SR–NASD–2004–054. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 Nasdaq. All submissions should refer to file number SR–NASD–2004–054 and should be submitted by April 29, 2004.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–7931 Filed 4–7–04; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49522; File No. SR–NASD–2003–182]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to "TRACE-Eligible Security'' and an Exemption to Trade Reporting

April 1, 2004.

On December 5, 2003, the National Association of Securities Dealers, Inc. ("NASD'') filed with the Securities and Exchange Commission ("SEC'' or "Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act'')[1] and Rule 19b–4 thereunder,[2] 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. Notice of the proposed rule change was published for comment in the **Federal Register** on December 22, 2003.[3] The Commission received two comment letters regarding the proposal.[4]

On February 13, 2004, NASD filed a response to the two comment letters.[5] On March 10, 2004, NASD provided a supplemental response to the comments regarding NASD's proposal.[6] On March 24, 2004, TBMA submitted a letter in response to NASD's Response Letter and NASD's Supplemental Response Letter.[7] On March 29, 2004, NASD filed an additional supplemental statement to its earlier two letters.[8] This order approves the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the provisions of section 15A(b)(6) of the Act,[9] 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. [10] The Commission believes that the proposed rule change 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.

The comment letter filed by Mr. Scheurer expressed concern that expanding exemptions from TRACE for certain securities subject to Nasdaq bond price reporting would weaken investor protection. 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).

NASD's Response Letter stated that currently there are very few debt securities that are listed on Nasdaq, and only some of the transactions occurring in those securities would meet all of the conditions for the exemption and thus not be reported to TRACE. NASD also stated that while there are certain differences between TRACE and Nasdaq reporting via the Automated Confirmation Transaction Service ("ACT'') in the reporting and dissemination of debt securities transactions, NASD does not believe that requiring members to report a transaction to both TRACE and ACT results in a measurable enhancement to investor protection or market integrity. NASD stated, for example, that it does not believe that it is beneficial to require a transaction that will be reported to ACT in 90 seconds also be reported to TRACE within 45 minutes.

NASD also stated that Rule 6230 requires that both sides of a transaction report the transaction to TRACE (if both are NASD members) and the Rule 4650 Series requires that only one member report such a transaction to ACT. After considering Mr. Scheurer's Letter and NASD's Response Letter, the Commission believes that the proposed exemption is not inconsistent with the Act because the proposed exemption will apply to a transaction in a TRACE-eligible security only if the transaction in the Nasdaq-listed and Nasdaq-quoted security is already subject to regulatory reporting and public dissemination.

TBMA's Letter focused exclusively on NASD's proposal to clarify the term "TRACE-eligible security'' to include the

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 48926 (December 15, 2003), 68 FR 71207.

[4] *See* e-mail letter from Paul Scheurer to *rule-comments@sec.gov* dated January 12, 2004 ("Mr. Scheurer's Letter'') and letter from Michele C. David, Vice President and Assistant General Counsel, The Bond Market Association ("TBMA''), to Jonathan G. Katz, Secretary, SEC, dated January 16, 2004 ("TBMA's Letter'').

[5] *See* 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, SEC, dated February 13, 2004 ("NASD's Response Letter'').

[6] *See* 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, SEC, dated March 10, 2004 ("NASD's Supplemental Response'').

[7] *See* letter from Michele C. David, Vice President and Assistant General Counsel, The Bond Market Association ("TBMA''), to Jonathan G. Katz, Secretary, SEC, dated March 24, 2004 ("TBMA's Supplemental Letter'').

[8] *See* 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, SEC, dated March 26, 2004 ("NASD's Supplemental Statement'').

[9] 15 U.S.C. 78o–3(b)(6).

[10] 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).

debt securities of all United States and/or foreign private "issuers,'' rather than "corporations.'' TBMA's Letter states that the proposal has the effect of extending TRACE reporting beyond NASD's mandate for the corporate bond market and potentially brings within TRACE securities that were never intended to be included. Further, TBMA stated that rather than clarifying the definition of "TRACE-eligible security,'' the proposal introduces new uncertainty into the definition by possibly bringing within the definition certain types of structured products and asset-backed securities that to date have not been included in the TRACE transaction reporting regime. In addition, TBMA stated that the integration of new financial instruments into TRACE will require significant effort and expenditures by member firms.

NASD's Response Letter stated that 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. NASD states that at the earliest stages of development of the TRACE regulatory and reporting structure, it was understood by market participants and regulators alike that securities that were Fixed Income Pricing Service ("FIPS'')-eligible would become TRACE-eligible securities. NASD states that securities that were reportable to FIPS included capital trust, equipment trust, trust, and limited partnership securities. NASD states that is has identified more than 100 securities that were not issued by a corporation, were routinely reported to FIPS and that, if still traded at the initiation of TRACE, were incorporated in TRACE and subject to TRACE requirements. NASD's Supplemental Response states that presently there is widespread reporting of debt securities issued by entities that are not corporations.

NASD's Response Letter also addressed the concern expressed in TBMA's Letter that the proposed clarification of the definition of "TRACE-eligible security'' would require members to report to TRACE a variety of "structured'' or "asset-backed'' securities that are not currently being reported to the system. NASD responded that under Rule 6210(a), "asset-backed securities'' are specifically excluded from the universe of TRACE-eligible securities and that NASD is not seeking to amend that exclusion with this proposal.

TBMA's Supplemental Letter states that NASD's Response Letter and Supplemental Response Letter do not address their previously stated concerns that the proposal causes confusion and uncertainty and potentially expands the universe of TRACE-reportable securities to include securities which do not expose bondholders to the credit risk of the issuer and were never intended to be included in a corporate bond reporting system.

NASD stated in its Supplemental Statement that 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 form are included in the definition of TRACE-eligible securities. NASD further stated that its interpretation of TRACE eligibility will not change after the adoption of the proposed rule change. Accordingly, the Commission believes the proposal should not cause confusion or require significant effort and expenditures by member firms because NASD is not seeking to change its existing interpretation of TRACE eligibility.

The Commission believes that NASD's clarification of the TRACE rules in this proposed rule change will enable it to implement TRACE more effectively, thus enhancing investor protection by facilitating the availability of TRACE. 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,[11] that the proposed rule change (SR–NASD–2003–182), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7970 Filed 4–7–04; 8:45 am]

BILLING CODE 8010–01–P

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49521; File No. SR–NYSE–2004–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

April 2, 2004.

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 March 24, 2004, the New York Stock Exchange, Inc. ("NYSE'' or "Exchange'') filed with the Securities and Exchange Commission ("SEC'' or "Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE.[3] NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. 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

The proposed rule change consists of an extension, until September 30, 2004, of NYSE Rule 600(g), relating to arbitration.

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

In its filing with the Commission, the Exchange 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. The NYSE 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

The proposed rule change is intended to extend until September 30, 2004, NYSE Rule 600(g), a pilot program that was most recently extended for a six-month period ending March 31, 2004.[6]

NYSE Rule 600(g) states:

This paragraph applies to the Ethics Standards for Neutral Arbitrators in

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

[2] 17 CFR 240.19b–4.

[3] Commission staff made non-substantive changes to the description of the proposed rule change with the permission of the NYSE. Telephone conversations between Daniel Beyda, Vice President—Arbitration and Hearing Board, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, April 1, 2004.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Release No. 34–48552 (September 26, 2003), 68 FR 57496 (October 3, 2003) (SR–NYSE–2003–28).