

Notice to Members

JULY 2004

SUGGESTED ROUTING

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

KEY TOPICS

Debt Securities
Operations
Rule 6200 Series
Transaction Reporting
TRACE

GUIDANCE

Corporate Debt Securities

SEC Approves Amendments to TRACE Rule 6230 to Reduce the Reporting Period to 30 Minutes on October 1, 2004, and to 15 Minutes on July 1, 2005

Executive Summary

On June 14, 2004, the Securities and Exchange Commission (SEC or Commission) approved amendments to Rule 6230(a) of the Trade Reporting and Compliance Engine (TRACE) rules, the Rule 6200 Series, reducing the reporting period.¹ The reductions to the reporting period will occur in two stages. In the first stage (Stage One), the period to report a transaction in a TRACE-eligible security will be reduced from 45 minutes to 30 minutes. In the second stage (Stage Two), that period will be reduced to 15 minutes.

Stage One amendments to Rule 6230(a), requiring 30-minute reporting, will become effective on October 1, 2004. Stage Two amendments to Rule 6230(a), reducing the reporting period to 15 minutes, will become effective on July 1, 2005. Rule 6230, as amended by Stage One rule changes only, is set forth in Attachment A. (In 2005, NASD will issue a second *Notice to Members* (NtM) reminding firms of the effective date of Stage Two and incorporating the Stage Two amendments to Rule 6230(a) that will require 15-minute reporting.)

Questions/Further Information

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

Background and Discussion

Since 1999, when the first formal proposal to establish TRACE was filed with the SEC, NASD and SEC stated that the TRACE reporting period would be reduced after firms obtained experience reporting corporate bond transactions to TRACE. On October 1, 2003, NASD reduced the period to report a transaction in a TRACE-eligible security from 75 minutes to 45 minutes. At that time, NASD indicated that it planned to reduce the reporting period further in the future. Reducing the reporting period results in a qualitative increase in transparency in the debt markets because market participants and investors receive actual transaction prices and other information more quickly.

Since October 1, 2003, when 45-minute reporting began, firms have developed the technical and operational capabilities to report transactions within a much shorter period than the current 45-minute period. For example, during the first two months of 2004, approximately 84 percent of all transactions were reported within 30 minutes of the time of execution, and approximately 73 percent were reported within 15 minutes of the time of execution. By October 1, 2004, NASD expects that the membership as a whole will be able to report TRACE-eligible securities transactions within 30 minutes.

Stage One 30-Minute Reporting

The SEC approved the Stage One 30-minute reporting requirement, together with the Stage Two 15-minute reporting requirement, on June 14, 2004. The impact that the Stage One changes will have on reporting is discussed below.

The amendments to Rule 6230(a) that are set forth in Stage One require a firm to report a transaction in a TRACE-eligible security within 30 minutes of the time of execution. In addition, NASD reduced other 45-minute reporting periods to 30 minutes in related provisions in paragraphs (1) through (4) of Rule 6230(a). Specifically, under Rule 6230(a)(1), as amended, if a firm executes a transaction within 30 minutes of the time the TRACE System closes, which, on a normal day is 6:30:00 p.m. Eastern Time (ET), a firm *is permitted* to report the transaction the next business day that the TRACE System opens, but must do so within 30 minutes after the TRACE System opens for the report to be timely (*i.e.*, on or before 8:29:59 a.m. ET).² Under Rule 6230(a)(2), and (a)(4), as amended, a firm is required to report a transaction that occurs on or after the closing of the TRACE System (*i.e.*, on or after 6:30:00 p.m. ET through 11:59:59 p.m. ET, or during a weekend or holiday) the next business day that the TRACE System opens,

and must do so within 30 minutes after the TRACE System opens (*i.e.*, on or before 8:29:59 a.m. ET). Under Rule 6230(a)(3), as amended, a firm is required to report any transaction in a TRACE-eligible security that occurs on a business day on or after 12:00 a.m. (midnight) through 7:59:59 a.m. ET, within 30 minutes of the opening of the TRACE System (*i.e.*, on or before 8:29:59 a.m. ET).

