



## Trade Reporting Frequently Asked Questions

The guidance provided in this FAQ pertains to the reporting of over-the-counter (OTC) transactions in equity securities to a FINRA Facility (a Trade Reporting Facility (TRF), the Alternative Display Facility (ADF) or the OTC Reporting Facility (ORF)). This guidance relates only to the trade reporting rules, as defined in FAQ 100.2 below, and does not address other member obligations under applicable FINRA rules or the federal securities laws, including but not limited to, recordkeeping obligations under SEC Rule 17a-3.

All references in this FAQ are to FINRA rules. Effective December 15, 2008, the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) were transferred to the consolidated FINRA rulebook as the FINRA Rule 6000 through 7000 Series. See Regulatory Notice 08-57 (October 2008). To facilitate the transition to the consolidated rulebook, FINRA has created [conversion charts](#) that map NASD and incorporated NYSE rules to new FINRA rules and vice versa.

Previous versions of the FAQ are archived:

[Pre-January 8, 2015](#)

[January 8, 2015](#)

[July 14, 2015](#)

[June 13, 2016](#)

Any questions regarding trade reporting to a FINRA Facility should be directed to FINRA's Market Regulation Department, at (240) 386-5126; FINRA's Office of General Counsel, at (202) 728-8071; or FINRA Operations, at (866) 776-0800.

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## General

### Section 100: Applicable Rules, Definitions and Related Guidance

#### Q100.1: What are the FINRA Facilities that support reporting of OTC transactions in equity securities?

**A100.1:** The TRFs are facilities through which members report transactions in NMS stocks, as defined in SEC Rule 600(b) (47) of Regulation NMS, effected otherwise than on an exchange. FINRA has established the following TRFs (each in conjunction with the pertinent Exchange): the FINRA/NASDAQ TRF and the FINRA/NYSE TRF. The ADF is both a trade reporting and quotation display and collection facility for purposes of transactions in NMS stocks effected otherwise than on an exchange. The ORF is the facility through which members report OTC transactions in OTC Equity Securities and Restricted Equity Securities, as those terms are defined in Rule 6420.

#### Q100.2: What rules govern the reporting of OTC transactions in equity securities to FINRA Facilities?

**A100.2:** The following Rule Series (collectively referred to herein as "the trade reporting rules") govern trade reporting to FINRA Facilities:

Rule Series	FINRA Facility	Type of Trades
6200 and 7100 Series	ADF	OTC transactions in NMS stocks
6300A and 7200A Series	FINRA/NASDAQ TRF	OTC transactions in NMS stocks

6300B and FINRA/NYSE OTC transactions in NMS stocks  
7200B TRF  
Series

6620 and ORF Transactions in OTC Equity Securities (i.e., non-NMS stocks such as OTC Markets  
7300 securities, ADRs, Canadian issues, foreign securities and non-exchange-listed DPP  
Series securities) and transactions in Restricted Equity Securities pursuant to Securities Act Rule 144A

**Q100.3: What transactions in equity securities must be reported to FINRA?**

**A100.3:** All OTC transactions in equity securities to which a FINRA member is a party must be reported to FINRA, unless expressly excepted from the trade reporting rules (as discussed more fully below). Reportable OTC transactions include trades in NMS stocks effected otherwise than on an exchange, which must be reported to the ADF or a TRF, as well as OTC trades in OTC Equity Securities and transactions in Restricted Equity Securities effected pursuant to Securities Act Rule 144A, which must be reported to the ORF.

**Q100.4: What is a "trade" or "transaction" that must be reported under the trade reporting rules?**

**A100.4:** For purposes of the trade reporting rules, a "trade" or "transaction" entails a change of beneficial ownership of securities between parties (e.g., a purchase or sale of securities) in which a member participates (e.g., as a dealer or an agent).

**Q100.5: How is "customer" defined for purposes of the trade reporting rules?**

**A100.5:** Pursuant to Rule 0160(b)(4), the term "customer shall not include a broker or dealer."

**Q100.6: What is a "tape" report (also referred to as a "media" report)?**

**A100.6:** A tape or media report is a trade report that is submitted to a FINRA Facility and reported to and publicly disseminated by the appropriate exclusive Securities Information Processor (SIP). Another term that is often used with respect to these trade reports is "for publication." In certain limited circumstances, trade reports submitted for publication may be suppressed from public dissemination (e.g., transactions in Restricted Equity Securities effected pursuant to Securities Act Rule 144A, as well as T+365 trades and trades executed on a non-business day reported to the ORF (effective November 17, 2014) and the ADF/TRFs (effective July 13, 2015)).

**Q100.7: What is a "non-tape" report (also referred to as a "non-media" report)?**

**A100.7:** A non-tape report can be either a "regulatory" report or a "clearing" report, neither of which is publicly disseminated. A regulatory report, sometimes referred to in the trade reporting rules as a "non-tape, non-clearing" report, is submitted to FINRA solely to fulfill a regulatory requirement (e.g., to report certain transactions subject to a regulatory transaction fee or, where applicable, to report the offsetting "riskless" leg of a riskless principal transaction). A clearing report, sometimes referred to in the trade reporting rules as a "clearing-only" report, is used by members to clear and settle transactions; information reported to FINRA in a clearing report is transmitted by FINRA to the National Securities Clearing Corporation (NSCC). Clearing reports also can be used to satisfy a member's obligation to provide regulatory information to FINRA, if applicable.

**Q100.8: What is the "time of execution" for purposes of the trade reporting rules?**

**A100.8:** The time of execution is the time when the parties to a transaction have agreed to all of the essential terms of the transaction, including the actual price (e.g., the published closing price or end-of-day volume weighted average price (VWAP)) and number of shares to be traded. For example, at 10:00 a.m., member BD1 receives an order to purchase 100

shares that is to be priced at the end-of-day VWAP, and at 4:30 p.m., the VWAP is published. In this instance, the time of execution is 4:30 p.m., not 10:00 a.m.

For non-tape reports of transactions such as step-outs and the offsetting leg of a riskless principal or agency transaction, the execution time is the time of allocation. See, e.g., FAQs 301.4, 302.7 and 303.4.

**Q100.9: What are "normal market hours" for purposes of the trade reporting rules?**

**A100.9:** "Normal market hours" are from 9:30:00:000 a.m. until 4:00:00:000 p.m. Eastern Time, and trades with an execution time outside of this period are considered "outside normal market hours." As of November 10, 2014 (ADF/TRFs) and November 17, 2014 (ORF), the FINRA Facilities support milliseconds. Thus, for example, a trade executed at 4:00:00:001 is considered "outside normal market hours" and must be modified accordingly.

**Reporting Requirements—OTC Equity Transactions Outside Normal Market Hours:**

Trade Execution Time	Reporting Requirement	Extended Hours/Sold – Field 3 Modifier	
		Actual Report Time	Field 3 Modifier
Midnight – 7:59:59:999 am	By 8:15 am (within 15 minutes of system open) on trade date	8:00 – 8:15 am on trade date	Outside normal market hours trade (.T)
		After 8:15 am on trade date	Outside normal market hours trade reported late (.U)
8:00:00:000 – 9:29:59:999 am	Within 10 seconds of execution on trade date	Within 10 seconds of execution	Outside normal market hours trade (.T)
		More than 10 seconds after execution	Outside normal market hours trade reported late (.U)
9:30:00:000 am – 4:00:00:000 pm (normal market hours)	Within 10 seconds of execution on trade date	Within 10 seconds of execution	N/A
		More than 10 seconds after execution	Normal market hours trade reported late (.Z)
4:00:00:001 – 8:00:00:000 pm	Within 10 seconds of execution on trade date	Within 10 seconds of execution	Outside normal market hours trade (.T)

(4:00:00:001 – 6:30:00:000 pm for ADF)		More than 10 seconds after execution	Outside normal market hours trade reported late (.U)
8:00:00:001 – 11:59:59:999 pm	By 8:15 am (within 15 minutes of system open) on T+1, "as/of"	8:00 – 8:15 am on T+1	Outside normal market hours trade (.T)
(6:30:00:001 – 11:59:59:999 pm for ADF)		After 8:15 am on T+1	Outside normal market hours trade reported late (.U)
OR			
Date of execution is non-business day (effective November 17, 2014 for ORF; July 13, 2015 for the ADF/TRFs.)			

**Q100.10: Are secondary transactions in unlisted direct participation program (DPP) and real estate investment trust (REIT) securities reportable to FINRA?**

**A100.10:** Yes. Secondary transactions in unlisted DPP and REIT securities fall within the definition of "OTC equity security" under Rule 6420 and must be reported to the ORF, unless the transaction qualifies for an exception or exemption from trade reporting, or the security qualifies as a "restricted equity security," as defined in Rule 6420. Rule 6622.01 provides that for purposes of reporting secondary market transactions in non-exchange-listed DPP securities, the following definitions shall apply. "Date of execution" means the date when the parties to a transaction in a DPP have agreed to all of the essential terms of the transaction, including the price and number of the units to be traded. "Time of execution" means the time when the parties to a transaction in a DPP have agreed to all of the essential terms of the transaction, including the price and number of the units to be traded.

**Q100.11: Where can firms find information regarding the migration of the ORF to FINRA's multi-product platform (MPP) on November 17, 2014?**

**A100.11:** Firms can obtain information relating to ORF migration on the [FINRA OTC Reporting Facility \(ORF\) Migration page](#).

**Q100.12: Where can firms get regulatory announcements relating to the FINRA Facilities and interpretive guidance relating to the trade reporting rules?**

**A100.12:** All firms that report to a FINRA Facility, including firms that report to the FINRA/NASDAQ TRF or FINRA/NYSE TRF, should sign up to receive regulatory announcements from FINRA under the Market Transparency tab of the [FINRA Email Subscription Service](#). For interpretive guidance relating to the trade reporting rules, firms should contact FINRA OGC or Market Regulation, as noted above. For technical or operational issues regarding the ADF or ORF, firms should contact FINRA Market Operations, and for technical or operational issues regarding the FINRA/NASDAQ TRF or FINRA/NYSE TRF, firms should contact NASDAQ or NYSE, respectively.

**Q100.13: Where can firms find the technical specifications for the FINRA Facilities?**

**A100.13:** The technical specifications can be found on FINRA's website:

[ADF](#)  
[TRF](#)  
[ORF](#)

## Section 101: Reporting Time, Price and Share Quantity **UPDATED**

### *Time*

#### **Q101.1: Must trade reports include the time the transaction was executed?**

**A101.1:** Yes. The trade reporting rules require that all trade reports submitted to a FINRA Facility must include the time of execution based on Eastern Time, except where another time is expressly required by rule. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). Prior to the effective date of amendments described below, these exceptions include Stop Stock transactions (the trade report must include the time at which the member and the other party agreed to the Stop Stock Price in lieu of the actual time the trade was executed) and transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time (PRP transactions) (the trade report must include the prior reference time in lieu of the actual time the trade was executed). See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). In addition, FINRA published Member Alert: Guidance Relating to "Execution Time" for Purposes of Compliance with NASD Trade Reporting Rules (June 13, 2007), providing further clarification on the appropriate "execution time" to be reported under certain circumstances when executing a block transaction using the Intermarket Sweep Order (ISO) exception (outbound), pursuant to SEC Rule 611(b)(6) of Regulation NMS. In all cases, the reported time must be in military format.

