types of information, as specified by the NASD, if necessary.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended by Amendments Nos. 1, 2, and 3, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of section 15A(b)(6).[13] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the Act in that it is 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.[14] The TRACE Rules, as originally approved by the Commission on January 23, 2001 and as further amended, dramatically improve the transparency of the corporate bond market. The Commission believes that the NASD's clarification of the TRACE Rules in this proposed rule change will enable it to implement TRACE more effectively, thus enhancing investor

[4] *See* Securities Exchange Act Release No. 45943 (May 16, 2002), 67 FR 36049.

[5] *See* letter from Michel de Konkoly Thege, Vice President and Associate General Counsel, TBMA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated June 12, 2002 (''TBMA's Letter''). TBMA's Letter is described in Section IV, *infra.*

[6] Amendment No. 2 is described in Section III, *infra.*

[7] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65). FIPS, which was operated by Nasdaq, collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds.

[8] *See* Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR–NASD–2001–04).

[9] *See* Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR–NASD–2001–91).

[10] *See* Securities Exchange Act Release No. 45960 (May 17, 2002), 67 FR 36654 (May 24, 2002) (Commission notice seeking public comment on NASD proposal).

[11] *See* Securities Exchange Act Release No. [ ], (June 28, 2002).

[12] *See supra,* note 4.

[13] 15 U.S.C. 78o–3(b)(6).

[14] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

protection by facilitating the availability of TRACE.

As previously noted, the Commission received one comment letter, from TBMA, on the proposed rule change.[15] Although TBMA's Letter generally supported the latest amendments, it raised a number of specific concerns. As a result, the NASD entered into discussions with TBMA aimed at responding to its comments. On June 25, 2002, the NASD filed Amendment No. 2 to the proposal to address the concerns articulated in TBMA's Letter.

TBMA's Letter noted that the proposed rule change contained a number of useful clarifications concerning the workings of the TRACE Rules and reflected certain suggestions that TBMA had made in previous comment letters on the TRACE Rules and in discussions with the staff of the NASD. Nonetheless, TBMA urged further changes to the requirement applicable to managing underwriters to provide CUSIPs for new issues, requested further clarification and guidance on definitional matters, and requested the NASD to resolve pending legal, operational and technology matters relating to implementation.

Rule 6260 as originally adopted stated that the lead underwriter of any newly issued TRACE-eligible security was required to provide a CUSIP number to the TRACE Operations Center ''no later than on the effective date of the offering.'' As initially filed, this proposed rule change revised that requirement to require the managing underwriter to provide the CUSIP ''not later than 5:00 p.m. on the first business day following the day that the registration statement becomes effective, or, if registration is not required, the day that the securities are first priced.'' Amendment No. 1 required the CUSIP to be provided to the TRACE Operations Center not later than 5:00 p.m. on the business day preceding such day.

TBMA stated that frequently an issuer's decision to take advantage of a market window and the pricing of an offering occur within the same day. TBMA stated that Rule 6260 as amended by Amendment No. 1 would prevent the issuer from pricing such a transaction until the next business day. TBMA suggested that Rule 6260 should be further revised to deal with the case of same-day takedowns under shelf registration statements and Rule 144A documentation. In such cases, TBMA suggested that Rule 6260 should require a managing underwriter to make reasonable efforts to provide the CUSIP by the end of the same business day on which the takedown occurs.

The NASD noted in its response that the deadline for providing CUSIPs was moved back to immediately precede 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. In addition, price transparency would be reduced because the first day of trading in a debt security is often its most active day.

