

Notice to Members

NOVEMBER 2002

SUGGESTED ROUTING

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

KEY TOPICS

Debt Securities
Dissemination
Operations
Rule 6200 Series
Transaction Reporting

INFORMATIONAL

Corporate Debt Securities Transactions Subject to Reporting and Dissemination

NASD Issues Interpretive Guidance to the Trade
Reporting and Compliance Engine Rules (TRACE Rules)

Executive Summary

NASD requires members to report corporate debt securities transactions to NASD and subjects transaction information of certain categories of securities to dissemination pursuant to the Trade Reporting and Compliance Engine (TRACE) rules (TRACE Rules). On June 28, 2002, the Securities and Exchange Commission (SEC) approved amendments to the TRACE Rules (the Rule 6200 Series).¹ On July 1, reporting and dissemination under TRACE began and the TRACE Rules, as amended on June 28, 2002, became effective.² In this *Notice to Members (NtM)*, NASD addresses a number of interpretive issues that have arisen since TRACE began. In addition, the revised TRACE Rules are set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to tracefeedback@nasd.com.

Interpretive Matters: Questions and Answers

The following interpretive Questions and Answers address a variety of interpretive issues that have arisen since the TRACE Rules took effect. They also respond to specific questions NASD has received since TRACE began. The staff will continue to address open interpretive issues under the TRACE Rules in subsequent *NtMs*.

02-76

1. **How much time does a member have to resubmit a trade report that was rejected?**

NASD staff understands that in the initial phase of TRACE reporting, there may be incidences of trade reports being rejected by the TRACE System while members become familiar with TRACE reporting requirements and systems.³ The staff also understands that certain members are relying on technology that reports transactions to and receives verification of accepted reports back from TRACE via a “batch” process. This “batch” process may add time to the identification and correction of trade reports initially rejected by the TRACE System. Therefore, initially, the staff expects that members will correct and resubmit rejected trade reports that are “high priority reports,” as defined below, as soon as practicable but not later than 2½ hours after execution. For “low priority reports,” as defined below, the staff expects that members will correct and resubmit rejected reports as soon as practicable, but not later than the end of the reporting day on the day of execution (or the first business day following the day of execution, if the transaction occurs on a non-business day).

High and Low Priority Reports. If a report details a transaction in a debt security that is listed in TRACE Rule 6250(a) as eligible for dissemination, the report is a “high priority report.” Currently, only certain very large issues of Investment Grade⁴ securities, and approximately 50 Non-Investment Grade securities⁵ are listed in Rule 6250(a).⁶ If a report concerns a transaction in a debt security that is not subject to dissemination under Rule 6250(a), the report is a “low priority report.”

Regardless of the reporting mechanism used by the member (e.g., batch submission, Computer-to-Computer Interface (CTCI), Web browser, or third party intermediary reporting systems), any rejected trade reports should be

corrected and resubmitted to TRACE as soon as possible by the reporting member. NASD will be monitoring members’ reporting to ensure that members have procedures in place that are reasonably designed to ensure that rejected trade reports are identified, corrected, and resubmitted in a timely manner. Patterns and practices of late submissions due to rejections may be considered a violation of the TRACE Rules and Rule 2110.

2. **Do the clock synchronization rules that apply in OATS apply to TRACE?**

Yes. Under NASD Rule 6953, “Synchronization of Member Business Clocks,” all members with an obligation under any NASD rule to record the date and time of any event (such as the time of execution of a transaction under TRACE Rule 6210(d) and Rule 6230(c)) must synchronize their business clocks, including computer system clocks and mechanical clocks. The clock synchronization requirements apply to all members with a time-reporting obligation under any NASD Rule, and therefore apply to all members in reporting under the TRACE Rules. For more information about clock synchronization requirements and frequently asked questions, refer to “The NASD Provides Guidance On OATS Clock Synchronization,” RCA (December 1998), http://www.nasdr.com/3050_9812.htm.