Pursuant to recent amendments, members must include two times when reporting Stop Stock and PRP transactions to the ORF (effective November 17, 2014) and the ADF/TRFs (effective July 13, 2015). For Stop Stock transactions, the trade report must reflect the time the parties agreed to the Stop Stock price and the actual execution time. For PRP transactions, the trade report must reflect the prior reference time and the actual execution time. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a); see also [Regulatory Notice 14-21](#) (May 2014).

In addition, members must include two times when reporting block transactions to the ADF/TRFs (effective July 13, 2015) using the exception for Intermarket Sweep Orders (ISOs) (outbound) under SEC Rule 611 of Regulation NMS if the time the firm routed the ISOs is different from the execution time. Specifically, firms must report the time that all material terms of the transaction are known in the "execution time" field, and in the new time field (i.e., the reference or "ISO time" field), if different from the execution time, firms should report the time they used to determine the ISOs, if any, to route to any better-priced protected quotations (sometimes referred to as the time the firm takes a "snapshot" of the market). See Rules 6282.03, 6380A.03 and 6380B.03; see also [Regulatory Notice 14-21](#) (May 2014).

See also FAQ 100.8.

#### **Q101.2: Where a PRP or Stop Stock transaction is reported within 10 seconds of the prior reference time or the time the parties agree to the Stop Stock price, should two times be included in the trade report?**

**A101.2:** No, if the trade is executed and reported within 10 seconds of the prior reference time (for PRP transactions) or the time the parties agreed to the Stop Stock price (for Stop Stock transactions), then the designated modifier should not be used and only the execution time should be reported. See Sections 402 and 408.

#### **Q101.3 (effective November 10, 2014 for ADF/TRFs; November 17, 2014 for ORF): My firm does not currently capture execution time in milliseconds. Is my firm required to start capturing execution time in milliseconds?**

**A101.3:** No, firms are not required to capture time in milliseconds and are permitted to continue to report time in seconds, if their system does not capture milliseconds. However, FINRA would expect to see over time an increasing percentage of firms capturing and reporting in milliseconds. See Rules 6282.04, 6380A.04, 6380B.04, 6622.04, 7130.01, 7230A.01, 7230B.01 and 7330.01; see also [Regulatory Notice 14-21](#) (May 2014).

#### **Q101.4 (effective November 10, 2014 for ADF/TRFs; November 17, 2014 for ORF): My firm operates an alternative trading system (ATS) that captures execution time in milliseconds. Must my firm report execution time in milliseconds on reports of trades executed in the ATS?**

**A101.4:** Yes, if a firm's system, such as an ATS, captures time in milliseconds, then that system is expected to be capable of reporting in milliseconds. See [Regulatory Notice 14-21](#) (May 2014).

**Q101.5 (effective November 10, 2014 for ADF/TRFs; November 17, 2014 for ORF):** My firm operates an ATS that captures execution time in milliseconds, while our market making desk captures time in seconds. Must our market making desk begin capturing time in milliseconds?

**A101.5:** No, the trade reporting rules do not require that the market making desk begin capturing time in milliseconds. However, because the ATS captures time in milliseconds, it must report in milliseconds. See FAQ 101.4; see also [Regulatory Notice 14-21](#) (May 2014).

**Q101.6 (effective November 10, 2014 for ADF/TRFs; November 17, 2014 for ORF):** My firm does not capture time in milliseconds. Can the trade report reflect time as HH:mm:ss or must it reflect time as HH:mm:ss:000?

**A101.6:** As noted in FAQ 101.3, a firm is permitted to continue to report time in seconds, if its system does not capture milliseconds. These firms may report time as HH:mm:ss:000, or they may report time as HH:mm:ss and the FINRA Facilities will populate the millisecond field with 000.

**Q101.7 (effective April 7, 2014 for OATS; November 10, 2014 for ADF/TRFs; November 17, 2014 for ORF):** If a firm reports execution time in milliseconds on the trade report submitted to the FINRA Facility, must the firm also report execution time on the corresponding OATS Execution Report at the millisecond (not second) level?

**A101.7:** Yes, the execution time on the trade report and corresponding OATS Execution Report must be identical and at the same level of granularity. The OATS execution timestamp and the trade report execution timestamp both must reflect the time of trade captured by the firm's execution system, and therefore, can never be different. See [Regulatory Notice 14-21](#) (May 2014); see also March 21, 2014, OATS Report, "[Firms Capturing Time in Milliseconds Required to Report to OATS in Milliseconds Beginning April 7, 2014.](#)"

**Q101.8 (effective November 10, 2014 for ADF/TRFs; November 17, 2014 for ORF):** For firms that report time in milliseconds, is the determination whether a trade has been reported late (i.e., outside the 10-second reporting window under the trade reporting rules) made at the millisecond level?

**A101.8:** Yes, the determination whether a trade has been reported late is made at the millisecond level for a firm that reports time in milliseconds. The FINRA Facility will mark any trade reported more than 10 seconds after execution as late. For example, a trade with an execution time of 10:01:00:999 must be reported no later than 10:01:10:999; if the trade is reported at 10:01:11:000, it will be marked late by the FINRA Facility. For firms that do not capture and report time in milliseconds, such determination remains at the second level (e.g., a trade with an execution time of 10:01:00 must be reported no later than 10:01:10; if the trade is reported at 10:01:10:001, it will be marked late by the FINRA Facility).

## **Price**

**Q101.9:** How many decimal places should a member use when reporting the price on trade reports?

**A101.9:** Members should report as many decimal places as the FINRA Facility permits, as specified by the applicable technical specifications. Thus, for example, if a member executes a trade at 10.123456 and the FINRA Facility permits entries up to six decimal places, then the member should report 10.123456.

**Q101.10:** What is the "explicit fee" functionality offered by the FINRA Facilities? **UPDATED**

**A101.10:** Members may agree in advance to transfer a transaction fee charged by one member to another member on an OTC transaction reported a FINRA Facility. The transaction fee is transferred through the submission of a clearing report, which must provide, in addition to all other information required under the trade reporting rules, a total per share or contract price amount, inclusive of the transaction fee. Thus, members submit two price amounts as part of their report to the FINRA Facility: one price including the transaction fee, which is submitted by the FINRA Facility to NSCC for clearance and



settlement, and one price exclusive of the transaction fee, which is reported for public dissemination. See Rules 7130(h), 7230A(h), 7230B(i), and 7330(i).

Both members and their respective clearing firms, as applicable, must execute [an agreement](#) (PDF 25KB), as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the FINRA Facility. Such agreement must be executed and submitted to FINRA before the members can transfer a transaction fee.

**Q101.11: Member BD1 purchases 100 shares of ABCD security from member BD2 at \$10.00 per share and the parties agree to a transaction fee of \$.001 per share. If the parties use the explicit fee functionality to transfer the transaction fee, what price will be publicly disseminated?**

**A101.11:** The trade price that is publicly disseminated is \$10.00, while the trade is cleared and settled by NSCC at \$10.001.

**Q101.12: Member BD1 receives an order from member BD2 to buy 5,000 shares of ABCD security and works the order as riskless principal. BD1 accumulates the shares through five separate trades with other market participants and each of these five trades is reported to the tape. BD1 then sells the 5,000 shares of ABCD to BD2 at its volume-weighted average cost and submits a non-tape report reflecting the riskless leg. Can BD1 use the explicit fee functionality to transfer a per share transaction fee to BD2? **UPDATED****

**A101.12:** Yes. Assuming that the parties have agreed in advance to the transaction fee and otherwise meet the requirements of Rule 7130(h), 7230A(h), 7230B(i) or 7330(i), as applicable, BD1 can use the explicit fee functionality to transfer a transaction fee on the sale of the 5,000 shares to BD2.

**Q101.13: If a firm executes an OTC trade in a security for which the price can be expressed as per share (or per unit) or as a percentage of par value, how should the price and quantity be reported to the ORF?**

**A101.13:** When reporting an OTC trade to the ORF, firms must report a per share (or per unit) dollar price, irrespective of whether the price for the security may also be expressed as a percentage of par value. The quantity must be reported as the number of shares (or units) purchased (or sold) and not the total face value of the transaction. For example, if member BD1 executes an OTC trade for 10 shares with a \$25 par value at a price of \$24 per share (or per unit) for a total transaction value of \$240, BD1 reports \$24 as the price and 10 shares as the quantity. If BD1 executes an OTC trade for 10 shares with a \$1000 par value at a price of \$1010 per share (or per unit) for a total transaction value of \$10,100, BD1 reports \$1010 as the price and 10 as the quantity. In this example, BD1 should not report the price as 101, which would be a percentage of par value, to the ORF.

#### **Share Quantity **NEW****

**Q101.14: How should a trade for a fractional number of shares, for example, 100.5 shares, be reported? **NEW****

**A101.14:** When reporting a trade for a fractional number of shares, firms should delete the fraction and report the whole number, except if the whole number would be 0 (zero). If the whole number would be 0, firms should round up to 1. Thus, for example, for a trade of 100.5 shares, the reported quantity would be 100. Trade reports with a share quantity containing a decimal or a fraction will be rejected. (See also, e.g., OATS FAQ T69.)

**Q101.15: Must trades for less than one share be reported? **NEW****

**A101.15:** Yes. As noted in FAQ 101.14, where a trade is executed for less than one share, e.g., 1/3 share, firms should round up and report a share quantity of 1.

## **Section 102: Timely Submission of Trade Report Information**

**Q102.1: When must OTC trades be reported to FINRA?**

**A102.1:** Generally, members must submit tape reports of transactions in NMS stocks and OTC Equity Securities (including non-exchange listed foreign securities, ADRs, Canadian issues and direct participation program (DPP) securities) as soon as practicable, but no later than 10 seconds, following trade execution during the hours that the FINRA Facility to which the member is reporting is open. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). See also [Regulatory Notice 13-19 \(May 2013\)](#). Trades executed before the Facility opens and after the close of the Facility must be reported, but such trades are subject to a different reporting time frame. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a); see also FAQ 102.3.