Effective Date

The amendments to Rule 6230(a) designated as Stage One, which require a firm to report a transaction in a TRACE-eligible security within 30 minutes of the time of execution, will become effective on October 1, 2004.

15-Minute Reporting Takes Effect in 2005

As noted previously, the SEC also approved amendments to Rule 6230(a), designated as Stage Two, that will require firms to report a transaction in a TRACE-eligible security within 15 minutes of the time of execution, except as otherwise provided. The Stage Two amendments will become effective on July 1, 2005. NASD will remind firms in an NtM to be published in 2005 that Stage Two 15-minute reporting will become effective on July 1, 2005.

Interpretive Guidance

1. When the new TRACE 30-minute reporting requirement becomes effective, how much time does a firm have to resubmit a trade report that was rejected?

Under both the prior 75-minute and current 45-minute reporting regimes, NASD staff issued interpretive guidance regarding the time to re-submit a rejected trade report.³ NASD staff is issuing revised guidance regarding the time to re-submit a rejected trade report that is similar to the interpretive guidance provided in *NtM 03-58*, Q & A No. 6 regarding this issue. The revised guidance, as described in greater detail below, is based on the 30-minute reporting requirement, with the result that a 45-minute extension provided in *NtM 03-58* is reduced to a 30-minute extension, and a 15-minute extension in *NtM 03-58* is reduced to 10 minutes.

This interpretive guidance will become effective on October 1, 2004, when the requirement to report in 30 minutes becomes effective. In addition, as of October 1, 2004, the interpretive guidance in *NtM 03-58*, Q & A No. 6, relating to the same issue, is rescinded and superseded by the interpretive guidance set forth below. Accordingly, as of October 1, 2004, a firm may no longer rely on the guidance in *NtM 03-58*, Q & A No. 6.⁴

As noted in prior interpretive guidance regarding the resubmission of rejected trade reports, NASD recognizes that some firms may be using a reporting technology that does not immediately relay a message to the firm that a transaction report has been rejected. Thus, firms may be unaware for a substantial part of the 30-minute reporting period that they must resubmit the trade report.⁵ Accordingly, in these circumstances, as a general rule, NASD staff expects that firms will correct and resubmit rejected trade reports as soon as practicable, but not later than 60 minutes from the time of execution. (This generally applicable interpretive guidance is referred to hereinafter as the “30-Minute Extension.”)

However, there are three scenarios set forth below when a firm may not rely on the 30-Minute Extension.

- a. **Rule 6230(a)(1): 30-Minute Extension is Inapplicable.** If a firm executes a trade less than 30 minutes before the closing of the TRACE System (on or after 6:00:01 p.m. ET through 6:29:59 p.m. ET)⁶ under Rule 6230(a)(1), the firm has the option to report the transaction to TRACE the same day, or the next day that the TRACE System is open, within 30 minutes of the opening. In both of these scenarios, a firm is not entitled to rely on the 30-Minute Extension to comply with the obligation to timely report.
 - i. **No Extension of Time.** If the firm reports the transaction to TRACE before the TRACE System closes and the transaction report is rejected, the firm must report the transaction the next day the TRACE System is open, within the first 30 minutes that the System is open in order for the report to be timely. The 30-Minute Extension does not apply in these circumstances. For example, a firm executes a transaction at 6:10:00 p.m. ET on Thursday, the firm reports the transaction at 6:29:00 p.m. ET, and the transaction report is rejected. On Friday morning, the firm must resubmit the correct transaction report within the first 30 minutes that the TRACE System is open for the report to be timely.
 - ii. **10-Minute Extension.** If the firm opts to first file the transaction report on the next business day that the TRACE System is open, and the transaction report is rejected, the firm must correct and resubmit the transaction report as soon as possible and not later than forty minutes after the TRACE System opens, because the firm is granted a 10-minute extension (“10-Minute Extension”) in these circumstances. The 30-Minute Extension does not apply. The 10-Minute Extension is an appropriate extension of time because firms have had time to prepare the transaction report, and should attempt to report outstanding transactions promptly after the TRACE System opens. For example, a firm executes a trade at 6:10:00 p.m. ET on Thursday, the firm first reports the trade on Friday at 8:05:00 a.m. ET, and the report is rejected. The firm must correct and resubmit the transaction report not later than 8:39:59 a.m. ET in order for the report to be considered timely filed.