3. **How does a member report the date and time of execution of a transaction executed on a weekend or a holiday?**

The TRACE Rules recognize that transactions in TRACE-eligible securities may occur at any time. In Rule 6230(a)(1)-(4), NASD established specific reporting periods. In Rule 6230(a)(4), NASD describes how to report when a transaction is executed during a weekend or on a holiday. Initially,

the TRACE System is not able to recognize, and will reject, a transaction report that includes a calendar date that is a Saturday, Sunday, or a federal or religious holiday on which the TRACE System is closed. In addition, the TRACE System will reject a date in the "as/of" field for the same reason. Therefore, the actual date of transactions that are executed on a non-business day cannot be captured electronically at this time. Until the TRACE System is revised, Rule 6230(a)(4) requires members to report transactions that are executed on a non-business day as follows. A member must report the transaction on the first business day following the actual date of the transaction within one hour and fifteen minutes of the opening of the TRACE System. The transaction date must be reported as the first business day after which the transaction occurred (the same day of the report). The time of execution must be reported as "00:01:00" (military time for 12:01:00 a.m., Eastern Time). This will distinguish the limited number of weekend and holiday transactions from transactions actually occurring on the business day. The modifier, "special price," must be selected. In addition, when the reporting method chosen provides a "special price memo" field, the member must enter the actual date and time that the transaction occurred.⁷

4. If a member executes a transaction overseas, what time (and day) should the member use to report?

Time of execution must be reported in military time based on Eastern Time (e.g., a transaction that occurs at 3:30:30 p.m., Eastern Time would be reported as "15:30:30"). Since the TRACE System is based upon Eastern Time, all trade reports must be submitted based on the time the transaction occurred, converted to Eastern Time, even if the local date and time of the

reporting party and other parties to the transaction are not Eastern Time.⁸

5. How should a member report a transaction when the market and the TRACE System close early and a transaction is executed after the market closes?

When NASD announces an early market closing (or follows the early market closing announced by another self-regulatory organization), transactions that occur after the TRACE System closes on that business day should be reported according to Rule 6230(a)(2), which describes how to report "after system hours" for transactions that occur on a business day. Thus, the transaction report will include the day of execution (using the as/of feature) and the actual time of execution. The report must be filed within one hour and 15 minutes on the next business day that the TRACE System is open. For example, if NASD announces that the TRACE System will be open from 8:00 a.m. to 2:00 p.m., and that day a member executes a trade between 2:00 p.m. and 6:29:59 p.m., Eastern Time (e.g., 2:45 p.m., Eastern Time), the member will correctly and timely report the transaction if the member reports it the next TRACE business day, within one hour and 15 minutes after the TRACE System opens, reporting the transaction "as/of (month/day/year)," with time of execution (e.g., 14:45:00 p.m., Eastern Time).

6. Has NASD staff identified specific instances, other than those identified in Rule 6230(c)(13), when yield is not required to be reported?

Yield is a required element in reporting a debt securities transaction. However, paragraph (c)(13) of Rule 6230 sets forth specific exceptions from the requirement. In addition, the rule provides that yield is not

required to be reported “where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that NASD designates if NASD determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.”

NASD does not believe it is possible to identify, before each occurrence, all the instances in which it is not appropriate or useful to report yield. Instead, NASD has clarified that in those instances where the reported yield would provide inaccurate or misleading information concerning the price of, or trading in, the security, NASD will designate additional types or specific securities where yield is not required to be reported.

Security In Default. Under one of the exceptions in Rule 6230(c)(13), a member is not required to report yield for a transaction in a security in default. Members have asked how default is interpreted under the Rule, or when it occurs. Under Rule 6230(c)(13), when market participants have begun to trade a bond “flat” in anticipation of a formal announcement (e.g., of a default, a bankruptcy, a filing seeking reorganization under Chapter XI, 11 U.S.C. §§1101 et seq. (2002), or any other official announcement that the company will not meet its financial obligations), but the official announcement has not occurred, a broker/dealer must indicate in its report that it is trading the bond “flat” using the “special price” indicator and, if available, the “special price memo” field. In such cases, yield is not required to be reported. When a formal announcement, made on behalf of and authorized by the issuer, has been disseminated in the market, yield is not

required to be reported, *and* the special price indicator and the “special price memo” field would not be used.