In response to TBMA's comments, the NASD proposed Amendment No. 2 providing for an exception to the prior day CUSIP notification in Rule 6260 for intra-day offerings. (These offerings are generally referred to as ''off-the-shelf'' or ''shelf'' offerings.) The NASD stated that when securities are previously registered under Rule 415 of the Securities Act or are unregistered securities that may be resold pursuant to Rule 144A of the Securities Act,[16] an issuer and an underwriter may decide to take advantage of favorable market conditions and offer the issuer's debt securities on that day. The NASD stated that when such intra-day offerings occur, it would be impossible for an underwriter to price, offer and sell such securities and comply with the prior day CUSIP notification. The NASD noted that it was not its intent to inhibit same-day access to the capital markets. Therefore, the NASD proposed to except from the prior day CUSIP notification intra-day unregistered offerings for Rule 144A resales and shelf offerings. In such offerings, the underwriter must obtain the CUSIP number and provide it to the TRACE Operations Center not later than 5:00 p.m. on the business day that the securities are priced and offered.

In Amendment No. 2, the NASD also proposed to amend Rule 6260 to require the underwriter to provide information in addition to the CUSIP number to the TRACE Operations Center. The additional information is 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). The NASD represented that this information will allow the TRACE Operations Center to compare the CUSIP and related information about the security with information available from vendors, and verify that the CUSIP numbers are accurate before the NASD disseminates the CUSIP numbers to the industry that night. The NASD stated that it will make the final determination whether a debt security is TRACE-eligible.

In Amendment No. 3, the NASD proposed to amend the text of Rule 6260(b) as submitted in Amendment No. 2. 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 the TRACE Operations Center not later than 5:00 p.m. on the next business day. In addition, the NASD proposed to allow the underwriter to provide the NASD with information other than the six listed items in Rule 6260(b) to comply with the notification requirement, because industry participants have stated that some of the required information, such as coupon rate and maturity, may not have 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, the NASD proposed to allow underwriters to submit alternative types of information, as specified by the NASD, if necessary.

The Commission believes that Amendment Nos. 2 and 3 address the primary concerns of TBMA with respect to certain intra-day offerings. The proposed changes will allow the NASD to balance the interests of issuers in obtaining expedited, well-timed access to the capital markets and those of investors in enabling the NASD to collect a more complete audit trail (and, when dissemination occurs, obtaining more complete price information).

TBMA's Letter also requested further clarification and guidance on various definitional matters under the TRACE Rules and items to be submitted in trade reports. TBMA noted that the term ''money market instrument'' is important because it defines one category of instruments that are excluded from the definition of TRACE-eligible security. For the purpose of the proposed exclusion, Rule 6210(a) of the TRACE Rules defines a money market instrument as a debt instrument that ''at issuance has a maturity of one year or less.'' TBMA recommended that the definition of money market instrument in Rule 6210(a) track the definition of Eligible Security contained in Rule 2a–7(a)(10) under the Investment Company Act of 1940.

In its response, the NASD stated that it did not believe that it is appropriate to revise the definition of money market instrument in the TRACE Rules to track the definition of ''Eligible Security'' under Rule 2a–7(a)(10). First, the NASD noted that the definition of ''Eligible Security'' is quite complex, and that

[15] *See supra,* note 5.

[16] 17 CFR 230.415; 17 CFR 230.144A.

making use of the definition is inconsistent with the NASD's goal to clearly delineate those securities subject to the TRACE Rules. In addition, the NASD said that, with respect to a particular security, Rule 2a–7(a)(10) applies differently over time. The NASD noted that the definition in Rule 2a–7(a)(10) may apply to long and medium term securities as they approach maturity. Under the definition proposed by the NASD, eligibility under TRACE requires a single determination for the life of the security. Thus, the NASD stated that applying the definition in Rule 2a–7 would not clarify or simplify a determination of whether a debt instrument is TRACE-eligible or excluded as a money market instrument and would not make it consistent with instruments that are eligible for money market funds. In addition, the NASD noted that the term ''Eligible Security'' in the Investment Company Act and the term ''TRACE-eligible security'' in the TRACE Rules are applied in different contexts. The Commission agrees, and does not believe that the definition of money market instrument in the TRACE Rules should be revised.