Transactions in Restricted Equity Securities effected pursuant to SEC Rule 144A must be reported to the ORF no later than 8:00 p.m. Eastern Time. Transactions in Restricted Equity Securities effected pursuant to SEC Rule 144A and executed between 8:00 p.m. and midnight must be reported the following business day (T+1) by 8:00 p.m. See Rule 6622(a)(3); see also [Regulatory Notice 10-26 \(May 2010\)](#).

**Q102.2: Does the 10-second reporting requirement apply to the submission of non-tape reports to FINRA?**

**A102.2:** No. Members are not required to submit non-tape reports to FINRA within 10 seconds of trade execution; however, regulatory reports generally are required to be submitted within specified time frames. For example, members must submit the non-tape report for the offsetting "riskless" leg of a riskless principal transaction as soon as practicable after the offsetting leg is executed, but no later than the time the FINRA Facility closes for the trading day. See [NTM 00-79 \(November 2000\)](#). However, to qualify for the exemption from the requirements of Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) for riskless principal transactions, a member must submit, contemporaneously with the execution of the facilitated order, a non-tape report reflecting the offsetting "riskless" leg of the transaction. See Rule 5320.03. For purposes of this exception, "contemporaneously" has been interpreted to require execution as soon as possible, but absent reasonable and documented justification, within one minute. See [NTMs 95-67 \(August 1995\)](#) and [98-78 \(September 1998\)](#).

Non-tape reports that are submitted for regulatory transaction fee purposes under Section 3 of Schedule A to the By-Laws must be submitted by the end of the reporting session for the FINRA Facility. See Rules 7130(c), 7230A(g), 7230B(f) and 7330(g).

Clearing reports must be submitted to the FINRA Facilities in conformance with the trade reporting rules, as well as all applicable rules of other self-regulatory organizations, including the rules of the National Securities Clearing Corporation (NSCC) requiring that locked-in trade data be submitted in real time and prohibiting pre-netting and other practices that prevent real-time trade submission. See [DTCC/NSCC Important Notice A#7663, P&S#7333, dated January 7, 2014](#).

**Q102.3: When must a trade in an NMS stock or an OTC Equity security that is executed outside normal market hours be reported?**

**A102.3:** Trades in NMS stocks and OTC Equity Securities that are executed outside normal market hours (i.e., outside the hours of 9:30:00:000 a.m. and 4:00:00:000 p.m. Eastern Time) and during the hours the FINRA Facility to which the member is reporting is open must be reported as soon as practicable, but no later than 10 seconds following execution. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). Trades in NMS stocks and OTC Equity Securities executed during the hours the FINRA Facility to which the member is reporting is closed are not subject to 10-second reporting. Specifically, trades executed between midnight and 8:00 a.m. must be reported by 8:15 a.m. Eastern Time on trade date. Trades executed between the close of the Facility (6:30 p.m. for the ADF and 8:00 p.m. for the TRFs and the ORF) and midnight must be reported on an "as/of" basis by 8:15 a.m. Eastern Time the following business day. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). See also [FAQ 100.9](#) and [Regulatory Notice 09-52 \(August 2009\)](#) for additional guidance on reporting trades executed outside normal market hours.

Trades executed on non-business days (i.e., weekends and holidays) must be reported to the ORF (effective November 17, 2014) and the ADF/TRFs (effective July 13, 2015) on an "as/of" basis by 8:15 a.m. Eastern Time the next business day following execution. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a); see also [Regulatory Notice 14-21 \(May 2014\)](#). Thus, for example, a trade executed on Saturday must be reported by 8:15 a.m. the following Monday (since the FINRA Facilities are not open on Saturday to accept the trade report), and if the trade is not reported by that time, it is marked late.

**Q102.4: If a trade is not reported within the time period prescribed by the trade reporting rules, must it still be reported?**

**A102.4:** Yes. If a trade is not reported within the time period prescribed by the trade reporting rules (e.g., within 10 seconds of execution), it must be reported as soon as practicable and shall be designated as late. Trades that are required to be reported on trade date, but are not reported on trade date, must be reported on an "as/of" basis on a subsequent date (T+N) and shall be designated as late. Trades that are required to be reported on an "as/of" basis the following business day (T+1) (e.g., certain trades executed outside normal market hours), but are not reported on T+1, must be reported on a subsequent date (T+N) and shall be designated as late. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a).

**Q102.5: What should firms do to satisfy the requirement to report "as soon as practicable" under FINRA trade reporting rules?**

**A102.5:** Firms must adopt policies and procedures reasonably designed to comply with the "as soon as practicable" requirement and must implement systems that commence the trade reporting process without delay upon execution. Where a firm has such reasonably designed policies, procedures and systems in place, the firm generally would not be viewed as violating the "as soon as practicable" requirement because of delays in trade reporting due to extrinsic factors that are not reasonably predictable and where the firm does not purposely intend to delay the reporting of the trade (e.g., TRF systems issues). Firms must not purposely withhold trade reports, e.g., by programming their systems to delay reporting until the last permissible second. See Rules 6282.02, 6380A.02, 6380B.02 and 6622.03. See also [Regulatory Notice 13-19 \(May 2013\)](#).

**Q102.6: Firm BD1 must enter the details of a trade manually following trade execution, and although BD1 has established efficient reporting processes and commences to report the trade without delay, BD1 is unable to complete the trade reporting process within 10 seconds. Will FINRA take the manual nature of the trade reporting process into account when reviewing for a pattern or practice of late reporting?**

**A102.6:** Yes. Where the details of a trade must be manually entered or typed into a trade reporting system following execution, FINRA will take such factors as the complexity and manual nature of the execution and reporting of the trade into consideration in determining whether "reasonable justification" exists to excuse what otherwise may be deemed to be a pattern or practice of late trade reporting. Among other things, FINRA will consider the complexity of a trade (e.g., a volume-weighted average trade or an options-related trade) and size of a trade (e.g., a trade that involves a basket of securities), as well as the fact that some amount of time must elapse between the commencement of the manual trade reporting process and the reporting of the trade. See Rules 6282.02, 6380A.02, 6380B.02 and 6622.03. See also [Regulatory Notice 13-19 \(May 2013\)](#).

Firms must maintain, and provide upon request, documentation sufficient to demonstrate that a trade was reported late due to the manual nature of the trade entry process following execution.

## **Section 103: Trade Comparison and Acceptance** **UPDATED**

**Q103.1: What FINRA Facilities provide trade acceptance and comparison functionality?** **UPDATED**

**A103.1:** Currently, the ADF, FINRA/NASDAQ TRF and ORF provide trade acceptance and comparison functionality. See Rules 7130(b), 7230A(b) and 7330(b). This means that the reporting party submits the trade information and the contra party then accepts (or declines) the trade information submitted by the reporting party. Parties must utilize the trade acceptance and comparison functionality where no give-up agreement between the parties exists. See FAQ 200.1. In addition, the ADF, FINRA/NASDAQ TRF and ORF provide a matching functionality, where each party enters its own trade information, and the Facility matches the two reports. See Rules 7140, 7240A and 7340. See also [Trade Reporting Notice 10/7/16](#) ("Trade Match" and "Trade Acceptance" Clearing Submissions on FINRA's Alternative Display Facility).

The FINRA/NYSE TRF does not provide trade acceptance and comparison functionality and, therefore, trades must be locked-in before they can be submitted to this Facility. See Rules 7230B(a) and 7240B. This means that the parties must

have a give-up agreement (i.e., the [FINRA Uniform Service Agreement](#)) in place, which allows the reporting party to submit both sides of the trade and "lock-in" the trade without specific acceptance by the contra party. See FAQ 200.1.

**Q103.2: Members BD1 and BD2 execute an OTC trade and BD2 has the reporting obligation under the trade reporting rules. The parties are using the trade comparison and acceptance functionality to report the trade. How much time does BD1 have to accept or reject the trade report submitted by BD2 using the trade comparison functionality?**

**A103.2:** BD1 has 20 minutes from the time of execution to accept or reject the trade information submitted by BD2. If the trade is executed during the hours that a FINRA Facility is closed, BD1 has until 8:20 a.m. Eastern Time to accept or reject the trade information submitted by BD2. See Rules 7130(b), 7230A(b) and 7330(b).

If the parties are reporting the trade as "locked in" pursuant to a give-up agreement (see Section 200), then the "20 minute rule" does not apply.

**Q103.3: Members BD1 and BD2 execute an OTC trade and BD2 has the reporting obligation under the trade reporting rules. BD2 fails to report the trade within 10 seconds, as required under the trade reporting rules, and instead reports it 30 minutes after execution. Should BD1 wait until BD2 submits the trade to FINRA and then accept the trade? **UPDATED****

**A103.3:** No. In this circumstance, BD1 should submit its own version of the trade within 20 minutes of execution (or, with respect to trades executed during the hours that a FINRA Facility is closed, by 8:20 a.m. Eastern Time on trade date, if the trade is executed between midnight and 8:00 a.m., or by 8:20 a.m. Eastern Time on T+1, if the trade is executed between 8:00 p.m. and midnight). If BD1 fails to do so, it could be charged with a trade reporting violation. However, FINRA would take into consideration factors such as BD1 did not receive an execution report from BD2 within 20 minutes of execution and thus did not have sufficient information to submit its own version of the trade. See, e.g., [Regulatory and Compliance Alert: NASD Regulation Reiterates ACT Transaction Reporting Obligations of Order Entry Firms \(Spring 2002\)](#) (PDF 589 KB).

**Q103.4: Members BD1 and BD2 execute an OTC trade and BD2 has the reporting obligation under the trade reporting rules. The parties are using the trade comparison functionality to report the trade. Is BD1 responsible for ensuring the accuracy of trade report information that it accepts?**

**A103.4:** Yes, BD1 is responsible for ensuring the accuracy of the trade report information that it accepts relating to its side of the trade. If BD1 accepts incorrect information submitted by BD2 relating to BD1's side of the trade, BD1 could be charged with a trade reporting violation.

**Q103.5: Members BD1 and BD2 execute an OTC trade and BD2 has the reporting obligation under the trade reporting rules. BD2 reports the trade for tape purposes, and the parties are using the trade acceptance and comparison functionality for purposes of clearing the trade. BD1 declines BD2's submission and the trade does not clear and settle. Is BD2 required to submit a cancellation to remove the trade from the tape?**

**A103.5:** Yes, BD2 must submit a cancellation. For any trade reported for public dissemination purposes that ultimately does not clear and settle, reporting firms must submit a cancellation (or reversal, if applicable) to remove the trade from the tape so that the tape accurately reflects that the trade did not take place. See [Trade Reporting Notice 7/11/2014: \(Obligation to Report Cancellations of OTC Trades in Equity Securities, Including Trades Declined by the Contra Party\)](#) and [Regulatory Notice 14-21](#) (May 2014).

