

Trade Reporting and Compliance Engine (TRACE)

SEC Approves Reporting Asset-Backed Securities Transactions to TRACE and Related Fees

Effective Date: February 14, 2011

Executive Summary

Effective February 14, 2011, firms must begin reporting asset- and mortgage-backed securities transactions to TRACE. FINRA will not disseminate the data; it will collect and study the transaction data and may propose to disseminate it in the future.

In addition, reporting fees for asset- and mortgage-backed securities transactions, and other related amendments to TRACE and FINRA rules will go into effect on this day.¹

The amended rule text is available at www.finra.org/notices/10-23.

Questions regarding this *Notice* should be directed to:

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April 2010

Notice Type

- Rule Amendment

Suggested Routing

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

Key Topics

- Asset-Backed Securities
- Fees
- Mortgage-Backed Securities
- Reporting
- TRACE-Eligible Security

Referenced Rules

- FINRA Rule 6710
- FINRA Rule 6720
- FINRA Rule 6730
- FINRA Rule 6750
- FINRA Rule 6760
- FINRA Rule 7730
- Securities Act Rule 144A
- SEA Section 19

Background & Discussion

The TRACE Rules (the FINRA Rule 6700 Series) provide for the reporting of transactions in TRACE-Eligible Securities to TRACE and the dissemination of transaction information, with limited exceptions.² TRACE reporting and data fees are set forth in FINRA Rule 7730.

In 2009, FINRA proposed two major expansions of TRACE.³ The first major expansion, which became effective March 1, 2010, added debt securities issued or guaranteed by U.S. federal agencies and government-sponsored enterprises (GSEs) (collectively, Agency Debt Securities) as TRACE-Eligible Securities.⁴ In addition, primary market transactions became reportable to TRACE, fee provisions were amended regarding both Agency Debt Securities and primary market transactions, and FINRA was granted certain emergency authority.⁵

On February 22, 2010, the SEC approved the second major proposed expansion of TRACE to include Asset-Backed Securities as TRACE-Eligible Securities, to require the reporting of Asset-Backed Securities transactions and to establish reporting fees. The significant changes to the TRACE Rules and FINRA Rule 7730 related to Asset-Backed Securities include:

- ▶ amendments to the definition of TRACE-Eligible Security in Rule 6710(a) to include Asset-Backed Securities, which is broadly defined in Rule 6710(m) and includes, but is not limited to, asset-backed securities, mortgage-backed securities, collateralized mortgage obligations, synthetic asset-backed securities, collateralized debt obligations, collateralized bond obligations, collateralized debt obligations of Asset-Backed Securities, collateralized debt obligations of collateralized debt obligations, including any residual tranches of such instruments, and similarly structured securities;
- ▶ amendments to the definition of Reportable TRACE Transaction to include specific requirements regarding Asset-Backed Securities in Rule 6710(c);
- ▶ the adoption of several new defined terms used in connection with Asset-Backed Securities— Sponsor, Issuing Entity, TBA, Agency Pass-Through Mortgage-Backed Security, Factor, Specified Pool Transaction, Stipulation Transaction, Dollar Roll and Remaining Principal Balance, in, respectively, Rule 6710(s), Rule 6710(t), Rule 6710(u), Rule 6710(v), Rule 6710(w), Rule 6710(x), Rule 6710(y), Rule 6710(z) and Rule 6710(aa)—and the term TRACE System Hours in Rule 6710(bb);
- ▶ amendments to the defined terms List or Fixed Offering Price Transaction and Takedown Transaction in, respectively, Rule 6710(q) and Rule 6710(r), to exclude Asset-Backed Securities;

- ▶ amendments to Rule 6730(a)(6), Rule 6730(c) and Rule 6730(d) to require the reporting of Asset-Backed Securities transactions to TRACE, including:
 - permitting the use of mortgage pool numbers and similar numeric identifiers when reporting if a CUSIP number is not available;⁶
 - reporting the original face value as the size (volume) of a transaction for transactions involving amortizing Asset-Backed Securities where par value is not used to indicate size (volume);
 - reporting the Factor used in the transaction if the Factor is not the most current Factor that is publicly available at the Time of Execution for the Asset-Backed Security;
 - reporting the total dollar amount of the commission;
 - reporting the actual date of settlement of the transaction and an indicator that the settlement is regular way or not regular way for the type of Asset-Backed Security traded; and
 - reporting the appropriate indicator if a transaction is a Specified Pool Transaction, a Stipulation Transaction, a Dollar Roll, or both a Dollar Roll and a Stipulation Transaction.
- ▶ amendments to Rule 6730(a)(6), for a six-month pilot, to extend the reporting period for Asset-Backed Securities transactions to no later than T+1 during TRACE System Hours, and, after the expiration of the six-month pilot, to require the reporting of Asset-Backed Securities transactions no later than the date of trade during TRACE System Hours, with certain exceptions for trades executed late in the trading day and outside of TRACE System Hours;⁷
- ▶ amendments to Rule 6750(b) to provide that FINRA will not disseminate information on Asset-Backed Securities transactions;
- ▶ amendments to Rule 6760 regarding the obligations of firms, including those that are a Sponsor or an Issuing Entity of an Asset-Backed Security, to provide notice to FINRA Operations regarding TRACE-Eligible Securities; and
- ▶ amendments to Rule 7730 to require firms reporting transactions in Asset-Backed Securities to pay reporting fees, and to calculate the fee based on the lesser of original face value or Remaining Principal Value (or the equivalent) at the Time of Execution for transactions in Asset-Backed Securities where par value is not used to determine the size (volume) of the transaction.