7. May a member report a yield on which the security is priced and sold, rather than the lower of yield to maturity or yield to call under Rule 6230(c)(13)?

As modified, a member must report the lower of yield to call or yield to maturity under Rule 6230(c)(13). A member may not report yield that is calculated on a basis other than yield to call or yield to maturity. Thus, even if a member sells or buys a security at a yield other than the yield to call or yield to maturity, the member is required to report the transaction with the yield calculated using the applicable standard(s), so that yield in different transactions may be meaningfully compared.

8. Which of the modifiers has priority over other modifiers described in Rule 6230(d)(4)?

If the price of a transaction is determined using a weighted average price method, a member must indicate this with the modifier “.w.” The member is required to select the modifier “.w” and may not select the “special price” modifier. In addition, the weighted average price modifier, “.w,” has priority over modifiers used to indicate settlement other than “regular way.” If the weighted average price modifier, “.w,” and one of the settlement term modifiers are applicable to the transaction, “.w” must be selected when reporting the transaction. Rule 6230(d)(4)(C). (Modifiers indicating special terms of settlement are set forth in Rule 6230(d)(4)(B).)

9. Has NASD identified instances where the “special price” modifier must be used in a transaction report?

Under Rule 6230(c)(4)(A), a member must indicate that certain transactions have been executed at a “special price.” In addition, the reporting party must explain in the “special price memo” field, when available, why the transaction was executed at other than a current market price.

The special price modifier should be used, for example, when a TRACE-eligible security is traded in the current market with a due bill or warrant attached, with the price reflecting the special conditions of the trade. In addition, when market participants perceive that an issuer is about to go into default on a security and begin trading a security “flat” before a formal announcement, the “special price” modifier should be used. (See Q. & A. No. 6. above.) Finally, there may be instances where a transaction done pursuant to an issuer’s plan to repurchase some or all of its outstanding debt (“issuer open market repurchases”) would require using the “special price” modifier. (See Q. & A. No. 13. below.)

10. Are there instances when the special price modifier should not be used?

Yes. The “special price” modifier should not be used when the transaction is priced by using a “weighted average price.” “Weighted average price” is indicated using the “weighted average price” modifier, “.w,” and should be used instead of the more general modifier, “special price.”

11. How does a member determine “time of execution” as required under Rule 6210(d) when a security is priced based on a yield of another security and that yield is not available at the time the parties decide to engage in a transaction?

NASD amended Rule 6210(d) to clarify the term, “time of execution,” when the yield in a transaction in a TRACE-eligible security will be established by determining the yield of a “benchmark” security. Under Rule 6210(d), “time of execution” means “the time when the parties to the transaction agree to all the terms of the transaction that are sufficient to calculate the dollar price of the trade.” When a benchmark security is a reference for determining yield, the time of execution is deemed to occur when the parties to the transaction may identify and agree upon the yield for the security. For example, if the parties agree to determine the specific yield of Security A based upon a spread that is 150 points “off” (above) or “through” (below) the yield of a comparable U.S. Treasury security, and agree to measure the yield of the comparable U.S. Treasury security at 3:30 p.m. on the day of the transaction, the parties will be expected to agree upon the yield of Security A at 3:30 p.m. when the information becomes available. As of that time, the parties have knowledge of all of the elements of the transaction necessary to calculate the dollar price of the transaction, must identify them, and are obligated to report the transaction within one hour and 15 minutes.