**Q103.6: Do trades that have been declined by the contra party remain available in the system after trade date?**

**A103.6:** Pursuant to recent amendments (effective November 17, 2014 for the ORF and July 13, 2015 for the ADF/TRFs, as applicable), trades that are declined by the contra party are not purged at the end of trade date processing, but are carried over and remain available for cancellation or correction by the reporting party or subsequent acceptance by the contra party. For example, if member BD1, as the contra party, erroneously declines the trade report member BD2 submits, BD1 could accept the previously declined trade up to T+1. Declined trades that are carried over will not be available for the automatic

lock-in process described in the rules and will not be sent to clearing unless the parties take action. See Rules 7140(a)(2), 7240A(a)(2) and 7340(a)(2); see also [Regulatory Notice 14-21](#) (May 2014).

## Section 104: Multiple MPIDs for Trade Reporting

### Q104.1: Can FINRA members use multiple Market Participant Symbols (MPIDs) to report to a FINRA Facility?

**A104.1:** Yes. FINRA permits the use of multiple MPIDs by members reporting trades to FINRA. Rules 6160 and 6480 provide that any member that wishes to use more than one MPID for purposes of reporting trades to a TRF or the ORF, respectively, must submit a written request to, and obtain approval from, FINRA Operations for additional MPIDs. Similarly, Rule 6170 sets forth the procedure for obtaining additional MPIDs for use on the ADF by Registered Reporting ADF ECNs.

By rule, a member is required to identify on its application the bona fide business and/or regulatory purpose(s) and the system(s) for which the multiple MPIDs will be used, as well as the identity of the other SROs on whose systems the member intends to use the MPID(s), as applicable. FINRA will evaluate the use of multiple MPIDs based upon the stated purpose(s) and system(s) for which the additional MPID(s) will be used. Members must notify FINRA, and obtain FINRA approval, before using multiple MPIDs for new or unidentified purpose(s) or system(s). Moreover, a member that ceases to meet the obligations appurtenant to its primary MPID in any security shall not be permitted to use additional MPIDs for any purpose in that security.

### Q104.2: Can a member's additional MPIDs be withdrawn or limited after issuance?

**A104.2:** FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. As such, if FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a member is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the member in its application, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s). See Rules 6160, 6170 and 6480.

### Q104.3: Are members required to use the same MPID for purposes of posting a quotation and reporting a trade resulting from such posted quotation?

**A104.3:** Yes. For example, a member that posts quotations on the ADF may report trades resulting from those quotations to either the ADF or a TRF. In such circumstances, the member must use the same MPID when reporting a trade that resulted from its posted quotation to either the ADF or a TRF.

### Q104.4: Is there guidance on the requirement that an ATS obtain and report with a single separate MPID under FINRA Rules 6160, 6170 and 6480?

**A104.4:** Yes, firms should refer to the ATS Reporting & MPID: [Frequently Asked Questions](#).

### Q104.5: Is there guidance on reporting matches (also referred to as "crosses") when using multiple MPIDs?

**A104.5:** Yes, firms should refer to the [ATS OATS and Trade Reporting guidance](#) that became effective February 2, 2015. This guidance addresses the matching of orders from customers, other FINRA members and non-FINRA member broker-dealers, and applies where the executing firm uses multiple MPIDs, irrespective of whether the execution occurs on an ATS. Firms were permitted – but not required to – begin reporting in accordance with that guidance prior to February 2, 2015. See also, generally, Sections 306 – 308.

**Q104.6: Member BD1 has two MPIDs, ABCA and ABCB. BD1 does not operate an ATS and is not executing a cross. One business unit in BD1 uses the MPID ABCA (the "ABCA business unit") and another business unit in BD1 uses the MPID ABCB (the "ABCB business unit"). Member BD2 routes a buy order to the ABCA business unit. In turn, the ABCA business unit routes the order to the ABCB business unit for execution. The ABCB business unit executes the trade in a principal capacity. How should this transaction be reported?**

**A104.6:** BD1 is the executing party and has the trade reporting obligation. BD1 can report the trade in one of two ways:

Alternative #1

- › Tape Report: ABCB (as principal) sells to BD2

Alternative #2

- › Tape Report: ABCB (as principal) sells to ABCA (as agent)
- › Non-Tape Report: ABCA (as agent) sells to BD2

**Q104.7: Member BD1 has two MPIDs, ABCA and ABCB. One business unit in BD1 uses the MPID ABCA (the “ABCA business unit”) and another business unit in BD1 uses the MPID ABCB (the “ABCB business unit”). If the ABCA business unit buys shares from the ABCB business unit to satisfy a customer buy order received by the ABCA business unit, must the transfer of shares from the ABCB business unit to the ABCA business unit be reported to FINRA?**

**A104.7:** No, the transfer of shares between the ABCA business unit and the ABCB business unit to satisfy the customer order is not trade reportable because there is no change in beneficial ownership. See FAQ 100.4. Note that the sale to the customer must be reported for tape purposes.

## **Section 105: Obtaining Security Symbols for Trade Reporting Purposes**

### **UPDATED**

**Q105.1: What should a member do if it executes a trade in a security that is reportable to the ORF under Rule 6622, but does not have a symbol? **UPDATED****

**A105.1:** In those situations where a security does not have a valid U.S. symbol assigned, the member must promptly request that [FINRA Market Operations](#) assign a symbol to the security so that the member can fulfill its trade reporting obligations. Members should submit such request on the OTC Equity Symbol Request Form via the [FINRA Member Firm Gateway](#) and must provide all requested information, including a CUSIP number for the security. If there is no symbol at the time the trade is executed, the trade should be reported to the ORF immediately upon the issuance of the symbol and be marked late, as applicable. If the trade is not reported on trade date, it should be reported on an "as/of" basis using the original execution date as the trade date. See [Trade Reporting Notice 9/23/2011: Trade Reporting Transactions in OTC Equity Securities and Restricted Equity Securities](#).

**Q105.2: Security ABCD is the subject of an initial public offering (IPO) and will later be listed on the NYSE. Immediately after the distribution and before the security becomes listed on the NYSE, the security begins trading OTC. Must these trades be reported to FINRA?**

**A105.2:** Yes, these trades must be reported to FINRA. Until the security becomes listed, it generally would be considered an OTC Equity Security, as defined in Rule 6420, or a TRACE-eligible security, as defined in Rule 6710, and must be reported to either the ORF or TRACE, as applicable. If the security is deemed an OTC Equity Security and there is no OTC symbol for the security, the member should request a symbol from FINRA in accordance with FAQ 105.1.

Firms are reminded that FINRA rules prohibit members from executing or causing to be executed, directly or indirectly, a transaction otherwise than on an exchange in a security subject to an IPO until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange. See Rule 6130. Accordingly, members should not execute or report trades in the listed symbol prior to dissemination of the opening transaction by the listing exchange. Any trading occurring prior to the date of

the IPO may only be effected in the OTC symbol, and trading in the OTC symbol is prohibited from midnight forward on the date of the IPO.

**Q105.3: Does FINRA assign symbols for securities listed on a national securities exchange?**

**A105.3:** No. Members should contact the relevant exchange to determine the symbol for a listed security.

**Q105.4: Does FINRA assign symbols for equity securities that do not have a CUSIP number?**

**A105.4:** No, FINRA does not issue symbols for any equity security that does not have a CUSIP number.

**Q105.5: Trade Reporting Notice 9/23/2011 reminds firms of their trade reporting obligations relating to customer sales of low-value OTC Equity Securities. Does this Notice apply when a firm removes from a customer's account securities once they have been revoked by the SEC or canceled pursuant to a bankruptcy proceeding or final liquidation plan, and are firms required to obtain OTC symbols in such instances?**

**A105.5:** No, this Notice does not apply when a firm removes from a customer's account securities once they have been revoked by the SEC or canceled pursuant to a bankruptcy proceeding or final liquidation plan. As such, firms should not request (and FINRA will not issue) OTC symbols in such instances.

## Section 106: Scope of Reporting Requirements

**Q106.1: Member BD1 buys at a discount a large block of previously restricted securities in XYZ Corp. from an XYZ Insider in compliance with SEC Rule 144, and then sells the block in pieces into the marketplace at market price (e.g., to BD2 and BD3). Is the sale from the XYZ Insider to BD1 reportable? Are the sales from BD1 to BD2 and BD3 reportable?**

**A106.1:** If all applicable conditions of SEC Rule 144 are satisfied, BD1 has received unrestricted stock for purposes of the trade reporting rules and, therefore, the sale from the XYZ Insider to BD1 should be reported to the tape. The sales from BD1 to BD2 and BD3 are also tape reportable. Note, however, that this guidance may not address all administrative steps that must be taken before a restricted security can be sold freely (e.g., CUSIP conversion from restricted to unrestricted status and symbol creation for a security that was not otherwise publicly traded).

**Q106.2: A registered investment advisor (RIA) operates within member broker-dealer BD1 (i.e., BD1 and RIA are part of the same legal entity). RIA routes an order for execution to member BD2. BD2 executes and reports the trade to FINRA. How should this trade be reported?**

**A106.2:** Because the RIA is part of the same legal entity as the broker-dealer, this is considered the broker-dealer's trade for purposes of the trade reporting rules. BD2 should report the trade showing BD1 and BD2 as the parties to the trade on the tape report, and BD1 is subject to all applicable trade reporting rules (e.g., the 20 minute rule) with respect to the trade. BD2 must not report this as a trade with a customer. If the RIA is a separate legal entity that is not a FINRA member, the RIA would not be subject to the trade reporting rules. (See also OATS FAQ (Compliance) #C3.)

**Q106.3: Member BD1 transfers 100 shares of ABCD from one business unit within BD1 to another business unit within BD1. Is this transfer required to be trade reported to FINRA?**

**A106.3:** No, this transfer is not required to be trade reported to FINRA. Because there is no change in beneficial ownership, this is not considered a "trade" for purposes of the trade reporting rules. See FAQ 100.4.

**Q106.4: Member BD1 transfers 100 shares of ABCD to its affiliate, member BD2, for risk management purposes. BD1 and BD2 are separate legal entities and owned by the same parent company. Is this transfer required to be reported to FINRA?**

**A106.4:** Yes, this transfer must be reported to FINRA. Because BD1 and BD2 are separate legal entities, there is a change in beneficial ownership and therefore this is a reportable trade for purposes of the trade reporting rules. See FAQ 100.4.

**Q106.5: Are transfers of equity securities effected pursuant to a repurchase/reverse repurchase ("Repo") agreement reportable to FINRA?**

**A106.5:** No. For purposes of the trade reporting rules, transfers of equity securities effected pursuant to a bona fide properly documented Repo agreement are viewed as financing arrangements rather than reportable transactions.

