

Notice to Members

AUGUST 2003

SUGGESTED ROUTING

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

KEY TOPICS

Underwriting
Debt Securities
Operations
Rule 6200 Series
Transaction Reporting

INFORMATIONAL

Corporate Debt Securities

SEC Approves Amendments to TRACE Rule 6260 to Require New Issue Notifications to Include Dissemination Eligibility Information and Be Submitted in Writing

Executive Summary

On August 8, 2003, the Securities and Exchange Commission (SEC or Commission) approved amendments to Rule 6260 of the Trade Reporting and Compliance Engine (TRACE) Rules, the Rule 6200 Series.¹ The amendments to Rule 6260 require that a managing underwriter, or, if there is no managing underwriter, the group of underwriters, of an initial offering of a TRACE-eligible security provide information that will aid NASD in determining if the new issue will be subject to dissemination when the managing underwriter or other underwriter submits the notification of the new issue to NASD (new issue notification). The specific additional information required will vary according to the dissemination requirements in Rule 6250. The amendments also require that the new issue notification be submitted in writing. Rule 6260, as amended, is set forth in Attachment A.

The amendments to Rule 6260 will become effective on August 25, 2003.

Questions/Further Information

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

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Background and Discussion

Currently, Rule 6260(b) requires a member that is the managing underwriter, or if there is no managing underwriter, the group of underwriters (hereinafter, “managing underwriter” refers to any underwriter responsible for complying with Rule 6260), of any newly issued TRACE-eligible security to submit a new issue notification to NASD. The new issue notification must contain basic descriptive information about the new TRACE-eligible security. Specifically, the Rule requires that the new issue notification contain: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; and (6) a brief description of the issue.

Rule 6260(b), as amended, requires a managing underwriter to provide to the TRACE Operations Center additional information, as determined by NASD staff, that is required to determine if the new TRACE-eligible security is subject to dissemination under Rule 6250, in addition to the six items of information specified above. The purpose of the new requirement is to provide NASD staff relevant information that will allow NASD staff to quickly and accurately determine if a newly issued TRACE-eligible security is subject to dissemination. The amendments are necessary because NASD, with the support of industry members, has developed a variety of criteria, which must be reviewed, in order to determine if a new TRACE-eligible security is subject to dissemination.

The dissemination criteria for TRACE-eligible securities are set forth in Rule 6250(a)(1) through (a)(4). For example, in paragraph (a)(1), securities that are Investment Grade² at the time of receipt of the transaction report and have an initial issuance size of \$1 billion or greater are subject to dissemination. Also, in paragraph (a)(3), securities that are Investment Grade and rated by Moody’s Investors Service, Inc.³ as “A3” or higher and by Standard & Poor’s, a division of McGraw Hill Co., Inc.,⁴ as “A-” or higher and have an original issuance size of \$100 million or greater are subject to dissemination. Accordingly, in many but not all cases, the additional information that NASD staff will require to determine if the newly issued security is subject to dissemination will be the rating(s) of the security and the original issue size of the offering. If, in a particular instance, NASD staff determines that other additional information is needed to quickly and accurately determine if the new TRACE-eligible security is subject to dissemination, NASD staff will require the managing underwriter to provide such information.

In the future, Rule 6250 may be amended to add additional factors that must be considered by staff in order to determine if a newly issued TRACE-eligible security is required to be disseminated. If Rule 6250 were so amended, under Rule 6260(b), NASD staff would require managing underwriters to provide any additional type of information relating to those factors that would be needed by NASD staff in order to quickly and accurately determine if newly issued TRACE-eligible securities are subject to dissemination. NASD would inform all members of the changes in the new issue notification information requirements in a *Notice to Members* and through other media.

Members are reminded that any additional information required must be provided within the time frames set forth in Rule 6260(b).

Provide Written New Issue Notification

Rule 6260, as amended, requires the member that is submitting the new issue notification to provide the information in writing. The written notification may be in the form of an e-mail or facsimile transmission.

Effective Date

The amendments to Rule 6260 will become effective on August 25, 2003.

Endnotes

- 1 See Securities Exchange Act Release No. 48305 (August 8, 2003), 68 F.R. 48656 (August 14, 2003) (File No. SR-NASD-2003-99).
- 2 The term "Investment Grade" is defined in Rule 6210(h).
- 3 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.
- 4 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.

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ATTACHMENT A

New text is underlined, and deleted text is bracketed.

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6260. Managing Underwriter Obligation To Obtain CUSIP

(a) In order to facilitate trade reporting and dissemination of secondary transactions in TRACE-eligible securities, the member that is the managing underwriter of any newly issued TRACE-eligible security must obtain and provide information by email or facsimile to the TRACE Operations Center as required under paragraph (b). If a managing underwriter is not appointed, the group of underwriters must comply with paragraph (b).

(b) For such TRACE-eligible securities, the managing underwriter 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; [and](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 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)[(6)] has not been determined, such other information as NASD deems necessary. The managing underwriter must obtain the CUSIP number and provide it and the information listed as (2) through (7)[(6)] not later than 5:00 p.m. 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 the issuer and the managing underwriter 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 Rule 144A of the Securities Act of 1933, the managing underwriter shall provide the information not later than 5:00 p.m. 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., the managing underwriter shall provide the information not later than 5:00 p.m. on the next business day. The managing underwriter must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.