The text of all amendments to the Rule 6700 Series and Rule 7730 is set forth at www.finra.org/notices/10-23.

As noted on the previous page, FINRA will not disseminate transactions in Asset-Backed Securities when the Asset-Backed Securities amendments become effective. Instead, FINRA intends to collect and study the transaction data. After a review is undertaken, FINRA may propose to disseminate Asset-Backed Securities transaction data. Any proposal to do so will be filed with the SEC under Section 19(b) of the Securities Exchange Act as a proposed rule change, providing firms and the public an opportunity to comment.

FINRA is aware that the Asset-Backed Securities amendments will require firms to make significant operational and technological changes to incorporate the requirements in firms' business operations, technologies, and compliance and supervisory systems. Accordingly, FINRA has designated the effective date as February 14, 2011.⁸

In addition, FINRA has extended the period to report a transaction in an Asset-Backed Security from the date of trade during TRACE System Hours to T+1 during TRACE System Hours under a six-month pilot program. Extending the reporting period during the six-month pilot program also will provide firms the time needed to make the changes required to timely and accurately report Asset-Backed Securities transactions. The pilot program will end on Sunday August 14, 2011, at 11:59:59 p.m., Eastern Time.

Endnotes

- 1 See Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065) (Asset-Back Securities filing).
- 2 FINRA disseminates information on publicly traded TRACE-Eligible Securities immediately upon receipt of the transaction report by TRACE. Under Rule 6750(b), a transaction is not disseminated if it is: (1) effected under Securities Act Rule 144A; (2) part of a transfer of multiple proprietary positions to effect an acquisition, merger or a similar combination involving multiple broker-dealers that qualifies under Rule 6750(b)(2); or (3) a primary market transaction that is a List or Fixed Offering Price Transaction or a Takedown Transaction. As discussed below, primary market transactions, including List or Fixed Offering Price Transactions and Takedown Transactions, became subject to TRACE reporting on March 1, 2010.
- 3 See Exchange Act Release No. 60727 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Order Approving File No. SR-FINRA-2009-010) (the Agency Debt Securities filing) and Asset-Backed Securities filing, *supra* note 1.
- 4 See Agency Debt Securities filing, *supra* note 3. The amended definition of TRACE-Eligible Security that became effective on March 1, 2010, continued to exclude Asset-Backed Securities.
- 5 See Agency Debt Securities filing, *supra* note 3. The rule change modified the definition of “Reportable TRACE Transaction” in Rule 6710(c), which previously was limited to secondary market transactions. Certain primary market transactions—those defined as List or Fixed Price Offering Transactions in Rule 6710(q) and Takedown Transactions in Rule 6710(r)—are not required to be reported until close of business on T+1. Also, such transactions are not disseminated. See *supra* note 2.

The amendments to Rule 7730 established TRACE reporting and data fees for transactions in Agency Debt Securities at the same rates applicable to corporate bonds. Also, under amended Rule 7730, a member is not required to pay a reporting fee when reporting a List or Fixed Offering Price Transaction or a Takedown Transaction.

New Rule 6770 provides FINRA emergency authority to suspend the reporting and/or dissemination of certain transactions in TRACE-Eligible Securities or the reporting of certain data elements as market conditions warrant and in consultation with the SEC.
- 6 A firm’s use of a numeric identifier other than a CUSIP is not limited to Asset-Backed Securities.
- 7 See Rule 6730(a)(6)(A)(ii) and Rule 6730(a)(6)(B).
- 8 See Exchange Act Release No. 61948 (April 20, 2010), 75 FR 22670 (April 29, 2010) (Notice of Filing and Request for Comment of Immediately Effective Proposed Rule Change SR-FINRA-2010-019).

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