12. How does a member report a commission?

If a member charges a commission in an agency transaction, the commission is reported separately under Rule 6230(c). Report the commission, stated in points per bond, with 1 point (1.00) equal to \$10.00 per bond. (The bond is assumed to be a

conventional bond having a \$1000 par value.) If the commission is stated as a flat fee per transaction (e.g., \$100 to execute a 10 bond odd lot transaction), the member must convert the commission to points per bond to report correctly.

Ex. 1: If a “sixteenth” commission were charged (i.e., 1/16 point per bond), the commission reported would be 0.0625. If an “eighth” commission were charged (i.e., 1/8 point per bond), the commission reported would be 0.125.

Ex. 2. If a \$100 commission were charged to execute an odd lot transaction of 10 bonds, the commission reported would be 1.0 (point). If a \$100 commission were charged to execute 20 bonds, the commission reported would be 0.5 (points).

13. When may a member rely on the exception in Rule 6230(e)(3) that a transaction executed at a price “substantially unrelated to the current market for the TRACE-eligible security” is not required to be reported?

Rule 6230(e)(3) provides that a member is not required to report a transaction if the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security. NASD interprets Rule 6230(e)(3) very narrowly. Generally, any one or more transactions executed in furtherance of an investment, commercial, or trading purpose will not fall within the exception of Rule 6230(e)(3). (NASD’s example of a transaction (i.e., a gift) in the rule that is subject to the exception is a limited, one-time execution that occurs without reference to current market pricing and investment, commercial, or trading considerations.)

When considering if a member is excepted from reporting under Rule 6230(e)(3), a member should consider the following: (1) NASD interprets the Rule 6230(e)(3) exception very narrowly; (2) the general requirement to report any transaction in a TRACE-eligible security under Rule 6230 is interpreted broadly in furtherance of the underlying policy goals of TRACE; and, (3) in furtherance of the policy goals, paragraph (d)(4)(A) of Rule 6230 provides that transactions in TRACE-eligible securities that do not reflect current market pricing must be reported using a “special price” modifier. Thus, with few exceptions, when a transaction in a TRACE-eligible security is executed, a member is required to report the transaction. If special conditions or circumstances affect the price, when in doubt, the member should report the transaction and append the “special price” modifier described in Rule 6230(d)(4)(A).⁹

Issuer Open Market Repurchase Transactions. An issuer of debt may determine to repurchase a portion or all of an outstanding issue of debt. When an issuer engages, directly or indirectly, in repurchasing its debt in the open market, the transaction must be reported and is not subject to the exception in Rule 6230(e)(3). Generally, in such purchases and sales, market participants negotiate the price and other terms of the transaction (or multiple transactions) based on investment, commercial or trading considerations, and execute the transaction in furtherance of investment, commercial, or trading purposes. Even where an issuer, or a market participant on behalf of an issuer, determines to price and purchase a significant amount of a debt security, the price established for the transaction is determined substantially by the current market price of the security and current market conditions. Thus, regardless of the issuer’s ultimate motivation, NASD interprets Rule 6230 as requiring the reporting of the

transaction. If the exception in Rule 6230(e)(3) were interpreted to apply, NASD's surveillance of the debt markets may be hampered by incomplete information relating to significant trading activity. In addition, if such transactions were subject to dissemination, the market may be deprived of significant, relevant, current price information.¹⁰

14. When a member uses a broker's broker or an inter-dealer broker to execute a TRACE-eligible transaction, what are the reporting requirements?

Generally when one member ("B/D X") contacts a broker's broker or an inter-dealer broker ("IDB") and executes a transaction through IDB, B/D X will be required to report and IDB, which is also a member, will be required to report. (In addition, the member ("B/D Y") on the other side of IDB is required to report.) In total, in most transactions involving an IDB, a total of four transaction reports must be filed.

Ex: B/D X contacts IDB to buy N Bond.
IDB contacts B/D Y to sell N Bond to IDB.

