

Notice to Members

SEPTEMBER 2004

SUGGESTED ROUTING

Corporate Finance
Legal and Compliance
Operations
Senior Management
Technology
Trading and Market Making
Training

KEY TOPICS

Debt Securities
Dissemination of Transaction Information
Operations
Rule 6200 Series
TRACE Rules
Transaction Reporting

GUIDANCE

Corporate Debt Securities

SEC Approves Amendments to TRACE Rules to Disseminate Transaction Information on All TRACE-Eligible Securities, Modify and Supplement Defined Terms, and Enhance Notification Requirements

Executive Summary

On September 3, 2004, the Securities and Exchange Commission (SEC or Commission) approved amendments to Rule 6250, Rule 6210, and Rule 6260 of the Trade Reporting and Compliance Engine (TRACE) rules, the Rule 6200 Series.¹ The most significant amendments, which are set forth in Rule 6250, effect a fundamental change in the corporate bond markets by requiring that information on *all* transactions in TRACE-eligible securities be disseminated, except those transactions in TRACE-eligible securities that are issued pursuant to Section 4(2) of the Securities Act of 1933 (Securities Act) and purchased or sold pursuant to Rule 144A under the Securities Act (Section 4(2)/Rule 144A TRACE-eligible securities).

In addition, NASD, amended two defined terms, "Investment Grade" and "Non-Investment Grade," and added a new defined term, "Split-rated," in Rule 6210; deleted provisions in Rule 6250 regarding market aggregate and last sale data and the treatment of certain transaction reports; and amended the notification provisions in Rule 6260 to require firms to provide information needed to implement various dissemination schedules. Rule 6250, Rule 6210, and Rule 6260, as amended, are set forth in Attachment A.

The amendments to the TRACE Rules will become effective in two stages (Stage One and Stage Two), on, respectively, October 1, 2004 and February 1, 2005. All of the amendments to Rules 6210 and 6260, and part of the amendments to Rule 6250, will become effective on October 1, 2004, as Stage One. The remainder of the amendments to Rule 6250 will become effective on February 1, 2005, as Stage Two. (A more detailed statement of the effective dates of various provisions of Rule 6250, as amended, is set forth below.)²

Questions/Further Information

Questions concerning this *Notice* should be directed to tracefeedback@nasd.com; Elliot Levine, Chief Counsel, Market Operations, Markets, Services and Information, at 202-728-8405; or Sharon K. Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at 202-728-8985.

Discussion

I. Dissemination of Corporate Bond Transaction Information

Currently, under Rule 6250(a), NASD disseminates transaction information on four categories of TRACE-eligible securities: (1) any Investment Grade TRACE-eligible security having an initial issuance size of \$1 billion or greater; (2) approximately 50 Non-Investment Grade TRACE-eligible securities; (3) any TRACE-eligible security that is Investment Grade, is rated A or higher and has an original issue size of \$100 million or greater, unless downgraded below BBB; and (4) approximately 120 TRACE-eligible securities rated BBB.³ All dissemination required under current Rule 6250(a) is “immediate”; NASD disseminates the transaction information as soon as it is reported to NASD.

Amended Rule 6250 will effect a fundamental change in the corporate bond markets as it is implemented by making publicly available for the first time pricing information on all transactions in publicly traded TRACE-eligible securities. Under Rule 6250, as amended, NASD will disseminate publicly transaction information for secondary market transactions in all TRACE-eligible securities, except transactions in Section 4(2)/Rule 144A TRACE-eligible securities. Pursuant to amended Rule 6250(b)(1), NASD will disseminate information immediately on approximately 99 percent of all transactions in TRACE-eligible securities and 95 percent of the par value traded in such securities.

The amended TRACE dissemination provisions are set forth in Rule 6250(a) through (c). Rule 6250(a) relates solely to delayed dissemination during the new issue aftermarket for TRACE-eligible securities rated BBB or lower. Rule 6250(b) sets forth the dissemination requirements for all other secondary market transactions in TRACE-eligible securities—those occurring in the new issue aftermarket that are not subject to delayed dissemination, and all transactions occurring after the new issue aftermarket, whether subject to immediate or delayed dissemination. Finally, Rule 6250(c) codifies a

staff interpretation that NASD will not disseminate information on transactions in Section 4(2)/Rule 144A TRACE-eligible securities.