## Section 107: Reporting Capacity

**Q107.1: Is the firm that reports the trade responsible for providing capacity information for both sides of the trade?**

**A107.1:** Yes, the trade reporting rules require that unless the contra side will have an opportunity to provide its own trade information (see Section 103), the reporting member is responsible for the complete and accurate submission of information for both sides of the trade, including capacity. See Rules 7130(d), 7230A(d), 7230B(d) and 7330(d).

**Q107.2: My firm reports to a FINRA Facility that defaults the capacity code. Is my firm responsible for correcting the capacity, if different from the default capacity?**

**A107.2:** Yes. Members are responsible for accurately reporting all information in trade reports, including capacity. Where a FINRA Facility defaults the capacity code, the reporting member must ensure that the default capacity is accurate. For purposes of compliance with the trade reporting rules, reliance on the default capacity is considered the equivalent of affirmatively selecting the default capacity. Thus, for example, if member BD1 reports a trade and the default capacity is "agent," BD1 will be deemed to have affirmatively reported its capacity as agent.

## Reporting Relationships and Responsibilities

### Section 200: Reporting on Behalf of Another Member ("Give-Up" Relationships)

**Q200.1: Can a FINRA member report to a FINRA Facility on behalf of (also referred to as "giving up") another FINRA member?**

**A200.1:** Yes. A member may agree to allow another member to report and lock-in trades on its behalf to a TRF, the ADF or the ORF, provided that both parties have executed an agreement to that effect (a "give-up agreement") in the form specified by FINRA ([FINRA Uniform Service Agreement](#)) (PDF 18 KB), and submitted such agreement to the FINRA Facility (or Facilities) to which the "give-up" or "on behalf of" relationship applies. See Rules 6380A(h), 6380B(g) and 6622(h); NASD Member Alert: Notice to All TRF, ADF and Other NASD Facility Participants Regarding AGU and QSR Relationships (January 25, 2007). Give-up agreements may only be used where the member that is being "given up" or on whose behalf the report is being submitted is a true executing party to the trade. In addition, the member being "given up" must have a valid MPID for the reporting member to use when reporting trades on its behalf.

**Q200.2: Is a give-up agreement required any time a member is "giving up" or reporting trade information to a FINRA Facility on behalf of another member?**

**A200.2:** A give-up agreement, in the form specified by FINRA ([FINRA Uniform Service Agreement](#)) (PDF 14 KB), is required any time a member is reporting trade information to a FINRA Facility on behalf of another member and acceptance by the other member is not otherwise required to lock-in the trade. For example, two FINRA members (BD1 and BD2) execute a trade and under the trade reporting rules, BD1 has the reporting obligation. For BD2 to report the trade on BD1's



behalf, a valid, executed give-up agreement must be in place. Similarly, for BD1 to report the trade as locked-in and identify BD2 as the contra party to the trade, a valid, executed give-up agreement must be in place.

Where a tape only report is being submitted to a FINRA Facility, a give-up agreement is not required for the member with the reporting obligation to identify the contra party to the trade on the trade report. For example, two FINRA members (BD1 and BD2) execute a trade and under the trade reporting rules, BD1 has the reporting obligation. A give-up agreement is not required for BD1 to identify BD2 as the contra party to the trade on a tape only report.

**Q200.3: Is a give-up agreement required even if the parties have executed a Qualified Service Representative (QSR) agreement?**

**A200.3:** Yes. A QSR agreement is a National Securities Clearing Corporation (NSCC) agreement and only establishes that one party can send a trade to clearing on behalf of the other party. It does not establish that one party can trade report on behalf of another party for purposes of complying with the trade reporting rules. Therefore, a give-up agreement, in the form specified by FINRA ([FINRA Uniform Service Agreement](#)) (PDF 14 KB), is required for a member to report trade information to a FINRA Facility on behalf of another member, even if the parties have a QSR agreement in effect. See NASD Member Alert: Notice to All TRF, ADF and Other NASD Facility Participants Regarding AGU and QSR Relationships (January 25, 2007).

**Q200.4: What are the obligations of the member being "given up" or reported on behalf of with respect to the submission of trade information?**

**A200.4:** A give-up agreement is a private contractual arrangement recognized by FINRA for trade reporting purposes, but it does not relieve the member being "given up" from its trade reporting obligations in the event of a failure of the reporting party to report pursuant to applicable rules. Both the member with the reporting obligation and the member submitting the trade report to FINRA are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations. See Rules 6282(h) 6380A(h), 6380B(g) and 6622(h). Any member that agrees to allow another member to report trades on its behalf must establish, maintain and enforce supervisory procedures that allow it to determine that the other member is reporting in compliance with all applicable rules. See [NTM 98-96](#) (December 1998).

**Q200.5: Member BD1 has the reporting obligation under the trade reporting rules and has executed a give-up agreement with member BD2, whereby BD2 reports on behalf of BD1. BD2 fails to report the trade within 10 seconds of execution, as required under the trade reporting rules. Can BD1 be charged with late trade reporting?**

**A200.5:** Yes. As noted in FAQ 200.4, both the member with the reporting obligation and the member submitting the trade to FINRA are responsible for ensuring that the trade is reported in compliance with all applicable rules. Thus, BD1 could be charged with late trade reporting if BD2 fails to report on BD1's behalf within the time prescribed by the trade reporting rules. BD1 could also be charged with failure to establish, maintain and enforce proper supervisory procedures under such circumstances.

**Q200.6: Member BD1 matches as agent a buy order from member BD2 with a sell order from member BD3, and BD1 has give-up agreements with both BD2 and BD3. Can BD1 submit a single trade report as between BD2 and BD3, without BD1 appearing as a party to the trade?**

**A200.6:**No. BD1 is a party to the trade and must appear on the trade report as such. It would be a rule violation for BD1 to submit a single trade report identifying BD2 and BD3 as the only parties to the trade.

**Q200.7: Member BD1 has give-up agreements with member BD2 and member BD3. BD2 and BD3 execute an OTC trade. Can BD1 report the trade between BD2 and BD3?**

**A200.7:** Yes. In this example, BD1 is not a party to the trade and is merely facilitating the reporting of the trade between BD2 and BD3. Thus, assuming valid, executed give-up agreements are in place (see FAQ 200.1), BD1 could report the trade identifying BD2 and BD3 as the parties to the trade.

## Section 201: Order Routing, Execution and/or Reporting via Another Member

**Q201.1: Member BD1 uses member BD2's system to route its orders to member BD3. BD3 receives the order from BD1 and executes the order. BD2 has no discretion over BD1's order and has no involvement in the routing or execution of the order, other than providing the routing mechanism. Which members should be identified as the parties to the trade on the tape report? Does the same guidance apply where BD1 clears through BD2?**

**A201.1:** The parties to the trade on the tape report must be BD1 and BD3. In this example, BD3 views the order as coming from BD1 and BD2's role is solely to provide a routing mechanism.

This guidance also applies where, in the example above, BD1 clears through BD2, including on a fully disclosed basis.

**Q201.2: Assume the same facts as FAQ 201.1. Is it permissible for BD2 to "give up" or report on behalf of BD1 on the tape report?**

**A201.2:** Yes. In this instance BD2 can "give up" or report on behalf of BD1 for purposes of the tape report, provided that there is a valid, executed give-up agreement between BD1 and BD2. See FAQ 200.1. BD1 and BD3 must be identified on the tape report as the parties to the trade.

**Q201.3: Member BD1 enters an order into member BD2's system. BD2 makes the order routing and execution decision and directs BD1's order to member BD3. BD3 executes it. Which members should be identified as the parties to the trade on the tape report? Does the same guidance apply where BD1 clears through BD2?**

**A201.3:** The parties to the trade on the tape report must be BD2 and BD3. In this example, BD2 (and not BD1) is a party to the trade because BD2 is making the order routing and execution decision and directing BD1's order to BD3.

This guidance also applies where, in the example above, BD1 clears through BD2, including on a fully disclosed basis.

**Q201.4: Assume the same facts as FAQ 201.3. Is it permissible for BD2 to "give up" or report on behalf of BD1 on the tape report?**

**A201.4:** No, in this instance, BD2 cannot "give up" or report on behalf of BD1 for purposes of the tape report. BD1 is not a party to the trade between BD2 and BD3 and cannot be identified as such on the tape report.

**Q201.5: Member BD1 executes a trade with its clearing firm, BD2, which is also a member. Can BD2 "give up" or report on behalf of BD1 on the tape report?**

**A201.5:** Yes. In this instance, BD2 can "give up" or report on behalf of BD1, provided that there is a valid, executed give-up agreement between BD1 and BD2. See FAQ 200.1. BD1 and BD2 must be identified on the tape report as the parties to the trade.

## Section 202: Reporting Trades With a Non-FINRA Member

**Q202.1: How should trades executed with a broker-dealer that is not a FINRA member be reported to FINRA?**

**A202.1:** When reporting a trade with a broker-dealer that is not a FINRA member, the non-member should not be identified on the trade report as the contra party to the trade.

There is a limited exception where a Canadian non-member firm uses the FINRA/NASDAQ TRF or ORF for purposes of comparing trades pursuant to a valid Non-Member Addendum to the NASDAQ Services Agreement. In that instance, however, the Canadian non-member must appear on the trade report as the contra party to the trade and not as the reporting party. For any trade report on which a Canadian non-member appears as a party to the trade, the FINRA member must appear as the reporting party.

**Q202.2: Member BD1 executes a trade with non-member BD2. BD2's clearing firm is a FINRA member (BD3). Should BD2's clearing firm, BD3, appear on the tape report as the contra party to the trade?**

**A202.2:** No. Only the parties that execute the trade should be identified as the parties to the trade on the tape report and, thus, BD3 should not appear on the tape report as the contra party. In this example, BD1 would report the trade and, because BD2 is not a FINRA member, BD1 would not identify BD2 as the contra party. If the parties want to clear the trade through a FINRA Facility, a separate non-tape clearing-only report identifying BD1 and BD3 as the parties to the trade may be submitted, where permitted by rule. See FINRA [Regulatory Notice 07-38](#) (August 2007).

**Q202.3: Two non-FINRA members execute an OTC trade (for example, on the floor of a regional or options exchange). Can a FINRA member report the trade to a FINRA Facility on behalf of the two non-members?**

**A202.3:** No, it is not permissible for a FINRA member to report a trade to a FINRA Facility that was executed between two non-members if the FINRA member is not a party to the trade. If, however, the FINRA member is a party to the OTC trade, the FINRA member must report the trade to a FINRA Facility. Under such circumstances, the FINRA member would be obligated to comply with the trade reporting rules (e.g., the 10-second reporting obligation) and all other rules and regulations (e.g., the Order Protection Rule under Regulation NMS), as applicable.