Report 1. IDB reports a BUY from B/D Y of N Bond

Report 2. B/D Y reports a SELL to IDB of N Bond

Report 3. IDB reports a SELL to B/D X of N Bond

Report 4. B/D X reports a BUY from IDB of N Bond

IDB is acting in either an agency or a principal capacity. IDB buys the N Bond at a price including its mark-down (or charges a commission) and sells the N Bond at a different price, which includes a mark-up (or a commission).

15. What is a member's obligation under the TRACE Rules to identify new TRACE-eligible securities?

NASD amended Rule 6260 to require an underwriter to make a good faith determination of TRACE eligibility. If in doubt, the underwriter should submit the information regarding a new debt security to NASD's TRACE Operations Center. NASD then will make the final determination if a debt security is a TRACE-eligible security.

16. When a member that is required to notify NASD of a new TRACE-eligible security under Rule 6260 has not finalized all the information, such as coupon rate and maturity, required to be submitted prior to the deadline for notification, what should the member do?

Rule 6260(b) provides that a member that is the lead underwriter of any newly issued TRACE-eligible security shall provide to the TRACE Operations Center the following information concerning a new TRACE-eligible security: (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. The information may be provided by e-mail, facsimile, or telephone. The specific contact information is set forth in two places on the TRACE Web page, "TRACE FAQs" and "TRACE Contacts," at www.nasd.com/mkt_sys/trace_info.asp.

If all of the information has not been determined by the deadline for notification, the issuer may file "such other information as the NASD deems necessary" to properly identify the new issue for inclusion in the TRACE System. For example, an underwriter may notify the NASD of a new issue by providing the CUSIP number (Item 1) and Items, 2, 5, and 6 (which are, respectively,

issuer name, whether Rule 144A applies, and a brief description of the issue), in those instances where the coupon rate and the maturity have not been established. A CUSIP number, however, must always be provided.¹¹ In addition, the underwriter is required to provide the missing information, such as coupon rate and maturity, as soon as it becomes available.

17. For a new issue, when does the primary distribution end? When does secondary market trading begin?

Rule 6230(e)(1) provides that transactions that are part of a primary distribution are not required to be reported. Primary market distribution efforts cease when the underwriters of the offering (e.g., members of the underwriting syndicate) terminate the offering, and indicate that the issue is “free to trade.”¹² (Usually, the termination of an offering is announced over various wire services and other instantaneous means of communication that provide immediate notification to market participants.) For purposes of reporting under TRACE, all transactions that occur as of or after the termination of the offering are secondary market transactions and must be reported.

Endnotes

- 1 See Exchange Act Release No. 46144 (June 28, 2002), 67 Fed. Reg. 44907 (July 5, 2002) (File No. SR-NASD-2002-46). The amendments, among other things:
 - (1) extended the period to report a transaction from 1 hour to 75 minutes;
 - (2) incorporated standards in Rule 6250 for designating additional Non-Investment Grade securities for dissemination, if fewer than 50 such securities are subject to dissemination;
 - (3) required managing underwriters to provide to NASD the CUSIP number and additional identifying information about a new issue of a TRACE-eligible debt security prior to trading in the secondary market, with special provisions for issues offered on an intra-day basis;
 - (4) clarified that securities of a government-sponsored entity (GSE) are not TRACE-eligible securities;
 - (5) clarified definitions, including “time of execution,” “reportable TRACE transaction,” “parties to the transaction,” and “money market instrument”;
 - (6) clarified how to report transactions occurring before, during and after TRACE system (“TRACE System”) operation hours on a business day, and on holidays and weekends;
 - (7) described various trade reporting modifiers;
 - (8) clarified how to report yield and when yield is not required; and
 - (9) required that two transaction reports be filed for “crosses.”
- 2 Before the June 28, 2002 action, the SEC had approved three other rule filings in 2001 containing TRACE Rules. However, none of the TRACE Rules took effect until July 1, 2002. See Exchange Act Release No. 43873 (Jan. 23, 2001), 66 Fed. Reg. 8131 (Jan. 29, 2001) (File No. SR-NASD-99-65) (approval order); Exchange Act Release No. 44039 (Mar. 5, 2001), 66 Fed. Reg. 14234 (Mar. 9, 2001) (File No. SR-NASD-2001-04) (approval order); and Exchange Act Release No. 45229 (Jan. 3, 2002), 67 Fed. Reg. 1255 (Jan. 9, 2002) (File No. SR-NASD-2001-91) (notice of

