

FINRA Clarifies Classification and Trade Reporting of Hybrid Securities

FINRA recently published guidance that now requires firms to report over-the-counter (OTC) trades in covered hybrid securities to the Trade Reporting and Compliance Engine (TRACE) rather than to the OTC Reporting Facility (ORF) effective June 16, 2014.

Generally, FINRA requires OTC transactions in TRACE-eligible debt securities to be reported to TRACE and OTC transactions in equity securities to be reported to the ORF. Certain hybrid securities with both debt- and equity-like characteristics should be classified as “TRACE-Eligible Securities” and must be reported to TRACE. These include:

1. Unlisted capital trust and trust preferred securities;
2. Unlisted depositary shares having a liquidation preference of \$1,000 or more (or a cash redemption price of \$1,000 or more) that is a fractional interest in a non-convertible, preferred security (“hybrid \$1,000 depositary share”); and
3. Unlisted non-convertible, preferred securities having a liquidation preference of \$1,000 or more (or a cash redemption price of \$1,000 or more) (“hybrid \$1,000 preferred security”), such as a hybrid \$1,000 preferred security that is offered directly to an investor or a preferred security underlying multiple hybrid \$1,000 depositary shares.

All other preferred securities and depositary shares embodying fractional interests in these securities will continue to be considered equity securities and reported to the ORF.

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