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- b. **Rule 6230(a)(2) through (4): 30 Minute Extension is Inapplicable and 10-Minute Extension Applies.** If a firm executes a trade when the TRACE System is closed (on or after 6:30:00 p.m. ET on a business day that the TRACE System was open, during a weekend or a holiday, or before 8:00:00 a.m. ET on a business day that the TRACE System will open), the firm is required under Rule 6230(a)(2) through (4) to report the transaction the first day that the TRACE System is open, within 30 minutes. If the transaction report is rejected, the firm must correct and resubmit a transaction report as soon as possible, but not later than forty minutes after the TRACE System opens. Again, in these circumstances, the 10-Minute Extension applies, for the reasons set forth in the preceding paragraph, and the 30-Minute Extension is inapplicable. For example, a firm executes a trade at 7:00:00 p.m. ET on Thursday. The TRACE System is closed until Friday at 8:00:00 a.m. ET. The firm first reports the trade on Friday at 8:05:00 a.m. ET, and the report is rejected. The firm must correct and resubmit the trade report not later than 8:39:59 a.m. ET to report on time.

Regardless of the reporting mechanism used by the firm (e.g., batch submission, CTCL, Web browser, third-party intermediary reporting system), any rejected trade reports should be corrected and resubmitted to TRACE as soon as possible by the reporting firm. NASD will continue to monitor firms' reporting to ensure that firms 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 (Standards of Commercial Honor and Principles of Trade).

Endnotes

- 1 See Securities Exchange Act Release No. 49854 (June 14, 2004), 69 Fed. Reg. 35088 (June 23, 2004) (File No. SR-NASD-2004-057).
- 2 Generally, the TRACE System is open to receive reports Monday through Friday, from 8:00 a.m. through 6:29:59 p.m. and closes at 6:30 p.m. Eastern Time (ET). On days when NASD announces that the TRACE System will close early (e.g., at 2:00 p.m. ET on the day after Thanksgiving), NASD will announce the early closing and specify when the TRACE System will cease accepting reports. When early closings in TRACE occur, NASD staff interprets Rule 6230(a)(1) as allowing a firm (for a transaction that occurs just before the end of the TRACE System closing) to report the transaction on the day of execution before the system closes or the next business day, to provide the firm the same flexibility that is provided when the TRACE System closes at 6:30 p.m. ET. Assume, for example, that NASD announces that the TRACE System will close at 2:00 p.m. ET, in which case the TRACE System will not accept reports at or after the 2:00 p.m. closing. If a 30-minute reporting period is in effect, and a firm executes a transaction at 1:40 p.m. ET, the firm may report the transaction on the day of execution (up to 2:00 p.m. ET) or may report the transaction the next business day that the TRACE System is open within 30 minutes of the opening.
- 3 NASD staff previously issued interpretive guidance on this topic in *NtM 02-76*, Q & A No. 1 (in the context of 75-minute reporting) and *NtM 03-58*, Q & A No. 6 (in the context of 45-minute reporting). When the guidance in *NtM 3-58*, Q & A No. 6 was published, NASD staff rescinded the guidance in *NtM 02-76*, Q & A No. 1.
- 4 NASD staff notes that a firm may continue to rely on the guidance in *NtM 03-58*, Q & A No. 6 for transactions executed and reported prior to October 1, 2004.
- 5 Certain firms are using 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.
- 6 As noted previously, the normal schedule for TRACE System operations is 8:00 a.m. ET through 6:29:59 p.m. ET. The times are provided as an example. The actual times may vary if the TRACE System is not operating on a normal schedule.

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ATTACHMENT A

New language is underlined; deletions in brackets.

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

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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 30[45] 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 30[45] minutes of the time of execution. If a transaction is executed on a business day less than 30[45] minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within 30[45] 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 30[45] 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 30[45] 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 30[45] 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) and (6) No Change

(b) through (f) No Change

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