proposed rule and immediate effectiveness upon filing on December 13, 2001, and approval order). See NtM 01-18 (March 2001).

Because the TRACE Rules became effective less than 72 hours after the SEC approved the amendments, NASD published a complete set of TRACE Rules on the NASD Web site on June 28, 2002, to provide members notice of the revised TRACE Rules prior to the start of TRACE on July 1, 2002.

- 3 The term "reject" here refers to a TRACE report that is not accepted by the TRACE System. Therefore, no control number has been assigned to the report by the TRACE System. This differs from the situation in which a report is submitted to and accepted by the TRACE System and, therefore, a control number is assigned to the transaction report. If, for a transaction report accepted by the TRACE System, a member subsequently determines that one or more of the reported elements were submitted incorrectly, the trade report must be either corrected or "reversed." If "reversed," a new trade report is submitted to TRACE in its place.
- 4 "Investment Grade" is defined in TRACE Rule 6210(h).
- 5 "Non-Investment Grade" is defined in TRACE Rule 6210(i).
- 6 Over time, NASD expects to increase the type and number of securities for which transaction information will be disseminated.
- 7 NASD expects to modify the TRACE System so that it will accept, on a business day, transactions reported as executed on a weekend day or holiday that the TRACE System is not open (i.e., the member will submit the report on a business day during TRACE System hours, and TRACE will accept the report if the execution date states, for example, "as/of 12/25/02," as the holiday date on which the transaction was executed).
- 8 The requirement in Rule 6230 to use Eastern Time applies to reporting and records regarding reporting. Members are not required to confirm transactions to customers in Eastern Time.
- 9 Rule 6230(d)(4)(A) requires a member to select the special price modifier when a transaction "is not executed at a price that reflects the current market price."
- 10 There may be circumstances in which a member reports a transaction done pursuant to an issuer open market repurchase, and appropriately appends the "special price modifier" described in Rule 6230(d)(4)(A). In most cases, however, it appears that such issuer repurchase transactions may establish pricing in the current market for that security, rather than deviate from current market pricing.
- 11 The CUSIP number must be in the TRACE System in order for reporting to occur electronically using the System. If the appropriate CUSIP number has not been entered into the TRACE System, it will reject the transaction report, even if the security is a TRACE-eligible security.
- 12 The SEC defines "distribution" in Regulation M. "'Distribution' means an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods." Regulation M, Rule 100; 17 C.F.R. 242.100. A "primary distribution" or "primary offering" is the sale of a new issue of a debt or equity security.

© 2002. 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

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 the Association'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 corporations; and: (1) registered with the Securities and Exchange Commission; or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased or 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) The term "Trade Reporting and Compliance Engine" or "TRACE" shall mean the automated system developed by the NASD that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities.

(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 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) The term "time of execution" for a transaction in a TRACE-eligible security shall be the time when the parties to the transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. The time of execution for transactions involving TRACE-eligible securities that are trading "when issued" on a yield basis shall be when the yield for the transaction has been agreed to by the parties to the transaction. For a transaction in a TRACE-eligible security in which the actual yield for the transaction is established by determining the yield from one or more designated securities (e.g., a

“benchmark security” such as a U.S. Treasury security maturing in 5 years, or a combination of such “benchmark securities”) and adding the agreed upon “yield spread” (e.g., 150 basis points above the benchmark security), the “time of execution” occurs when the yield has been agreed to by the parties to the transaction.

