

Trade Reporting and Compliance Engine (TRACE)

Exemption from Trade Reporting Obligation for Certain Transactions on Alternative Trading Systems

Effective Date: July 18, 2016

Summary

On July 18, 2016, new FINRA Rule 6732 (Exemption from Trade Reporting Obligation for Certain Transactions on an Alternative Trading System) becomes effective. Rule 6732 provides FINRA staff with the authority to grant a member alternative trading system (ATS) an exemption from the TRACE trade reporting obligations of Rule 6730 (Transaction Reporting) for transactions occurring on an ATS that meet specified conditions.¹

The rule text is available in the online FINRA Manual.

Questions concerning this *Notice* should be directed to:

- ▶ FINRA Product Management at (866) 899-2107;
- ▶ for information on how to apply for exemptive relief, Patrick Geraghty, Vice President, Market Regulation (MR), at (240) 386-4973 or by email at patrick.geraghty@finra.org; or Joseph Schwetz, Associate Director, MR, at (240) 386-6170 or by email at joseph.schwetz@finra.org; or
- ▶ for legal and interpretive questions, Racquel Russell, Associate General Counsel, Office of General Counsel, at (202) 728-8363 or by email at racquel.russell@finra.org.

Background and Discussion

Rule 6732 generally provides that, pursuant to the Rule 9600 Series (Procedures for Exemptions), FINRA staff may exempt, upon application, a member ATS from the trade reporting obligation under Rule 6730 with regard to certain transactions.²

April 2016

Notice Type

- ▶ New Rule

Suggested Routing

- ▶ Compliance
- ▶ Fixed Income
- ▶ Legal
- ▶ Operations
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Alternative Trading Systems
- ▶ Fixed-Income Securities
- ▶ TRACE
- ▶ Transaction Reporting

Referenced Rules and Notices

- ▶ FINRA Rule 6720
- ▶ FINRA Rule 6730
- ▶ FINRA Rule 6732
- ▶ FINRA Rule 7730
- ▶ FINRA Rule 9600 Series
- ▶ Regulatory Notice 14-53

FINRA will consider exemptive applications on a case-by-case basis, taking into consideration all the relevant factors. Specifically, FINRA staff may grant an exemption to a member ATS if such exemption is consistent with the protection of investors and the public interest and only where all of the following criteria are satisfied:

- ▶ the trade is between FINRA members;
- ▶ the trade does not pass through any ATS account, and the ATS does not exchange TRACE-eligible securities³ or funds on behalf of the subscribers, take either side of the trade for clearing or settlement purposes, including, but not limited to, at DTC or otherwise, or in any other way insert itself into the trade;
- ▶ the ATS agrees to provide to FINRA on a monthly basis, or such other basis as prescribed by FINRA, data relating to each exempted trade occurring on the ATS's system pursuant to Rule 6732, and the ATS acknowledges that failure to report such data to FINRA, in addition to constituting a violation of FINRA rules, will result in revocation of any exemption granted pursuant to the rule;
- ▶ the ATS remits to FINRA a transaction reporting fee based on the fee schedule set forth in Rule 7730(b)(1) (Trade Reporting Fee) for each exempted sell transaction occurring on the ATS; and
- ▶ the ATS has entered into a written agreement with each member that is a "Party to a Transaction"⁴ with respect to any trade for which the ATS is exempted under the rule specifying that such trade must be reported by such party pursuant to Rule 6730(c)(13), identifying that the trade occurred on the ATS using the ATS's separate MPID obtained in compliance with Rule 6720(c) (Alternative Trading Systems).

FINRA emphasizes that, if the staff grants an exemption, members engaging in trades on an ATS that received an exemption must report additional information to TRACE with respect to exempted trades pursuant to the last criteria above; specifically, the unique MPID of the ATS. Accordingly, member ATSs receiving an exemption must enter into an affirmative written agreement with each member that is or may be a party to an exempt transaction, as described in Rule 6732, to ensure they understand and agree to their additional reporting responsibilities. Negative consent letters would not satisfy the condition that the member ATS enter into a written agreement with each member that is a Party to a Transaction concerning exempt trades.

Monthly Information on Exempted Transactions

If the staff grants a Rule 6732 exemption to an ATS, such ATS must report transaction information with respect to each exempt trade on a monthly basis.⁵ The data file provided by the ATS must contain the following information relating to each exempt trade that occurred on its system during a calendar month and must be received by FINRA no later than the tenth business day following the completion of each calendar month:

- ▶ CUSIP number or if a CUSIP number is not available at the time of execution, a similar numeric identifier (*e.g.*, a mortgage pool number) or a FINRA symbol;
- ▶ the size (volume) of the transaction as required by FINRA Rule 6730(d)(2);
- ▶ price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) as required by FINRA Rule 6730(d)(1);
- ▶ date of trade execution;
- ▶ time of execution;
- ▶ MPID of the seller; and
- ▶ MPID of the buyer.

Data Submission Information

Each ATS granted a Rule 6732 exemption must report the required transaction information to FINRA via the Secure File Transfer Protocol (SFTP). To submit files via SFTP, an ATS must have an FTP account set up with appropriate privileges. If an ATS does not already have an FTP account with FINRA, it must submit a request to create an FTP account. Once an ATS has received authorization for its FTP account, it will be able to submit its data to FINRA via SFTP.

If you have questions concerning FINRA Entitlement, please refer to the FINRA Entitlement Program or contact the FINRA Entitlement Group, at (240) 386-4185 or the FINRA Gateway Call Center at (301) 869-6699.

Endnotes

1. See Securities Exchange Act Release No. 76677 (December 17, 2015), 80 FR 79966 (December 23, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-055) (“ATS Exemption Filing”).
2. An ATS is a Party to a Transaction in a TRACE-eligible security occurring through its system and has a TRACE transaction reporting obligation, unless an exception or exemption applies. See ATS Exemption Filing. See also [Regulatory Notice 14-53](#) (November 2014) (FINRA Reminds ATSS and ATS Subscribers of Their Trade Reporting Obligations in TRACE-Eligible Securities).
3. Rule 6710 provides that a “TRACE-Eligible Security” is a debt security that is United States dollar-denominated and issued by a U.S. or foreign private issuer, and, if a “restricted security” as defined in Securities Act Rule 144(a) (3), sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar-denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n). “TRACE-Eligible Security” does not include a debt security that is: issued by a foreign sovereign, a U.S. Treasury Security as defined in paragraph (p), or a money market Instrument as defined in paragraph (o).
4. Rule 6710 defines a “Party to a Transaction” as an introducing broker-dealer, if any, an executing broker-dealer or a customer. “Customer” includes a broker-dealer that is not a FINRA member.
5. FINRA publishes letters or summaries of its letters in response to requests for exemption at <http://www.finra.org/industry/exemptive-letters>.