The full text of the amendments providing for dissemination of transaction information on all TRACE-eligible securities (except Section 4(2)/Rule 144A TRACE-eligible securities) is set forth in Attachment A. The discussion below highlights, in Section A, *only* those provisions *requiring delayed dissemination*, which will apply to only one percent of all transactions in TRACE-eligible securities, and, in Section B, *the single provision under which NASD will not disseminate transaction information*.

A. Delayed Dissemination Provisions

NASD will disseminate information on the following transactions in TRACE-eligible securities subject to certain delays as set forth below.⁴

- ▶ Transactions in newly issued BBB-rated TRACE-eligible securities that are executed during the first two business days after pricing will be disseminated beginning on the third business day.⁵ (The period of the first two business days after pricing is referred to as the New Issue Aftermarket-2.) Rule 6250(a)(1).
- ▶ Transactions in newly issued TRACE-eligible securities rated BB or lower that are executed during the first ten business days after pricing will be disseminated beginning on the eleventh business day.⁶ (The period of the first ten business days after pricing is referred to as the New Issue Aftermarket-10.) Rule 6250(a)(2).
- ▶ Transactions that are greater than \$1 million (par value) in BB-rated TRACE-eligible securities that trade an average of less than one time per day⁷ will be disseminated two business days from the time of execution.⁸ Rule 6250(b)(2)(A).
- ▶ Transactions that are greater than \$1 million (par value) in TRACE-eligible securities rated B or lower that trade an average of less than one time per day will be disseminated four business days from the time of execution.⁹ Rule 6250(b)(2)(B).

All other TRACE-eligible securities transactions except those in Section 4(2)/Rule 144A TRACE-eligible securities will be disseminated immediately upon receipt of the transaction report.

B. Section 4(2)/Rule 144A TRACE-Eligible Securities

Under amended Rule 6250(c), NASD will not disseminate information on secondary market transactions in Section 4(2)/Rule 144A TRACE-eligible securities. Rule 6250(c) codifies the staff's prior interpretive position that such securities would not be disseminated publicly because the securities transactions are not registered under Section 5 of the Securities Act and the securities cannot be freely traded. (A firm's obligation to report such transactions to TRACE remains in effect.)

II. Investment Grade, Non-Investment Grade, and Split-Rated TRACE-Eligible Securities

Rule 6210(h) currently defines an “Investment Grade” security as a TRACE-eligible security rated by an NRSRO “in one of its four highest generic rating categories.” In addition, under the current TRACE Rules, “split-rated,” although not set forth as a defined term, is interpreted as a security that is classified as Investment Grade by one NRSRO and Non-Investment Grade by a second NRSRO. Rule 6210(i) currently defines “Non-Investment Grade” as a TRACE-eligible security “that is unrated, non-rated, split-rated (where one rating falls below Investment Grade), or otherwise does not meet the definition of Investment Grade” as defined in Rule 6210(h).

NASD amended the terms, “Investment Grade” and “Non-Investment Grade” in, respectively, Rule 6210(h) and Rule 6210(i), and added a new defined term, “split-rated,” as Rule 6210(j) to properly classify a TRACE-eligible security and determine if any of the provisions in amended Rule 6250 that require delayed dissemination apply to such security.

The amendments provide a method to categorize TRACE-eligible securities more specifically than Investment Grade or Non-Investment Grade. This is required when, for example, a security is assigned two Non-Investment Grade ratings, but the Non-Investment Grade ratings are not in the same generic rating category (e.g., a security is rated “Ba” by Moody’s, which is a rating in the fifth-highest generic rating category, and “B” by S&P, which is a rating in the sixth-highest generic rating category).¹⁰

In addition, under Rule 6210(h) and Rule 6210(i) as amended, if a TRACE-eligible security is unrated, for purposes of TRACE, NASD may otherwise classify the security. When TRACE-eligible securities are not rated, NASD will classify such securities as Investment Grade or Non-Investment Grade, then more specifically in a generic rating category for purposes of determining the appropriate TRACE dissemination provision that applies to such securities and for any other provision of TRACE, if applicable. A determination is necessary because the rating (or, otherwise, the classification) of a TRACE-eligible security is a key dissemination criterion under amended Rule 6250. The classification of a TRACE-eligible security is an internal, administrative process of NASD. The staff will classify TRACE-eligible securities as necessary and appropriate and solely for the purpose of administering TRACE.