## **Section 203: Reporting by an Alternative Trading System (ATS) or Electronic Communications Network (ECN)**

**Q203.1: Is an ATS subject to the same reporting requirements as an ECN?**

**A203.1:** Yes. Under the "executing party" trade reporting structure, an ATS (a term that includes an ECN) is the executing party and has the reporting obligation where the transaction is executed on the ATS. If an ATS routes an order to another member firm for handling and/or execution, then the ATS would not be the executing party and would not have the reporting obligation. See [Regulatory Notice 09-08](#) (January 2009).

**Q203.2: If an ATS or ECN matches the orders of two FINRA members, can the ATS or ECN submit a single report showing the trade between the two members, without identifying itself as a party to the trade?**

**A203.2:** No. The ATS or ECN must always appear on the trade report as a party to the trade. See FAQ 200.6.

**Q203.3: Can an ATS or ECN use a three-party trade report to report to a FINRA Facility?**

**A203.3:** No, the FINRA Facilities currently do not support three-party trade reports.

**Q203.4: Where an ECN matches the orders of two FINRA members and reports the transaction to a FINRA Facility, is the ECN required to submit a non-tape report to FINRA to reflect the offsetting leg of the transaction?**

**A203.4:** Yes. Any member with the obligation to report the trade under FINRA rules that is acting in a riskless principal or agency capacity on behalf of one or more other members is required to submit to FINRA one or more non-tape report(s) identifying such other member(s) as a party to the transaction, if such other member(s) is not identified on the initial trade report or a report submitted to FINRA to reflect the offsetting leg of a riskless principal transaction. See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4), and 6622(d)(4); see also [Regulatory Notice 09-08](#) (January 2009). This requirement applies to all members, including ATSs (which term includes ECNs). For example, an ECN matches the orders of two members, BD1 and BD2, and executes the trade, and the tape report identifies the ECN and one of the members (e.g., BD1) as the parties to the trade. The ECN is required to submit a non-tape report to reflect the offsetting leg of the transaction; in this example, ECN vs. BD2.

The guidance in FINRA [Trade Reporting Notice 2/19/08](#) (Guidance on Reporting Electronic Communications Network (ECN) Transactions) was superseded upon implementation of these rules on August 3, 2009.

## Section 204: Trade Reporting Structure - Which Party Has Trade Reporting Obligation

### Q204.1: Which party has the reporting obligation under the trade reporting rules?

**A204.1:** The following trade reporting structure is in place for purposes of reporting OTC transactions in NMS stocks, OTC Equity Securities and Restricted Equity Securities to FINRA:

1. in transactions between members, the "executing party" reports; and
2. in transactions between a member and a non-member or customer, the member reports.

See Rules 6282(b) and 7130(c), 6380A(b) and 7230A(c), 6380B(b) and 7230B(c); and 6622(b) and 7330(c). See also [Regulatory Notice 09-08](#) (January 2009).

### Q204.2: How is market maker status determined for purposes of determining which party has the responsibility for reporting a trade in an OTC Equity Security?

**A204.2:** With the implementation of the "executing party" trade reporting structure on August 3, 2009, guidance relating to the determination of market maker status for purposes of trade reporting is no longer applicable.

### Q204.3: Which party has the obligation to report trade cancellations and reversals?

**A204.3:** The member with the obligation to report the original trade has the obligation to report the cancellation or reversal of the trade to FINRA. See Rules 6282(g)(1) and 7130(e)(1); 6380A(g)(1) and 7230A(f)(1); 6380B(f)(1) and 7230B(e)(1); and 6622(f)(1) and 7330(f)(1).

### Q204.4: Member BD1 routes a sell order to member BD2 for handling and execution. BD2 does not re-route the order and executes the trade OTC with BD1. As such, BD2 is the executing party and has the obligation to report the trade under FINRA rules. If BD1 is selling short, is BD1 required to disclose this to BD2?

**A204.4:** The trade report submitted to FINRA must indicate that BD1 is selling short. If BD1 does not want to disclose to BD2 that it is selling short, then the parties may use the trade comparison and acceptance functionality of a FINRA Facility. In other words, BD2 will report the trade within 10 seconds of trade execution and BD1 will enter its own trade information-including that it was selling short-within 20 minutes of trade execution. See Section 103 (Trade Comparison and Acceptance). Additionally, BD1 could report on behalf of BD2 pursuant to a valid give-up agreement, in the form specified by FINRA ([FINRA Uniform Service Agreement](#)) (PDF 18 KB), and in that instance, would not be required to disclose to BD2 that it was selling short. See Section 200 (Reporting on Behalf of Another Member ("Give-Up" Relationships)).

### Q204.5: How is "executing party" defined for purposes of the trade reporting structure?

**A204.5:** Under FINRA rules, the "executing party" is defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. For transactions between two members where both members could reasonably maintain that they satisfy the definition of executing party (e.g., manually negotiated trades via the telephone), the member representing the sell-side must report the transaction to FINRA, unless the parties agree otherwise and the member representing the sell-side contemporaneously documents such agreement. See Rules 6282(b), 6380A(b), 6380B(b), and 6622(b); see also [Regulatory Notice 09-08](#) (January 2009).

### Q204.6: What impact does the executing party trade reporting structure have on the processing of regulatory transaction fees pursuant to Section 3 of Schedule A to the FINRA By-Laws ("Section 3")?

**A204.6:** The executing party trade reporting structure has no impact on the processing of Section 3 fees. FINRA always bills Section 3 fees to the clearing member identified as the sell-side on the tape report and, as such, it makes no difference for billing purposes which member appears on the tape report as the reporting party and contra party.

**Q204.7: What impact does the executing party trade reporting structure have on reporting with give-up and Qualified Service Representative (QSR) agreements?**

**A204.7:** The executing party trade reporting structure does not change the QSR process or member obligations with respect to give-up agreements. A QSR agreement is a National Securities Clearing Corporation agreement and, for FINRA purposes, merely establishes that one party to the trade can send the trade to clearing on behalf of the other party to the trade. A give-up agreement, in the form specified by FINRA (FINRA Uniform Service Agreement ) (PDF 18 KB), is required for a member to report trade information to FINRA on behalf of another member, even if the parties have a QSR agreement in effect. Under the executing party trade reporting structure, members can continue to agree to allow another member to report and lock-in trades on their behalf in accordance with the requirements discussed in Section 200 (Reporting on Behalf of Another Member ("Give-Up" Relationships)).

## Section 205: Determining "Executing Party"

Section 205 provides guidance on members' obligations under the executing party trade reporting structure. FAQ 205.1 through 205.7 relate to determining which member is the executing party in different scenarios.

**Q205.1 (member receives order for handling and execution): Member BD1 routes to member BD2 an order for handling and execution. BD2 does not re-route the order and executes the trade OTC with BD1. Which member is the executing party for purposes of reporting the trade to FINRA?**

**A205.1:** In this example, BD2 is the executing party and has the trade reporting obligation, because BD2 received an order for handling and execution from BD1, did not re-route the order and executed the trade.

This guidance applies irrespective of the mechanism used by BD1 to route the order to BD2 (e.g., electronically, via the telephone, etc.).

**Q205.2 (member receives order for execution): Member BD1 presents to member BD2 an order for execution. BD2 does not subsequently route BD1's order and executes the trade OTC with BD1 on the terms (i.e., quantity and price) presented. Which member is the executing party for purposes of reporting the trade to FINRA?**

**A205.2:** In this example, BD2 is the executing party and has the trade reporting obligation, because BD2 received an order for execution from BD1, did not route the order and executed the trade.

This guidance applies irrespective of the mechanism used by BD1 to present the order to BD2 (e.g., electronically, via the telephone, etc.).

**Q205.3 (matching scenario): Member BD1 matches as agent orders from members BD2 and BD3 and executes the trade OTC. Which member is the executing party for purposes of reporting the trade to FINRA?**

**A205.3:** In this example, BD1 is the executing party and has the trade reporting obligation. See also Section 307 (Reporting Matches of Broker-Dealer Orders by a Member (Including an ATS or ECN)).

**Q205.4 (member presented order against its quote): Member BD1 displays a quote (or order) and member BD2 presents an order to BD1 at BD1's quoted price. BD1 does not subsequently route BD2's order and executes the trade OTC. Which member is the executing party for purposes of reporting the trade to FINRA?**

**A205.4:** In this example, BD1 is the executing party and has the trade reporting obligation, because BD1 was presented an order against its quote (or displayed order), did not route the order and executed the trade at BD1's quoted price.

This guidance applies irrespective of the mechanism used by BD2 to access BD1's quote (e.g., electronically, via the telephone, etc.).

**Q205.5 (member asked to provide quote):** Member BD1 requests a quote from member BD2, receives a quote and agrees to trade with BD2 at BD2's quoted price. Which member has the trade reporting obligation?

**A205.5:** In this example, BD2 is the executing party and has the trade reporting obligation, because BD2 was presented an order against its quote, did not route the order and executed the trade at BD2's quoted price.

**Q205.6 (electronically negotiated and accepted trade):** Member BD1 displays a quote (or order). Member BD2 electronically routes an order to BD1, but not at BD1's quoted price. The parties are using broker-to-broker negotiation software or a system, such as OTC Link, that permits parties to make and accept counter-offers electronically. BD1 electronically counters at a different price and BD2 accepts BD1's counter by pressing the "buy" or "accept" button. Which member has the trade reporting obligation?

**A205.6:** In this example, BD2 is the executing party because BD2 electronically accepted and executed the trade at the negotiated price.

**Q205.7 (negotiated trade where both members may satisfy the definition of executing party):** Member BD1 displays a quote (or order). Member BD2 contacts BD1 with an order, but not at BD1's quoted price. The two members negotiate the terms and ultimately agree to trade at a price different than BD1's quoted price. BD2 represents the sell-side, and based on the interaction between the members, both members could reasonably maintain that they satisfy the definition of executing party. Which member has the trade reporting obligation?

**A205.7:** In this example, because both members could reasonably maintain that they satisfy the definition of executing party, BD2, as the member representing the sell-side, has the trade reporting obligation, unless the parties agree otherwise. This guidance applies irrespective of the mechanism used by the members to negotiate the terms of the trade (e.g., via telephone or electronically) *but only if* both members could reasonably maintain they were the executing party because of the negotiated-nature of the interaction. In the vast majority of cases, it will be clear that one member is the ultimate executing party (e.g., during an electronic negotiation, the member that accepts and executes the trade) and that member has the trade reporting obligation. See FAQ 205.6.

FAQ 205.8 through 205.14 provide guidance on shifting the trade reporting obligation, and the applicable documentation requirements, if any, in the limited circumstance where it may not be clear which member is the executing party.

**Q205.8:** Member BD1 and member BD2 manually negotiate an OTC trade via the telephone. Because both members could reasonably maintain that they satisfy the definition of executing party, as the member representing the sell-side, BD2 has the trade reporting obligation under FINRA rules. If BD2 reports the trade, does the "contemporaneously documented agreement" requirement apply?