TBMA stated that the NASD's exclusion of clearing brokers from the defined term ''parties to the transaction'' is unclear. In response, the NASD stated that it excluded ''clearing broker'' from the definition to indicate that a broker that merely clears a transaction does not have a reporting obligation under the TRACE Rules. The NASD represented that for purposes of TRACE, a broker that performs only a clearing function is not considered a party to the transaction and should not submit a transaction report, unless the broker has also performed the executing function, or the clearing broker is reporting a transaction for an actual party to the transaction pursuant to an agreement to do so (*e.g.*, where a clearing broker, pursuant to a privately negotiated agreement with a correspondent, reports on behalf of the correspondent whenever the correspondent has a reporting obligation under TRACE).

TBMA stated that requiring a party to report the lower of yield to call or yield to maturity is confusing. The NASD responded that it believes that requiring the reporting of the lower of these two yields is appropriate and necessary for the protection of investors and the integrity of the debt markets. The Commission agrees. The Commission believes that the data reported for each trade as ''yield'' must be comparable to the data to: (1) Inform buyers and sellers, including public investors, of the price and yield of comparable debt securities; and (2) create an audit trail in which the price and yield of all transactions can be compared. The Commission believes that the NASD is correct in requiring that a party report the lower of yield to call or yield to maturity because such yields are the benchmarks for comparing bonds.

TBMA expressed concern that the NASD's proposal forces reporting firms to incur unnecessary expenses by requiring that transactions, including the two transactions that occur in an ''agency cross,'' must be reported separately. The NASD responded that the TRACE Rules require the reporting of each transaction and that the requirement that both transactions be reported individually is in furtherance of a regulatory goal. The NASD stated that the TRACE system was so designed based on input from market surveillance and market regulation personnel, and that it was determined that, in some instances, ''single'' trade reporting may raise issues, and creates gaps in the regulatory audit trail. The NASD represented that in creating a new bond reporting system, it determined not to incorporate certain features that may hinder the creation of a complete audit trail and therefore hinder efficient oversight of the market. For these reasons, the NASD determined that the agency cross transaction should be reported as two transactions. The Commission believes that the NASD's decision is reasonable, and is consistent with the Act.

TBMA also asked that the NASD address and clarify certain interpretive issues, which include TRACE eligibility questions, the trade reporting obligations of broker-dealers that are alternative trading systems (''ATSs''), the identification of transactions that do not reflect secondary market pricing, and others. The NASD responded that these and other interpretive issues will be addressed in NASD Notices to Members. In addition, TBMA requested that the NASD address several operational and technical issues, and respond to contractual and testing issues in a manner that would notify the entire industry. The NASD responded that it addresses the operational, technical and testing issues raised in TBMA's Letter on the TRACE website, which is *http://www.nasd.com/trace.asp,* and that it has responded to issues raised in agreements by revising its agreements.[17]

V. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause to approve Amendment Nos. 2 and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Rule 6260 would require most but not all underwriters to provide CUSIP numbers to the NASD by 5 p.m. Eastern Time on the business day prior to the initial sale of securities. This prior day CUSIP notification was previously published and subject to comment. The proposed exception to the prior day CUSIP notification provides that underwriters that are offering securities on an intra-day basis shall provide CUSIP numbers to the NASD not later than 5 p.m. Eastern Time on the same day that pricing and sales occur, provided that if such securities are priced and offered on or after 5 p.m., the member shall provide the information not later than 5 p.m. on the next business day. Although not previously published, the proposal is an appropriate and narrowly drafted exception to the previously published proposal and responds to the concerns that Rule 6260 would negatively impact issues that are offered and sold in the market on an intra-day basis.

Amendment No. 2 also requires that an underwriter supply to the TRACE Operations Center, in addition to the CUSIP number for each newly issued security, the issuer's name, the coupon rate, the maturity, a brief description of the security and whether the issue is being resold pursuant to Rule 144A. Amendment No. 3 allows the underwriter to provide the TRACE Operations Center alternative types of information, as specified by the NASD, if necessary. The NASD believes, and the Commission agrees, that the acceleration of the approval of these provisions are necessary to protect customers and the integrity of the audit trail. The NASD will use the information to promptly determine if the CUSIP numbers submitted are accurate before the NASD loads the new CUSIP numbers in the TRACE system and transmits such numbers to the industry. If the CUSIP numbers are inaccurate, transaction activity will be incorrect either because a report reflects the wrong security or a report was rejected by the TRACE system.