NASD will classify an unrated TRACE-eligible security by attributing a certain credit quality—*i.e.*, considering the security as if it were assigned ratings reflecting a specific generic rating category—when there is evidence of the issuer’s credit quality available in the bond markets. For example, if an unrated TRACE-eligible security is newly issued and the issuer of the security has other, similar debt securities outstanding that are rated, NASD may classify the unrated TRACE-eligible security by attributing to the security the same credit quality that is indicated by the one or more ratings assigned by the NRSROs to the issuer’s rated, similar debt securities. In most cases, NASD will look to the generic rating(s) that one or more NRSROs assigned to the issuer’s most recently issued and outstanding, similar debt security as the most important factor in determining the classification.

However, there may be instances when a TRACE-eligible security is unrated and there is not sufficient information available to NASD to make a determination, whether the security is newly issued or has been outstanding for some time. In such cases, NASD will classify the TRACE-eligible security as a "Non-Investment Grade" security that is rated B for purposes of dissemination. By treating the TRACE-eligible security as a B-rated security, it will be disseminated according to the most conservative dissemination provisions. NASD believes that this is a reasonable approach because such unrated securities often are considered distressed debt.

See Attachment A for the full text of such changes.

III. Amendments to Rule 6260; Other Amendments

NASD amended the notification provisions in Rule 6260(b) and made other minor technical revisions to Rule 6260. Amended Rule 6260(b) provides NASD the necessary flexibility to obtain information on a timely basis about new TRACE-eligible securities and incorporate such securities into the TRACE System. Under amended Rule 6260(b), NASD may require a firm to provide any information needed, as determined by NASD, to implement the New Issue Aftermarket dissemination criteria in Rule 6250(a)(1) and (2), in addition to the CUSIP and other basic identifying information previously required. NASD anticipates that, in many cases, the information that NASD will request firms to provide will be the date and time that a new TRACE-eligible security is priced and its rating(s). The full text of the amendments is set forth in Attachment A.

NASD also deleted paragraphs (b) through (d) of Rule 6250 relating to the administration, calculation, and dissemination of "market aggregate" and "last sale" data for disseminated securities, and the treatment of TRACE-eligible securities traded after the TRACE System has closed or on a non-business day. NASD will establish policies regarding the calculation and dissemination of "market aggregate" and "last sale" data, which will be published in *Notices to Members* and various other media (e.g., TRACE User's Guide and NASD's Web site).

NASD will continue to treat transactions executed after the TRACE System closes and on weekends and holidays that were described in Rule 6250(c) and (d), in the same manner as set forth in the Rule, provided the treatment is consistent with the delayed dissemination provisions in amended Rule 6250 and continues to meet the needs of the marketplace. Information regarding the treatment of such transactions also will be published by NASD.

Effective Dates

As noted previously, NASD will implement the amendments to the TRACE Rules in two stages. The following amendments to the TRACE Rules will become effective on October 1, 2004, as Stage One.

- ▶ All amendments to Rule 6210
- ▶ All amendments to Rule 6260
- ▶ Certain provisions in amended Rule 6250 listed below:

New Rule 6250(b)(1)(A) and (B)

A portion of new Rule 6250(b)(1)(C)(i)

Amended Rule 6250(b)(1)(C)(i) requires all transactions in TRACE-eligible securities rated BB or lower to be disseminated immediately upon receipt of the report if the size of the transaction is \$1 million or less (par value). All such transactions in a TRACE-eligible security that meet or exceed the frequency standard set forth in Rule 6250(b)(1)(C)(ii) (*i.e.*, the security trades an average of one or more times per day) will be disseminated as of October 1, 2004.¹¹

New Rule 6250(b)(1)(C)(ii)

New Rule 6250(c)

Deletion of paragraphs (a) through (d) of current Rule 6250

The following provisions of amended Rule 6250 will become effective on February 1, 2005, as Stage Two.

