

Trade Reporting and Compliance Engine (TRACE)

SEC Approves Expanding Disseminated Real-Time TRACE Data

Effective Date: November 3, 2008

Executive Summary

On November 3, 2008, FINRA will begin to publicly disseminate additional data elements for corporate bond transactions that are reported to TRACE.¹ The additional data elements indicate whether a transaction is an inter-dealer transaction or a transaction with a customer and, if a customer transaction, whether the broker-dealer is on the buy or the sell side.

Questions regarding this *Notice* may be directed to:

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- Sharon Zackula, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8985.

Background and Discussion

Currently, two types of information are included in the data elements reported to the Trade Reporting and Compliance Engine (TRACE): (1) the identification of a transaction as an inter-dealer transaction or a transaction with a customer, and (2) whether the reporting broker-dealer (dealer) is on the buy side as principal or agent (Buy) or the sell side as principal or agent (Sell). However, the identification of transactions as either inter-dealer or customer transactions and whether, in customer transactions, the dealer is on the Buy or Sell side, presently are not disseminated in real-time TRACE data.

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Notice Type

- SEC Policy Approval

Suggested Routing

- Compliance
- Executive Representatives
- Fixed Income
- Legal
- Operations
- Senior Management
- Systems
- Trading
- Training

Key Topic(s)

- Disseminated Real-Time TRACE Data
- Debt Securities Pricing
- Best Execution
- Debt Mark-Ups

Referenced Rules & Notices

- NASD Rule 2110
- NASD Rule 2320
- NASD Rule 2440
- NASD IM-2440-1
- NASD IM-2440-2
- NASD Rule 6200 Series

FINRA will disseminate these additional data elements in real-time TRACE data beginning November 3, 2008. In addition to identifying whether a transaction is inter-dealer or with a customer, the additional real-time data elements will indicate whether the dealer is on the Buy or Sell side in dealer transactions with customers. (Currently, in inter-dealer transactions, only the selling dealer's transaction information is disseminated, making a Buy or Sell indicator in the disseminated data unnecessary for such transactions.)

Dissemination of the additional data elements will enhance market transparency by allowing dealers, customers and other corporate bond market participants and observers to better understand the nature of a trade represented by a particular price disseminated in real-time TRACE data. In real-time TRACE data, customer transaction prices are "all-in prices," meaning that the disseminated price includes a mark-up/mark-down or a commission, which is not the case in disseminated inter-dealer transaction prices. Currently, disseminated customer and inter-dealer prices are intermingled in real-time TRACE data, and the additional data elements will allow greater distinction of the nature of the transactions underlying these prices.

With the dissemination of transaction information identifying inter-dealer and customer transactions and the related Buy or Sell side price information in customer transactions, dealers will be able to use the additional data elements to compare prices as an aid in determining their best-execution obligations under NASD Rule 2320, and their compliance with the fair mark-up/mark-down requirements under NASD Rule 2440, NASD IM-2440-1, NASD IM-2440-2 and other provisions of the federal securities laws.² For example, under NASD IM-2440-2, paragraph (b)(6), when a dealer may refer to transaction prices in similar securities to establish a price from which to compute a mark-up or mark-down, the dealer should know the side of the market (*i.e.*, the Buy or Sell information) to determine the relative comparability of a transaction in a similar security to the transaction to determine whether that transaction is appropriate for marking purposes under the rule.³

Investors also will benefit from knowing whether a transaction price reflected in real-time TRACE data is an inter-dealer or customer transaction, and, if a customer transaction, whether it reflects a dealer on the Buy or Sell side. With this information, investors will be able to compare prices more effectively to determine the quality of execution pricing and remuneration.

The revised dissemination policy will become effective November 3, 2008.

Endnotes

- 1 See Securities Exchange Act Release No. 58115 (July 7, 2008), 73 FR 40409 (July 14, 2008) (order approving SR-FINRA-2007-026).
- 2 See Section 17 of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 under the Exchange Act.

NASD Rule 2320, NASD Rule 2440, NASD-IM-2440-1 and NASD IM-2440-2 do not apply to transactions in municipal securities.

- 3 See also, e.g., NASD IM-2440-2, paragraph (b)(5)(A) and paragraph (b)(5)(B).

In describing the reporting requirements for TRACE, the information that is reported to TRACE, and the information that will be disseminated in real-time TRACE data, the term “inter-dealer trade” or “inter-dealer transaction” includes the dealer’s own inter-dealer transactions. In contrast, when a dealer is applying FINRA’s mark-up rules and interpretations and NASD Rule 2110 in the context of mark-ups, the term “inter-dealer trade” or “inter-dealer transaction” does not include the dealer’s own inter-dealer transactions.