(e) The term “parties to the transaction” shall mean the introducing broker-dealer, if any, and the executing broker-dealer.

(f) The term “TRACE Participant” shall mean any NASD member that reports transactions to the TRACE system, directly or indirectly.

(g) The term “Introducing Broker” shall mean the NASD member that has been identified in the TRACE system as a party to the transaction, but does not execute or clear the transaction.

(h) The term “Investment Grade” shall mean 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 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.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2001-91 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]

6220. Participation in TRACE

(a) Mandatory Member Participation

(1) Member participation in TRACE for trade reporting purposes is mandatory. Such mandatory participation obligates members to submit transaction reports in TRACE-eligible securities in conformity with the Rule 6200 Series.

(2) Participation in TRACE shall be conditioned upon the TRACE Participant’s initial and continuing compliance with the following requirements:

(A) Execution of, and continuing compliance with, a TRACE Participant application agreement and all applicable rules and operating procedures of the Association and the Commission; and

(B) Maintenance of the physical security of the equipment located on the premises of the TRACE Participant to prevent unauthorized entry of information into TRACE.

(3) Each TRACE Participant shall be obligated to inform the Association of non-compliance with, or changes to, any of the participation requirements set forth above.

(b) Participant Obligations in TRACE

Upon execution and receipt by the Association of the TRACE Participant application agreement, a TRACE Participant may commence input of trade information in TRACE-eligible securities. TRACE Participants may access the service via an NASD-approved facility during the hours of operation.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]

6230. Transaction Reporting

(a) When and How Transactions are Reported

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within one hour and fifteen minutes of the time of execution, except as otherwise provided below, or the transaction report will be "late." The member must transmit the report to TRACE during the hours the TRACE system is open ("TRACE system hours"), which are 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

(1) Transactions Executed During TRACE System Hours

Transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be reported within one hour and fifteen minutes of the time of execution. If a transaction is executed on a business day less than one hour and fifteen minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within one hour and fifteen minutes after the TRACE system opens. If reporting the next business day, the member must indicate "as/of" and provide the actual transaction date.

(2) Transactions Executed At or After 6:30 P.M. Through 11:59:59 P.M. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time must be reported the next

business day within one hour and fifteen minutes after the TRACE system opens. The member must indicate "as/of" and provide the actual transaction date.

(3) Transactions Executed At or After 12:00 A.M. Through 7:59:59 A.M. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day within one hour and 15 minutes after the TRACE system opens.

(4) Transactions Executed on a Non-Business Day

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, at any time during that day (determined using Eastern Time), must be reported the next business day within one hour and fifteen minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be "12:01:00 a.m. Eastern Time" (stated in military time as "00:01:00"); and the modifier, "special price," must be selected. In addition, the transaction must not be designated "as/of". When the reporting method chosen provides a "special price memo" field, the member must enter the actual date and time of the transaction in the field.

(5) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.

(6) A member may be required to report as soon as practicable to the Market Regulation Department on a paper form, the transaction information required under Rule 6230 if electronic submission into TRACE is not possible. Transactions that can be reported into TRACE, including transactions executed on a Saturday, Sunday or holiday as provided in (a)(4) above, and trades that can be submitted on the trade date or on a subsequent date on an "as/of" basis, shall not be reported on a paper form.

(b) Which Party Reports Transaction

Trade data input obligations are as follows:

(1) In transactions between two members, both members shall submit a trade report to TRACE;

(2) In transactions involving a member and a non-member, including a customer, the member shall be required to submit a trade report to TRACE.