For these reasons, the Commission finds good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act, to accelerate approval of

[17] In this connection the Commission emphasizes its statement in the original TRACE approval order, Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001), that members that provide data to TRACE are ''free to sell or give the same information to information vendors.'' The NASD may not, by contract or otherwise, restrict a member's ability to distribute data that is has reported to TRACE to information vendors.

Amendment Nos. 2 and 3 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–46 and should be submitted by July 26, 2002.

VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASD–2002–46), as amended, be and hereby is approved, and that Amendment Nos. 2 and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–16850 Filed 7–3–02; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46145; File No. SR–NASD–2002–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto, by the National Association of Securities Dealers, Inc., Relating to Proposed Fees for the Trade Reporting and Compliance Engine (TRACE) for Corporate Bonds

June 28, 2002.

I. Introduction

On May 6, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] to establish fees for use of TRACE. TRACE provides for the reporting and dissemination of transaction information in eligible corporate debt securities. The NASD submitted Amendment No. 1 to the proposed rule change on May 16, 2002.[3] Notice of the proposed rule change was published for comment in the **Federal Register** on May 24, 2002.[4] The NASD submitted Amendment No. 2 to the proposed rule change on May 28, 2002.[5] The Commission received one comment letter, from The Bond Market Association (''TBMA''), regarding the proposal.[6]

On June 25, 2002, the NASD filed Amendment No. 3 to the proposed rule change and a response to TBMA's Letter. This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2, accelerates approval of Amendment No. 3, and solicits comments from interested persons on Amendment No. 3.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *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''), dated May 16, 2002. Amendment No. 1 corrected a typographical error in the filing.

[4] *See* Securities Exchange Act Release No. 45960 (May 17, 2002), 67 FR 36654.

[5] *See* letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine England, Assistant Director, Division, dated May 24, 2002. Amendment No. 2 made the language of the rule internally consistent and corrected certain typographical errors.

[6] *See* letter from Michel de Konkoly Thege, Vice President and Associate General Counsel, TBMA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated June 14, 2002 (''TBMA's Letter''). TBMA's Letter is described in Section IV, *infra*.

II. Background

On January 23, 2001, the Commission approved the Rule 6200 Series providing for reporting and dissemination of transaction information in eligible debt securities (''TRACE rules'').[7] Subsequently, on March 5, 2001, the Commission approved additional amendments to the TRACE rules requiring trade reports in transactions between two NASD members to be filed by each member.[8] 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.[9] Finally, on April 3, 2002, the NASD filed a proposed rule change to make certain technical changes to the TRACE rules. The NASD subsequently submitted Amendment No. 1 to that filing, and the Commission published notice of the proposal and Amendment No. 1 thereto.[10] The NASD subsequently submitted Amendment Nos. 2 and 3 to that filing. The Commission is approving that filing, and granting accelerated approval of Amendment Nos. 2 and 3, concurrently with approval of this proposal.[11]

The TRACE rules will become effective on 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.

III. Description of the Proposal

The proposed rule change establishes fees for participants and users of the TRACE facility and rescinds the FIPS fees. The proposed fees are divided into three general categories: (1) System fees paid by member firms based on the method chosen by the member to report corporate bond transactions to the NASD (members will have several options on how to report trades and the fees will vary accordingly); (2) transaction reporting fees paid by members to file trade reports and cancel or correct trade reports; and (3) market data fees paid by members and non-

[7] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65).

[8] *See* Securities Exchange Act Release No. 44039 (March 5, 2001), 66 FR 14234 (March 9, 2001) (File No. SR–NASD–2001–04).

[9] *See* Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002) (File No. SR–NASD–2001–91).

[10] *See* Securities Exchange Act Release No. 45943 (May 16, 2002), 67 FR 36049 (May 22, 2002).

[11] *See* Securities Exchange Act Release No. 46144, (June 28, 2002).