- ▶ New Rule 6250(a)(1) and (2)
- ▶ The portion of new Rule 6250(b)(1)(C)(i) not fully implemented in Stage One

The portion of Rule 6250(b)(1)(C)(i) that was not fully implemented—transactions of \$1 million or less (par value) in any TRACE-eligible security described in Rule 6250(b)(1)(C)(i)—that did not meet or exceed the frequency standard in Rule 6250(b)(1)(C)(ii) will be implemented in Stage Two with the dissemination of all such transactions.
- ▶ New Rule 6250(b)(2)

Endnotes

- 1 See Securities Exchange Act Release No. 50317 (September 3, 2004), ___ Fed. Reg. _____ (September __, 2004) (File No. SR-NASD-2004-094).
 - 2 In the SEC's order approving the rule filing, the SEC noted "that the two studies commissioned by the NASD to address the relationship between transparency and liquidity found no conclusive evidence that TRACE transparency has adversely affected liquidity. Accordingly, the Commission expects that, not later than November 1, 2005 (nine months after the effective date of Stage Two), the NASD will submit a proposed rule change eliminating the delays in TRACE information dissemination." Securities Exchange Act Release No. 50317 (September 3, 2004), p. 8.
 - 3 A and BBB are ratings of Standard and Poor's, a division of the McGraw-Hill Companies, Inc. (S&P). S&P is a nationally recognized statistical rating organization (NRSRO). S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purposes, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

For purposes of the TRACE rules, any rating of S&P used means the S&P rating and the equivalent ratings of Moody's Investors Service, Inc. (Moody's), an NRSRO, and any other NRSRO whose ratings may be used for purposes of TRACE. Currently, NASD administers the TRACE provisions based on the ratings of S&P and Moody's. The use of a single rating is for the convenience of readers only.
- The ratings of the NRSRO, Moody's, are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purposes, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.
- 4 The amended TRACE Rules do not allow a member to delay the *reporting* of any transaction. Reports on all TRACE-eligible securities transactions must be filed within 45 minutes of the time of execution. (The period to report such transactions will be reduced, effective October 1, 2004, to 30 minutes, and, effective July 1, 2005, to 15 minutes.)
 - 5 Under Rule 6250(a)(1), when such transaction information is disseminated on the third business day, it will be disseminated in the order of the date and time of execution.
 - 6 Similarly, under Rule 6250(a)(2), the previously withheld transaction information will be disseminated in the order of the date and time of execution.
 - 7 To calculate the average daily trading of a security, which is required to administer Rule 6250(b)(1)(C) and (b)(2), NASD, where applicable, will review a security's trading during its New Issue Aftermarket-10 to determine the appropriate dissemination protocol. That dissemination protocol will remain in effect for the security until the next established calculation timeframe occurs. That calculation timeframe will be based on the trading activity during the last 20 business days of a 90-day period determined by NASD (20/90 period). Unlike a New Issue Aftermarket-10, where the timing is specific to the security, the 20/90 period will be established quarterly and will apply to all Non-Investment Grade TRACE-eligible securities.

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- 8 For example, if a transaction meeting the three criteria (*i.e.*, the transaction is greater than \$1 million (par value), the subject security is BB-rated, and such security trades an average of less than one time per day) is executed on Monday, November 15, 2004, at 10:00 a.m. Eastern Time, the transaction will be disseminated on Wednesday, November 17, 2004, at approximately 10:01 a.m. Eastern Time.
- 9 For example, if a transaction in such a security is executed on Monday, November 15, 2004, at 10:30 a.m. Eastern Time, the transaction will be disseminated on Friday, November 19, 2004, at approximately 10:31 a.m. Eastern Time.
- 10 As noted above, NASD currently administers the TRACE dissemination provisions based on the ratings of two NRSROs, S&P and Moody's. The amendments to Rule 6210(h) and Rule 6210(i) and new Rule 6210(j) were drafted to allow NASD to consider additional NRSRO rating information, if appropriate. NASD is also incorporating the ratings of Fitch Inc. (Fitch) into the TRACE System, which also will be used to administer TRACE beginning in Stage Two.
- 11 Rule 6250(b)(1)(C)(i) provides for the immediate dissemination of transactions in TRACE-eligible securities that are rated BB or lower and are executed other than during the New Issue Aftermarket-10, if the size of the transaction is \$1 million or less. NASD will partially implement this provision in Stage One. In Stage One, NASD will disseminate immediately such transactions in *any security* for which the larger transactions (*i.e.*, "\$1 million plus" transactions) are also disseminated in Stage One (*i.e.*, securities that are traded an average of one or more times per day, as more fully set forth in Rule 6250(b)(1)(C)(ii)). Securities transactions described in Rule 6250(b)(1)(C)(i) that would otherwise be subject to immediate dissemination, but occur in a security that is traded an average of less than one time per day and in which "\$1 million plus" transactions are subject to dissemination delays under Rule 6250(b)(2)(A) or Rule 6250(b)(2)(B), will be disseminated in Stage Two, when delayed dissemination has been implemented and all transactions in the security will be disseminated. For example, XYZ Security is rated BB and trades an average of less than one time per day. Under Rule 6250(b)(1)(C)(i), a transaction in XYZ Security for \$100,000 would be disseminated immediately if not for the above approach to implementation, but a \$2 million transaction on the same day in XYZ Security would not be disseminated at any time during Stage One. NASD will withhold dissemination of the \$100,000 XYZ transaction during Stage One because it believes that all market participants will be best served and get a more complete and accurate indication of price when, in a particular security, transactions of all sizes are subject to an operative TRACE dissemination requirement

