

Trade Reporting Notice

FINRA Addresses Frequently Asked Questions About TRACE Reporting Issues

Executive Summary

FINRA addresses certain trade reporting issues in connection with reporting transactions in TRACE-eligible securities to the Trade Reporting and Compliance Engine (TRACE) system.

Questions concerning this *Notice* should be directed to:

- ▶ tracefeedback@finra.org;
- ▶ Patrick Geraghty, Director, Market Regulation, at (240) 386-4973;
- ▶ Joseph Schwetz, Assistant Director, Market Regulation, at (240) 386-6170;
- ▶ Elliot Levine, Associate Vice President and Counsel, TRACE, at (202) 728-8405; or
- ▶ Sharon Zackula, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8985.

Discussion

FINRA has received a number of questions from member firms regarding certain TRACE reporting issues, which are addressed in this *Notice*.

- Q1: If a sole underwriter, syndicate manager, syndicate member or selling group member (or in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, an initial purchaser, syndicate manager, syndicate member or selling group member) effects a List or Fixed Offering Price Transaction as defined in FINRA Rule 6710(q), with a counterparty buyer that is a registered broker-dealer (BD), and reports the transaction to TRACE pursuant to FINRA Rule 6730(a)(2), designating the transaction "P1" as provided in FINRA Rule 6730(d)(4)(D) and the Trade Reporting and Compliance Engine User Guide, does the counterparty BD also report the transaction pursuant to FINRA Rule 6730(a)(2) and designate the transaction "P1"?

December 21, 2011

Key Topics

- ▶ List or Fixed Offering Price Transactions
- ▶ Multi-Family Agency Pass-Through Mortgage-Backed Securities Transactions
- ▶ P1/S1 Indicators
- ▶ Small Business Administration Pool Transactions
- ▶ Underwriting
- ▶ Variances

Referenced Rules & Notices

- ▶ FINRA Rule 6710
- ▶ FINRA Rule 6730
- ▶ Securities Act Rule 144A

- A1: Yes. A BD that is a *counterparty buyer* in a List or Fixed Offering Price Transaction must report the transaction in accordance with FINRA Rule 6730(a)(2), which requires reporting no later than the next business day during TRACE System Hours, and designate the transaction as “P1.”
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- Q2: If an underwriter opts to sell at a fixed price an offering that is described in the issuer’s offering documents as a variable price offering, and provides notification to the syndicate, selling group (if applicable) and to other market participants that the offering will be sold at a fixed price, may firms report the transactions as List or Fixed Offering Price Transactions and use the “P1” indicator?
- A2: No. The issuer’s description of the offering in the offering documents is controlling for purposes of reporting to TRACE. Thus, if the issuer’s offering documents state that the offering is a variable price offering, firms may not identify and report the transactions as List or Fixed Offering Price Transactions and may not use the “P1” indicator.
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- Q3: As part of the securitization/issuance process, an originator of Small Business Administration (SBA) pools or Multi-Family Agency Pass-Through Mortgage-Backed Securities traded to be announced (TBA) (Multi-Family MBS TBAs) may include as a condition to a transaction an allowable variance regarding the settlement date or the final total dollar value of the pool(s) to be delivered on settlement date (final delivery amount). However, when the SBA pool transaction or the Multi-Family MBS TBA transaction is executed, the transaction is done at a specific price and/or yield (coupon), which must be reported to TRACE on the date of execution. Subsequently, when the SBA pool(s) or the pool(s) for the Multi-Family MBS TBA are delivered for settlement, if the settlement date or the final delivery amount has changed (or, if the final price is adjusted due to and based upon the change of settlement date or the change in the final delivery amount), and the changes are within the allowable variance to which the parties previously agreed, is a firm required to report the transaction again (*i.e.*, file an amended transaction report)?

- A3: If the originator includes an allowable variance(s) regarding the settlement date or the final delivery amount in good faith as a condition in a transaction in an SBA pool or a Multi-Family MBS TBA (and is not establishing an allowable variance(s) for the purpose of avoiding trade reporting obligations), and there is a change (a variance) at settlement, a firm is not required to file an amended transaction report, as long as the change is within the allowable variance to which the parties previously agreed. For example, when there is a change in the final delivery amount that is within the allowable variance, and the parties adjust the final price to maintain the yield agreed upon on the date of execution, a firm is not required to file an amended transaction report. Also, when there is a change in the settlement date within the allowable variance, and the parties adjust the final price due to the change of the settlement date, a firm is not required to file an amended transaction report. However, if there is a change in the final delivery amount or the settlement date that is not within the allowable variance (and any price adjustments made in connection with a change in the final delivery amount and/or settlement date that is not within the allowable variance), a firm would be required to file an amended transaction report.

Firms must maintain accurate and adequate books and records and relevant written policies and procedures regarding the transactions, including a record of the allowable variances to which the parties agreed for each transaction, to evidence, among other things, that the variances are bona fide and not used to avoid trade reporting obligations or accurate price and volume reporting. FINRA also reminds firms that the original transaction report for the transactions must include all of the firm's transaction-related remuneration.

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- Q4. What is a firm's reporting obligation under TRACE with respect to a counterparty that is a registered BD?
- A4: FINRA reminds firms that they must accurately identify their registered BD counterparties when reporting a transaction to TRACE, using the appropriate MPID to identify the BD. If the counterparty BD uses multiple MPIIDs, the firm required to report the transaction must accurately identify the counterparty BD by the appropriate MPID. Further, if an entity, such as a hedge fund, is also a registered BD, the reporting firm must identify the entity by its MPID in the TRACE transaction report.