

Trade Reporting Notice

FINRA Announces Modifications to the TRACE System Relating to Certain Securities with Equity CUSIPs and Reminds Firms of Their Reporting Obligations Regarding Equity-Linked Notes and Convertible Debt

Executive Summary

FINRA has modified the TRACE System to accept equity CUSIPs, and reminds member firms that they must report transactions to TRACE in securities that are “TRACE-eligible securities,” such as unlisted convertible debt, unlisted equity-linked notes and similar debt securities. FINRA reminds firms that only unlisted convertible debt and unlisted equity-linked notes are treated as debt for purposes of trade reporting; convertible debt and equity-linked notes that are *listed* on a national securities exchange must be reported to the appropriate equity trade reporting facility.

Questions concerning this *Notice* should be directed to:

- tracefeedback@finra.org;
- FINRA Operations, at (866) 776-0800;
- Elliot Levine, Chief Counsel, Transparency Services, at (202) 728-8405;
- Patrick Geraghty, Director, Market Regulation, at (240) 386-4973; or
- Office of General Counsel, at (202) 728-8071.

Discussion

FINRA has modified the Trade Reporting and Compliance Engine (TRACE) System to accept transaction reports for TRACE-eligible securities that have equity CUSIPs.¹ Previously, when a transaction report was submitted for a TRACE-eligible security that had an equity CUSIP, the TRACE System was unable to accept and process the transaction report. With this modification, firms may report transactions to TRACE in specific TRACE-eligible securities—such as equity-linked notes and similar securities having an equity CUSIP—using the same processes and systems used to report all other TRACE-eligible securities. Under NASD Rule 6230, firms must report such transactions to TRACE within 15 minutes of the time of execution.

February 22, 2008

Key Topic(s)

- Convertible Debt
- Debt Securities with Equity CUSIPs
- Equity-Linked Notes

Referenced Rules & Notices

- NASD Rule 6200 Series

Submitting CUSIP Information to FINRA

FINRA is working to update information in the TRACE Issue Master to include TRACE-eligible securities that have equity CUSIPs. However, firms may become aware of securities that were assigned equity CUSIPs that should be reported to TRACE, but that are not listed in the TRACE Issue Master.

A firm that is an underwriter in a distribution or offering of a TRACE-eligible security (excluding a secondary distribution or offering) must notify FINRA Operations of the CUSIP and other information identifying the security, as specified in NASD Rule 6260(b).² The firm must notify FINRA no later than 5 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, with certain exceptions.³ In addition, if a firm has a reporting obligation under NASD Rule 6230 in a security that is TRACE-eligible but not included in the TRACE Issue Master, the firm must notify FINRA immediately and provide the CUSIP and other information necessary for FINRA to update the TRACE Issue Master and enable the firm to report its transaction to TRACE promptly and comply with its obligations under NASD Rule 6230.⁴ Finally, if a firm other than an underwriter of a TRACE-eligible security or a firm with a trade reporting obligation is aware that a TRACE-eligible security has not been included in the TRACE Issue Master, FINRA requests that the firm notify it promptly of the CUSIP and other information identifying the security.

When providing information about a security that should be listed in the TRACE Issue Master, firms should contact FINRA at TRACENewIssues@finra.org to provide CUSIP and other information about the security.

Treatment of Certain Securities for Reporting Purposes

FINRA also is reminding firms that convertible debt and equity-linked notes that are *not listed* on a national securities exchange are considered debt securities for purposes of trade reporting and must be reported to TRACE. However, when these securities are *listed* on a national securities exchange and traded over-the-counter, they must be reported to FINRA's Alternative Display Facility or one of FINRA's Trade Reporting Facilities.

Endnotes

- 1 CUSIP stands for Committee on Uniform Securities Identification Procedures and is a registered trademark of Standard and Poor's, Inc. (S&P). Each security is assigned a unique CUSIP by a service administered by S&P. The configuration of an equity CUSIP differs from a debt CUSIP. When the TRACE System was built, it was not designed to accept equity CUSIPs.
- 2 NASD Rule 6260(b) requires that the notice contain the CUSIP, the issuer name, the coupon rate, the maturity, whether Rule 144A applies, a brief description of the issue and other information that FINRA may deem necessary. If a firm has not obtained the CUSIP at the time it must notify FINRA, other information may be required to identify the security accurately.
- 3 Under NASD Rule 6260(b), there are different deadlines for certain offerings, such as intra-day offerings under Rule 415 promulgated under the Securities Act of 1933.
- 4 The firm should provide the CUSIP and same type of information as set forth in NASD Rule 6260 and referenced above for FINRA to update the TRACE Issue Master accurately.