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Rule 6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

Rule 6210. Definitions

(a) through (g) No Change

(h) The term "Investment Grade" shall mean a TRACE-eligible security that, if rated by only one nationally recognized statistical rating organization ("NRSRO"), is rated in one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated in one of the four highest generic rating categories by all or a majority of such NRSROs; provided that if the NRSROs assign ratings that are evenly divided between (i) the four highest generic ratings and (ii) ratings lower than the four highest generic ratings, NASD will classify the TRACE-eligible security as Non-Investment Grade for purposes of TRACE. If a TRACE-eligible security is unrated, for purposes of TRACE, NASD may otherwise classify the TRACE-eligible security as an Investment Grade security and further classify it as being in one of the four highest generic rating categories.[any TRACE-eligible security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.]

(i) The term "Non-Investment Grade" shall mean a TRACE-eligible security that, if rated by only one NRSRO, is rated lower than one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by all or a majority of such NRSROs. If a TRACE-eligible security is unrated, for purposes of TRACE, NASD may otherwise classify the TRACE-eligible security as a Non-Investment Grade security and further classify it as being in one of the generic rating categories below the four highest such categories. If NASD does not have sufficient information to make a judgment regarding the classification of an unrated TRACE-eligible security, for purposes of TRACE, NASD will classify the TRACE-eligible security as having been rated B (or the equivalent rating of one or more NRSROs).! [any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below Investment Grade), or otherwise does not meet the definition of Investment Grade in paragraph (h) above.]

1 "B" is a rating of Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"). S&P is a nationally recognized statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

(j) The term, "split-rated," shall mean an Investment Grade or a Non-Investment Grade security that is assigned ratings by multiple NRSROs that, for an Investment Grade security, are not in the same generic Investment Grade rating category, or, for a Non-Investment Grade security, are not in the same generic Non-Investment Grade rating category. After determining if a security is Investment Grade or Non-Investment Grade, NASD will disregard any rating, if the security is Investment Grade, that is Non-Investment Grade, or, if the security is Non-Investment Grade, that is Investment Grade. With respect to an Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Investment Grade rating category, or, with respect to a Non-Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Non-Investment Grade rating category, NASD will classify the TRACE-eligible security for purposes of TRACE by the generic rating that a majority or, if no majority, a plurality of the NRSROs assigns the security, provided that (i) if the NRSROs assign ratings that are evenly divided between two generic rating categories, NASD will classify the TRACE-eligible security for purposes of TRACE by the lower of the ratings; or (ii) if each NRSRO assigns a different generic rating, NASD will classify the TRACE-eligible security for purposes of TRACE by the lower or lowest of the ratings.

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6250. Dissemination of [Corporate Bond Trade]Transaction Information

(a) Dissemination of New Issue Aftermarket Transactions

(1) Transaction information for TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BBB (or the equivalent rating of one or more NRSROs) executed during the period beginning the day a newly issued security is priced and lasting two business days ("New Issue Aftermarket-2") will not be disseminated during the New Issue Aftermarket-2. NASD will disseminate transaction information for transactions executed during the New Issue Aftermarket-2 starting on the next (third) business day, according to dissemination protocols established by NASD.

(2) Transaction information for TRACE-eligible securities rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed during the period beginning the day a newly issued security is priced and lasting 10 business days ("New Issue Aftermarket-10") will not be disseminated during the New Issue Aftermarket-10. NASD will disseminate transaction information for transactions executed during the New Issue Aftermarket-10 starting on the next (eleventh) business day, according to dissemination protocols established by NASD.