**A205.8:** No. The requirement relating to a contemporaneously documented agreement only applies where the trade reporting obligation is on the member representing the sell-side (in this example, BD2), but the parties have agreed that the member representing the buy-side (in this example, BD1) will report the trade. This requirement does *not* apply in this example because BD2, the member representing the sell-side, is reporting the trade in accordance with the trade reporting rules.

**Q205.9:** Member BD1 and member BD2 manually negotiate an OTC trade via the telephone. Because both members could reasonably maintain that they satisfy the definition of executing party, as the member representing the sell-side, BD2 has the trade reporting obligation under FINRA rules. Can the parties agree that BD1 will have the trade reporting obligation?

**A205.9:** Yes. Under FINRA rules, BD1 and BD2 can agree that BD1 will report the trade and in that instance, BD2 must contemporaneously document the parties' agreement. See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b); see also [Regulatory Notice 09-08](#) (January 2009).

**Q205.10:** Assume the same facts as FAQ 205.9. If the parties agree that BD1 will have the trade reporting obligation, what types of documentation would be acceptable for purposes of satisfying the requirement that BD2 contemporaneously document the parties' agreement?

**A205.10:** For purposes of satisfying this requirement, BD2 could produce, e.g., contemporaneous notes of a telephone conversation or notation on the order ticket. See [Regulatory Notice 09-08](#) (January 2009).

Additionally, the parties may comply with the "contemporaneously documented agreement" requirement through the use of a previously executed blanket agreement that expressly shifts the trade reporting obligation in this scenario (i.e., that in a manually negotiated trade between BD1 and BD2 where it is not clear which member is the executing party, the parties agree that BD1, as the member representing the buy-side, will have the reporting obligation).

**Q205.11:** Assume the same facts as FAQ 205.9. If the parties agree to shift the trade reporting obligation to BD1, is BD2 responsible for timely reporting of the trade?

**A205.11:** No. Because the parties have agreed to shift the trade reporting obligation under FINRA rules, BD1 is responsible for reporting the trade in compliance with FINRA rules. If, for example, BD1 were to report the trade late, BD2 would not be subject to a late trade reporting violation.

**Q205.12:** Assume the same facts as FAQ 205.9, but in this example, the parties do not agree to shift the trade reporting obligation. Can BD1 report the trade on behalf of BD2 pursuant to a previously executed give-up agreement in the form of FINRA's Uniform Service Bureau/Executing Broker Agreement?

**A205.12:** Yes. BD1 can report on *behalf* of BD2 pursuant to a previously executed give-up agreement; however, the trade reporting obligation does not shift to BD1 in this instance. Accordingly, BD2 would remain responsible for compliance with FINRA trade reporting rules and, for example, could be subject to a late trade reporting violation if BD1 fails to submit the tape report within 10 seconds of execution. See Section 200 (Reporting on Behalf of Another Member ("Give-Up" Relationships)).

A previously executed [FINRA Uniform Service Agreement](#) (PDF 14 KB) can satisfy the "contemporaneously documented agreement" requirement required to shift the trade reporting obligation to BD1 *only if* it has been amended to contemplate this specific scenario (i.e., that in a manually negotiated trade between BD1 and BD2 where it is not clear which member is the executing party, the parties agree that BD1, as the member representing the buy-side, will have the reporting obligation).

**Q205.13:** Assume the same facts as FAQ 205.9. If the parties agree to shift the trade reporting obligation to BD1, can the trade comparison and acceptance functionality of the FINRA/NASDAQ TRF, ADF or ORF satisfy the requirement that BD2 contemporaneously document the parties' agreement? In other words, if BD1 (the member representing the buy-side) reports the trade and BD2 (the member representing the sell-side) accepts the trade information entered by BD1, would this be sufficient evidence of the parties' contemporaneous agreement to shift the trade reporting obligation to BD1?

**A205.13:** No. Use of the trade comparison and acceptance functionality (see Section 103) would not satisfy the "contemporaneously documented agreement" requirement for purposes of shifting the trade reporting obligation under FINRA rules.

**Q205.14:** Member BD1 routes to member BD2 an order for handling and execution. BD2 does not re-route the order and executes the trade OTC with BD1. BD2 is the executing party and, as such, has the trade reporting obligation. Can the parties agree to shift the trade reporting obligation to BD1 under FINRA rules?

**A205.14:** No. FINRA rules permit the parties to agree to shift the trade reporting obligation only where it may not be clear which party is the executing party (e.g., in the context of manually negotiated trades via the telephone). In this example, it is

clear that BD2 is the executing party and has the trade reporting obligation. See FAQ 205.1. In this instance, BD1 could report on *behalf* of BD2 pursuant to a valid give-up agreement; however, BD2 would still be the member with the trade reporting obligation under FINRA rules and would be responsible for the trade information submitted by BD1.

## Section 206: Trade Reporting in the Event of Systems Issues

On January 20, 2016, FINRA published a Trade Reporting Notice with guidance on a firm's OTC equity trading and reporting obligations in the event of a systems issue during the trading day that prevents the firm from reporting OTC trades within the time frame prescribed by FINRA rules.

Firms are reminded that FINRA rules require that they report OTC trades in equity securities as soon as practicable, but no later than 10 seconds, following execution. See Rules 6282, 6380A, 6380B and 6622. FINRA rules further require that firms have policies and procedures reasonably designed to report OTC trades within the prescribed timeframe. See Rules 6282.02, 6380A.02, 6380B.02 and 6622.03. As such, a firm's policies and procedures must address how a firm will comply with its trade reporting obligations in the event of systems issues—either in the firm's or its vendor's systems or in the FINRA Facility used for trade reporting.

The following FAQs supplement the guidance provided in the Notice.

**Q206.1: My firm is working to develop policies and procedures that are consistent with the Trade Reporting Notice. Is there an effective date for implementation of the guidance? Is my firm out of compliance until we have implemented the new policies and procedures?**

**A206.1:** The Trade Reporting Notice provides guidance on the application of existing rules, and as such there is not an effective date. As required by FINRA rules, firms must have policies and procedures in place relating to the timely reporting of OTC trades. The Notice provides additional guidance around FINRA's expectations in the event of systems issues, and firms must—to the extent they have not already done so—determine in advance and document how they will respond to systems issues. FINRA recognizes that many firms are revisiting their policies and procedures in light of the Notice and that this process, and in particular, connecting to a second FINRA Facility for those firms that choose to do so, will take time. FINRA would take this into consideration, if a firm is unable to fully invoke the procedures described in the Notice in response to a widespread systems issue in its primary FINRA Facility, provided that the firm is making a good faith effort to comply with the Notice within a reasonable amount of time.

**Q206.2: What should a firm do if the FINRA Facility it uses for reporting OTC trades in NMS stocks is experiencing a widespread systems issue?**

**A206.2:** If the FINRA Facility a firm uses for reporting OTC trades in NMS stocks (a firm's "primary FINRA Facility") is experiencing a widespread systems issue, the firm must either maintain connectivity and be able to report to a second FINRA Facility (a firm's "secondary FINRA Facility") or stop executing OTC trades. A firm that chooses not to connect to a second FINRA Facility could route orders to an exchange and/or to a FINRA member firm(s) that is able to report to a FINRA Facility that is operational. Firms should determine in advance how they plan to respond to a widespread systems issue in their primary FINRA Facility and should document this response in their policies and procedures. For purposes of these FAQs, such procedures are referred to as a firm's "widespread outage response" procedures.

As discussed in the Trade Reporting Notice, firms will only be expected to invoke their "widespread outage response" procedures if FINRA has made an announcement to that effect. See FAQ 206.3.

**Q206.3: How will firms know when they should invoke their "widespread outage response" procedures?**

**A206.3:** FINRA will announce when a FINRA Facility is experiencing a widespread systems issue and will expressly state that firms should invoke their "widespread outage response" procedures. Firms will only be expected to invoke their "widespread outage response" procedures when FINRA has made such an announcement.



The announcement will be posted on FINRA's website and disseminated via email. (See FAQ 100.12 for information on signing up to receive regulatory announcements from FINRA under the Market Transparency tab of the FINRA Email Subscription Service.)

**Q206.4: If my firm's primary FINRA Facility is experiencing a widespread systems issue for which FINRA has not announced that firms should invoke their "widespread outage response" procedures, can my firm continue to execute OTC trades?**

**A206.4:** Yes. In these particular circumstances, it would be reasonable for firms to continue executing trades OTC and report those trades once their primary FINRA Facility is operational again.

**Q206.5: When is FINRA likely to announce that firms should invoke their "widespread outage response" procedures?**

**A206.5:** FINRA may announce that firms should invoke their "widespread outage response" procedures where widespread systems issues are likely to be protracted or the source and resolution of the systems issue are uncertain.

As discussed in the Trade Reporting Notice, FINRA likely would consider a systems issue to be "protracted" where the issue occurs during the first 15 minutes or the last 15 minutes of the trading day and appears unlikely to be resolved within five minutes. For systems issues occurring at other times during the trading day, the issue likely would be considered "protracted" if it is unlikely to be resolved within 30 minutes.

**Q206.6: Are firms required to establish and maintain connectivity to a secondary FINRA Facility?**

**A206.6:** No. Firms are not required to establish and maintain connectivity to a secondary FINRA Facility, unless they intend to continue executing OTC trades following announcement by FINRA of a widespread issue for which firms should invoke their "widespread outage response" procedures.

**Q206.7: My firm is not connected to a secondary FINRA Facility. FINRA has announced that our primary FINRA Facility is experiencing a widespread outage and that firms should invoke their "widespread outage response" procedures. What should my firm do in this instance?**

**A206.7:** Because your firm is not connected and able to report to a secondary FINRA Facility, your firm must stop executing trades OTC. Your firm could route orders to an exchange or to a FINRA member(s) that is connected and able to report to a FINRA Facility that is operational.

**Q206.8: Can FINRA provide a flow chart to help firms understand what they should do in the event of a widespread systems issue in their primary FINRA Facility?**

**A206.8:** Yes. This flow chart is designed to assist firms in understanding their obligations in the event of a widespread systems issue in their primary FINRA Facility: [Trade Reporting Flow Chart](#).

**Q206.9: Can firms use FINRA's Alternative Display Facility (ADF) as their secondary FINRA Facility for trade reporting in the event their primary FINRA Facility is experiencing a widespread systems issue?**

**A206.9:** Yes. The ADF rules permit the use of the ADF for trade reporting purposes only (without quoting activity). Firms interested in using the ADF for trade reporting purposes should contact FINRA Business Services at (866) 953-4672 or [FINRABusinessServices@finra.org](mailto:FINRABusinessServices@finra.org). The ADF can be made available to interested firms for testing later this year. Applicable testing requirements and fees for use of the ADF for trade reporting purposes only will be subject to a rule filing submitted to the SEC.