(c) Transaction Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) CUSIP number or NASD symbol;

(2) Number of bonds as required by paragraph (d) below;

(3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) as required by paragraph (d) below;

(4) A symbol indicating whether the transaction is a buy or a sell;

(5) Date of Trade Execution(as/of trades only);

(6) Contra-party's identifier;

(7) Capacity - Principal or Agent (with riskless principal reported as principal) as required by paragraph (d) below;

(8) Time of trade execution;

(9) Reporting side executing broker as "give-up" (if any);

(10) Contra side Introducing Broker in case of "give-up" trade;

(11) Stated commission;

(12) Such trade modifiers as required by either the TRACE rules or the TRACE users guide; and

(13) The lower of yield to call or yield to maturity. A member is not required to report yield when the TRACE-eligible security is a security that is in default; a security for which the interest rate is floating; a security for which the interest rate will be or may be increased (e.g., certain "step-up bonds") or decreased (e.g., certain

“step-down bonds”) and the amount of increase or decrease is an unknown variable; a pay-in-kind security (“PIK”); any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that the Association designates if the Association determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.

(d) Procedures for Reporting Price, Capacity, Volume

(1) For principal transactions, report the price, which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and the accrued interest.) For agency transactions, report the price, which must exclude the commission. (However, if a price field is not available, report the contract amount and the accrued interest.) Then, report the commission, stated in points per bond, with 1 point equal to \$10.00 per bond.

(2) For agency and principal transactions, report the actual number of bonds traded, with \$1,000 par value equal to 1 bond. If a bond has a par value of less than \$1,000 (“baby bond”) or the par value is not an even multiple of \$1,000, report the fractional portion of \$1,000 in decimals.

(3) For in-house cross transactions, a member must report two transactions, which are the member’s purchase transaction and the member’s sale transaction.

(4) (A) Special Price Modifier

If a transaction is not executed at a price that reflects the current market price, select the modifier, “special price.” When the reporting method chosen provides a “special price memo” field, state why the transaction was executed at other than the current market price in the “special price memo” field (e.g., when a debt security is traded conventionally and in the current market does not have a due bill and/or a warrant attached, but in the transaction to be reported is traded with a due bill and/or warrant attached, the price of the transaction is a “special price”). Do not select the modifier, “special price,” where the transaction price is determined using a weighted average price.

(B) Settlement Modifiers

If a transaction is to be settled other than the regular way, report the settlement terms by selecting the appropriate modifier. If the parties agree to

settlement on the same day the transaction is executed (*i.e.*, cash settlement), select the modifier, “.c.” If a trade will be settled the next day, select the modifier, “.nd.” If a trade will be settled other than on the date of trade, the next day, or T+3, select the modifier, “.sNN,” and enter the appropriate number of days (*e.g.*, if a trade will be settled in 5 business days, the reporting party will enter “.s05” in the data field).

(C) Weighted Average Price Modifier

If the price of the transaction is determined using a weighted average price method, select the modifier, “.w.” If one of the settlement modifiers and the weighted average price modifier apply to the transaction, select the modifier, “.w” for weighted average price and do not report the applicable settlement modifier.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

- (1) Transactions that are part of a primary distribution by an issuer;
- (2) Transactions in 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 securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly; and
- (3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (*e.g.*, to allow the seller to make a gift).

(f) Compliance With Reporting Obligations

A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2001-04 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]

6240. Termination of TRACE Service

The Association may, upon notice, terminate TRACE service to a member in the event that a member fails to abide by any of the rules or operating procedures of the TRACE service or the Association, or fails to honor contractual agreements entered into with the Association or its subsidiaries, or fails to pay promptly for services rendered by the TRACE service.

[Adopted by SR-NASD-99-65 eff. July 1, 2002.]

6250. Dissemination of Corporate Bond Trade Information

(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, the Association will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. Eastern Time) relating to transactions in:

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

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

(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.

(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,
- (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.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]

6260. Managing Underwriter Obligation To Obtain CUSIP

(a) In order to facilitate trade reporting 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 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: (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), or if such information has not been determined, such other information as the NASD deems necessary. The managing underwriter must obtain the CUSIP number and provide it and the information listed as (2) through (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 an underwriter, or the issuer and the 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 member 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 member shall provide the information not later than 5:00 p.m. on the next business day. A member must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]