(b) Dissemination of Secondary Market Transactions

(1) Immediate Dissemination. NASD will disseminate transaction information immediately upon receipt of a transaction report, if the report is for a transaction:

(A) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE above BBB (or the equivalent rating of one or more NRSROs); or

(B) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BBB (or the equivalent rating of one or more NRSROs) executed other than during the New Issue Aftermarket-2; or,

(C) In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed other than during the New Issue Aftermarket-10 if:

(i) the size of the transaction is \$1 million or less (par value); or

(ii) the size of the transaction is greater than \$1 million (par value), and the TRACE-eligible security is traded (a) an average of one or more times per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of one or more times per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to immediate dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (C)(ii)(b), in which case it shall be subject to a two- or four-business day delayed dissemination, as applicable.

(2) Two- or Four-Business-Day Delayed Dissemination. For transactions in a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) or lower executed other than during the New Issue Aftermarket-10, NASD will disseminate transaction information on a two- or four-business-day delayed basis from the time of execution as follows:

(A) Two-Business-Day Delay. In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as BB (or the equivalent rating of one or more NRSROs) if:

(i) the size of the transaction is greater than \$1 million (par value); and

(ii) the security is traded (a) an average of less than one time per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of less than one time per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to a two-business day delayed dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (A)(ii)(b), in which case it shall be subject to immediate dissemination.

(B) Four-Business-Day Delay. In a TRACE-eligible security rated by an NRSRO or classified by NASD for purposes of TRACE as B (or the equivalent rating of one or more NRSROs) or lower if:

(i) the size of the transaction is greater than \$1 million (par value) and;

(ii) the security is traded (a) an average of less than one time per day, during the New Issue Aftermarket-10; and (b) thereafter, an average of less than one time per day over the last 20 business days of a 90-day period determined each quarter by NASD. Such security shall remain subject to a four-business day delayed dissemination until such 90-day period in which the security fails to meet the condition set forth in this subparagraph (B)(ii)(b), in which case it shall be subject to immediate dissemination.

(c) **Rule 144A**

NASD will not disseminate information on a transaction in a TRACE-eligible security that is issued pursuant to Section 4(2) of the Securities Act of 1933 and resold pursuant to Rule 144A under the Securities Act of 1933.

(a) **General Dissemination Standard**

Immediately upon receipt of transaction reports received at or after 8:00 a.m. through 6:29:59 p.m. Eastern Time, NASD will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. Eastern Time) in the securities described below.

(1) A TRACE-eligible security that is Investment Grade at the time of receipt of the transaction report and has an initial issuance size of \$1 billion or greater.

(2) A TRACE-eligible security that is Non-Investment Grade at the time of receipt of the transaction report and is designated by NASD for dissemination according to the following criteria.

(A) The staff of NASD will designate fifty of the most actively traded Non-Investment Grade securities that are TRACE-eligible securities for dissemination under this rule, based on (i) the security's volume; (ii) the security's price; (iii) the security's name recognition; (iv) the research following of the security; (v) the security having a minimum number of bonds outstanding; (vi) the security being traded routinely by at least two dealers; and (vii) the security contributing to a representation of diverse industry groups in the group of securities designated for dissemination.

(B) A Non-Investment Grade security will not be designated, and may be immediately withdrawn from designation, for dissemination under this rule if the security: (i) has matured; (ii) has been called; (iii) has been upgraded to Investment Grade; or (iv) has been downgraded to an extent that the security's trading characteristics do not warrant designation for dissemination.

(3) A TRACE-eligible security that is Investment Grade, is rated by Moody's Investors Service, Inc. as "A3"¹ or higher, and by Standard & Poor's, a division of McGraw Hill Co., Inc., as "A-"² or higher, and has an original issue size of \$100 million or greater. If a security is rated under this provision to qualify for dissemination at any time on or after the effective date of the rule, dissemination of transaction information on the security will continue under this paragraph unless the security is downgraded below "Baa3/BBB-."

(4) Ninety to 120 TRACE-eligible securities designated by NASD that are rated "Baa/BBB" at the time of designation, according to the following standards.

(A) Three groups, each composed of up to 50 TRACE-eligible securities (Group 1, Group 2, and Group 3), but collectively not exceeding 120, shall be designated by NASD. At the time of designation, each TRACE-eligible security in Group 1 must be rated "Baa1/BBB+" and each TRACE-eligible security in Group 2 and Group 3, must be rated, respectively, "Baa2/BBB" and "Baa3/BBB-." If a TRACE-eligible security is rated one of the "Baa" ratings by Moody's and one of the "BBB" ratings by S&P and the ratings indicate two different levels of credit quality, the lower of the two ratings will be used to determine the group to which a debt security will be assigned under this paragraph (a)(4).

