

Notice to Members

MAY 2004

SUGGESTED ROUTING

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

KEY TOPICS

Debt Securities
Operations
Rule 6200 Series
TRACE Rules
Transaction Reporting

GUIDANCE

Corporate Debt Securities

SEC Approves Amendments to Clarify the Term “TRACE-Eligible Security” and to Expand the Scope of an Exemption from TRACE Reporting Requirements;
Effective Date: June 17, 2004

Executive Summary

On April 2, 2004, the Securities and Exchange Commission (SEC or Commission) approved amendments to Rules 6210 and 6230 of the Trade Reporting and Compliance Engine (TRACE) rules, the Rule 6200 Series.¹ The amendments clarify certain terms used in the definition, “TRACE-eligible security,” and 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). Rules 6210 and 6230, as amended, are set forth in Attachment A.

The amendments to Rules 6210 and 6230 will become effective on June 17, 2004.

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

The SEC has approved amendments to clarify certain terms used in the definition of “TRACE-eligible security,” set forth in Rule 6210(a), and to expand the trade reporting exemption set forth in Rule 6230(e)(2) to include additional types of NASDAQ-listed and-quoted TRACE-eligible securities.

TRACE-Eligible Security

The amendments to the defined term, “TRACE-eligible security,” in Rule 6210(a), serve to clarify the intended scope of the term. First, the amendments replace the phrase “registered with the Securities and Exchange Commission” with “registered under the Securities Act of 1933,” to more accurately describe registered securities.

Second, the amendments clarify that TRACE-eligible securities include the debt securities of all U.S. and foreign private issuers, regardless of the business model used by the issuer. Currently, the term “TRACE-eligible security” includes within its scope, among other things, “...debt securities that are...issued by United States and/or foreign private *corporations* (emphasis added).” As amended, the term will include “...debt securities that are...issued by United States and/or foreign private *issuers* (emphasis added).” This amendment makes clear that, although most private issuers of securities are organized as corporations, the debt securities of issuers that use forms of business organizations other than the corporate form are TRACE-eligible securities, provided that the other conditions set forth in Rule 6210(a) are met. The clarification does not require members to report transactions in any of the classes of securities that currently are excluded from the definition of “TRACE-eligible security.”

Trade Reporting Exemption for NASDAQ-Listed Debt Securities

NASD has amended the trade reporting exemption in Rule 6230(e)(2) that is applicable to certain transactions in debt securities that are listed on NASDAQ.² Currently, Rule 6230(e)(2) provides that a transaction in a TRACE-eligible security is exempt from reporting if the transaction is in a convertible debt security that is listed and quoted on NASDAQ, the transaction is reported to NASDAQ, and the transaction information is publicly disseminated. As amended, Rule 6230(e)(2) exempts 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 information is publicly disseminated).³ NASD has also made conforming changes to the defined term, “reportable TRACE transactions,” in Rule 6210(c).

Endnotes

- 1 See Securities Exchange Act Release No. 49522 (April 1, 2004), 69 Fed. Reg. 18660 (April 8, 2004) (File No. SR-NASD-2003-182).
- 2 Currently, these TRACE-eligible securities are a very small class of convertible debt securities.
- 3 Rule 6230(e)(2) also exempts from reporting those transactions in TRACE-eligible securities that are listed on a national securities exchange, when the transactions are executed on and reported to the exchange, and the transaction information is publicly disseminated.

©2004. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

ATTACHMENT A

Text of Rule Change

New language is underlined and deletions are in brackets.

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in NASD's By-Laws and Rules unless otherwise specified.

(a) The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private issuers[corporations]; and: (1) registered under the Securities Act of 1933[with the Securities and Exchange Commission] or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased and sold pursuant to Rule 144A of the Securities Act of 1933. The term "TRACE-eligible security" excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule 6200 Series, the term "money market instrument" means a debt security that at issuance has a maturity of one year or less.

(b) No Change.

(c) The term "reportable TRACE transaction" shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the

transaction information is disseminated publicly, or transactions in [convertible debt]TRACE-eligible securities that are listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.

(d) through (i) No Change.

* * * * *

6230. Transaction Reporting

(a) through (d) No Change.

(e) Transactions [Not Required To Be Reported]Exempt From Reporting

The following types of transactions shall not be reported:

- (1) Transactions that are part of a primary distribution by an issuer.[:]
- (2) Transactions in TRACE-eligible securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and transactions in [convertible debt]TRACE-eligible securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.[:; and]

(3) No Change.

(f) No Change.