(B) A TRACE-eligible security that has a rating from only one rating agency will not be designated under paragraph (a)(4).

(C) Dissemination of transaction information on a TRACE-eligible security that is designated under paragraph (a)(4) will not be discontinued if one rating is, or both ratings, are downgraded or upgraded.]

[(b) Transactions Excluded From Market Aggregate, Last Sale

All trade reports in TRACE-eligible securities that are approved for dissemination and submitted to TRACE at or after 8:00 a.m. Eastern Time and prior to 5:15 p.m. Eastern Time will be included in the calculation of market aggregates and last sale except:

(1) trades reported on an "as of" basis;

[1] Moody's Investors Service, Inc. ("Moody's") is a nationally recognized statistical rating organization. Moody's is a registered trademark of Moody's Investors Service. Moody's ratings are proprietary to Moody's and are protected by copyright and other intellectual property laws. Moody's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.]

[2] Standard & Poor's, a division of the McGraw-Hill Companies, Inc. ("S&P"), is a nationally recognized statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to NASD. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.]

- (2) "when issued" trades executed on a yield basis;
- (3) trades in baby bonds with a par value of less than \$1,000;
- (4) trades in which the price is determined by a weighted average price; and
- (5) trades in which the price is a "special price," as indicated by the use of the special price modifier.]

[(c) Dissemination of Certain Trades Executed on A Business Day

(1) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time, and are reported pursuant to Rule 6230(a)(2) on the next business day and designated "as/of" will be disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt. The reported information will not be included in the calculation of the day's market aggregates.

(2) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time, and are reported pursuant to Rule 6230(a)(3) on the same day beginning at 8:00 a.m. Eastern Time will be disseminated upon receipt. The reported information will be included in the calculation of the day's market aggregates, except as otherwise provided in Rule 6250(b)(1) through (5).]

[(d) Dissemination of Trades Executed on Non-Business Days

Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a non-business day at any time during the day, and are reported pursuant to Rule 6230(a)(4) on the next business day will be disseminated upon receipt. The reported information will not be included in the calculation of the day's market aggregates.]

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Rule 6260. Managing Underwriter or Group of Underwriters Obligation To Obtain CUSIP and Provide Notice

(a) Members Required to Provide Information and Notice

(1) In order to facilitate trade reporting and dissemination of secondary transactions in TRACE-eligible securities, the member that is the managing underwriter or the members that are the group of underwriters of a distribution or offering, excluding a secondary distribution or offering, of a debt security that, upon issuance will be a TRACE-eligible security ("new issue"),[of any newly issued TRACE-eligible security] must obtain and provide information [by email or facsimile]to the TRACE Operations Center as required below.[under paragraph (b).] If a managing underwriter is not appointed, the group of underwriters must provide the information required under this rule.[comply with paragraph (b).]

(2) The information must be provided by facsimile or e-mail.

(b) Notices

For such [TRACE-eligible securities]new issues, the managing underwriter or group of underwriters must provide to the TRACE Operations Center[, by email or facsimile]: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; (6) a brief description of the issue (e.g., senior subordinated note, senior note); and, (7) information, as determined by NASD, [that is required to determine]to implement the provisions of Rule 6250(a) and such other information NASD deems necessary to properly implement the reporting and dissemination of a TRACE-eligible security[if a TRACE-eligible security must be disseminated under Rule 6250 (e.g., size of issue and rating)], or if any of items (2) through (7) has not been determined, such other information as NASD deems necessary. The managing underwriter or group of underwriters must obtain the CUSIP number and provide it and the information listed as (2) through (7) not later than 5:00 p.m. Eastern Time 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 a managing underwriter or group of underwriters, or the issuer and the managing underwriter or group of underwriters 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 Section 4(2) and Rule 144A of the Securities Act of 1933, the managing underwriter or group of underwriters shall provide the information not later than 5:00 p.m. Eastern Time 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. Eastern Time, the managing underwriter or group of underwriters shall provide the information not later than 5:00 p.m. Eastern Time on the next business day. The managing underwriter or group of underwriters must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.