**Q206.10: My firm maintains connectivity to a secondary FINRA Facility for purposes of trade reporting in the event of a widespread systems issue in our primary FINRA Facility. However, the failover to the secondary FINRA Facility does not occur instantaneously. What should my firm do in the interim?**

**A206.10:** FINRA recognizes that the failover from a firm's primary FINRA Facility to a secondary FINRA Facility may not be instantaneous. If a firm has commenced the process of failing over to its secondary FINRA Facility, FINRA believes it would be reasonable—in this limited instance—for the firm to continue executing trades OTC (and report those trades late, if necessary) for a brief period while waiting for the failover to the secondary FINRA Facility to be completed.

**Q206.11: Will FINRA announce a widespread issue in a FINRA Facility for which firms should invoke their "widespread outage response" procedures outside of regular market hours?**

**A206.11:** No. FINRA would only announce a widespread systems issue for which firms should invoke their "widespread outage response" procedures during regular market hours (generally 9:30 a.m. - 4:00 p.m.).

**Q206.12: If my firm's primary FINRA Facility is experiencing a widespread systems issue outside of regular market hours, can my firm continue to execute trades OTC and report those trades once the FINRA Facility is operational again?**

**A206.12:** Yes. Firms would only be expected to invoke their "widespread outage response" procedures for widespread systems issues that occur during regular market hours (generally 9:30 a.m. - 4:00 p.m.). As such, if a FINRA Facility is experiencing a widespread systems issue outside of regular market hours, firms can continue to execute trades OTC and report those trades once the FINRA Facility is operational again.

**Q206.13: FINRA rules state that firms can report their trades by telephone to the FINRA Facility Operations department if the FINRA Facility is unavailable due to system or transmission failure. Can my firm's "widespread outage response" procedures contemplate reporting trades by telephone in the event of a widespread systems issue?**

**A206.13:** No. The reference to reporting trades by telephone does not in any way negate or waive the requirement that trades be reported within 10 seconds of execution, i.e., by its terms, the rule requires that all trades—whether submitted directly to the FINRA Facility or by telephone to FINRA Facility Operations—be reported within 10 seconds of execution. See Rules 6282(a)(1), 6380A(a)(1), 6380B(a)(1) and 6622(a)(1). Reporting by telephone is neither feasible nor practical (particularly in the event of a widespread systems issue), and firms reporting this way would not be able to meet their 10-second reporting obligation. As such, FINRA would not consider policies and procedures that contemplate reporting trades by telephone to be "reasonably designed" to comply with the trade reporting rules.

**Q206.14: Can a firm report for tape purposes to its secondary FINRA Facility and wait to submit non-tape reports once its primary FINRA Facility is operational again?**

**A206.14:** FINRA rules generally prohibit the submission to a FINRA Facility of any non-tape report (including clearing reports) associated with a previously executed trade that was not reported to the same Facility, except with respect to the second leg of a riskless principal or agency transaction. See, e.g., FAQs 300.2 and 300.3. However, FINRA will relieve firms of this requirement where FINRA has announced a widespread systems issue for which firms should invoke their "widespread outage response" procedures. Thus—in this limited instance only—a firm may submit a tape report to its secondary FINRA Facility and a non-tape report for the same trade to its primary FINRA Facility.

However, this does not change firms' obligations under other applicable rules, including the requirement to use the Related Market Center code on non-tape reports submitted to the firm's primary FINRA Facility (see Section 405), as well as Rule 5320.03 and applicable NSCC rules. See, e.g., FAQs 102.2 and 206.15.

**Q206.15: If my firm reports a trade for tape purposes to our secondary FINRA Facility, can we wait and submit a clearing report for that same trade to our primary FINRA Facility once it is operational again?**

**A206.15:** As noted in FAQ 206.14, FINRA will relieve firms of the requirement that tape and clearing reports for the same trade be submitted to the same FINRA Facility where FINRA has announced a widespread systems issue for which firms should invoke their "widespread outage response" procedures. Thus—in this limited instance only—a firm may submit a tape report to its secondary FINRA Facility and a clearing report for the same trade to its primary FINRA Facility.

However, as noted in FAQ 206.14, this does not change firms' obligations under other applicable rules, including NSCC's rules requiring that locked-in trade data be submitted in real time and prohibiting pre-netting and other practices that prevent real-time trade submission. See, e.g., FAQ 102.2. A significant delay in the submission of the clearing report to the firm's primary FINRA Facility after trade execution and submission of the tape report to the firm's secondary FINRA Facility may be inconsistent with NSCC rules requiring real-time submission.

**Q206.16: How will firms know when a widespread systems issue is over and they can start reporting to their primary FINRA Facility?**

**A206.16:** FINRA will announce that a widespread systems issue has been resolved and that firms can resume executing OTC trades and reporting to their primary FINRA Facility via the methods identified in FAQ 206.3 above.

**Q206.17: Are firms required to have "widespread outage response" procedures for trade reporting to the OTC Reporting Facility (ORF)?**

**A206.17:** No. Because the ORF is the only FINRA Facility available for reporting trades in OTC equity securities, firms would not be able to connect to a secondary facility in the event of a widespread systems issue in the ORF. In such cases, depending on the circumstances of the systems issue, FINRA may declare a halt in trading in OTC equity securities. In the event that FINRA declares a halt, firms would be required to stop trading in OTC equity securities until the halt is lifted.

**Q206.18: What should firms do if they are unable to report to their primary FINRA Facility due to a limited systems issue?**

**A206.18:** Where firms are affected by a limited systems issue in their primary FINRA Facility, firms should consider whether there are ways to mitigate the impact to the tape, which may include voluntarily invoking their "widespread outage response" procedures or making intraday changes to their trade reporting processes, if possible. Firms could also continue executing OTC trades and report the trades once their primary FINRA Facility is operational again, if they reasonably believe that such action is warranted by their best execution obligation or other duties to their customers. For purposes of these FAQs, such procedures are referred to as a firm's "limited outage response" procedures.

As discussed in the Trade Reporting Notice, where a FINRA facility systems issue is not widespread, but affects only a limited number of firms (e.g., the facility is operating normally but rejecting trades from one firm due to a participant configuration issue), FINRA will contact the affected firm(s).

**Q206.19: Can a firm continue to execute OTC trades if it is unable to report to its primary FINRA Facility due to a limited systems issue?**

**A206.19:** Yes. Given that market impact is limited rather than widespread, it would be reasonable for a firm to continue executing OTC trades and report the trades once the firm's primary FINRA Facility is operational again, if the firm reasonably believes that such action is warranted by its best execution obligation or other duties to its customers.

**Q206.20: Can a firm that is unable to report to its primary FINRA Facility wait to take action until FINRA either announces a widespread systems issue or contacts the firm directly regarding a limited systems issue?**

**A206.20:** Yes. Firms can wait to invoke their "widespread outage response" procedures until FINRA has announced a widespread systems issue. Firms also can wait to invoke their "limited outage response" procedures until FINRA has contacted them about a limited systems issue.

**Q206.21: My firm has been found to have engaged in a pattern of late trade reporting; however, my firm's trade reporting system experienced systems issues on multiple occasions that delayed reporting. Do these systems issues constitute reasonable justification or exceptional circumstances to excuse a pattern or practice of late trade reporting?**

**A206.21:** No. As discussed in the Trade Reporting Notice, firms must have sufficiently robust systems with adequate capability and capacity to enable them to report in accordance with FINRA rules, including reasonable back-up capabilities in

the event of a systems issue in the firm's or a vendor's systems. Recurring systems issues in a firm's or a vendor's systems would not be considered reasonable justification or exceptional circumstances under FINRA rules to excuse a pattern or practice of late trade reporting. See Rules 6282(a)(4), 6380A(a)(4), 6380B(a)(4) and 6622(a)(4).

**Q206.22: My firm routes all orders to another FINRA member for handling and execution and does not execute or report any OTC trades. Is my firm required to have policies and procedures consistent with the Trade Reporting Notice?**

**A206.22:** No. The Notice applies only to firms with the trade reporting obligation under FINRA rules.

## Types of Reports/Transactions

### Section 300: Non-Tape (Regulatory or Clearing-Only) Reports **UPDATED**

**Q300.1: Should trade report modifiers be used in non-tape (i.e., regulatory or clearing-only) reports submitted to a FINRA Facility?**

**A300.1:** As a general rule, no. The only trade report modifiers that should be included in non-tape reports are: (1) trade settlement type modifiers (in Trade Modifier Field 1); and (2) the modifiers used to designate that a trade is being reported for regulatory fee assessment purposes only (in Trade Modifier Field 4). See FAQ 600.1. No other trade report modifiers should be used in a non-tape report.

**Q300.2: Member BD1 reports a trade for public dissemination purposes to one FINRA Facility-e.g., the ADF. Can BD1 submit a clearing-only report for that same trade to another FINRA Facility-e.g., the FINRA/NASDAQ TRF-for transmission to National Securities Clearing Corporation (NSCC) for clearance and settlement purposes?**

**A300.2:** No. The trade reporting rules provide that, with certain limited exceptions (discussed in FAQ 300.3), members cannot submit any non-tape report to one FINRA Facility associated with a previously executed trade that was not reported to that FINRA Facility for publication or regulatory transaction fee purposes. Thus, in this example, BD1 cannot use the ADF to tape report and the FINRA/NASDAQ TRF to clear the same trade; BD1 would be required to both tape report and clear the trade through either the ADF or the FINRA/NASDAQ TRF. See Rules 7130(g), 7230A(i), 7230B(h) and 7330(h); [FINRA Regulatory Notice 07-38](#) (August 2007).

Members that report trades for publication purposes to a FINRA Facility that does not submit trades to clearing must make alternative arrangements to clear such trades (e.g., via Qualified Service Representative (QSR) agreements with NSCC).

**Q300.3: Are there any exceptions to the prohibition discussed above?**

**A300.3:** Yes, there is an exception to this prohibition for reports that reflect the offsetting portion of a riskless principal transaction, discussed in greater detail in Section 302 (Reporting Riskless Principal Transactions). This exception extends to agency transactions where a member acts as agent on behalf of another member, since such transactions are the functional equivalent of riskless principal transactions, discussed in greater detail in Section 303 (Reporting Agency Transactions). See Rules 7130(g), 7230A(i), 7230B(h) and 7330(h); [FINRA Regulatory Notice 07-38](#) (August 2007).

Where a transaction falls within this exception for riskless principal or agency transactions, members must identify on non-tape reports the market or facility where an associated trade was reported, if the related tape and non-tape reports are submitted to different FINRA Facilities or the non-tape report is associated with a trade that was reported to the tape through an exchange. See Section 405 (Related Market Center).

**Q300.4: Under what circumstances may firms submit clearing-only, non-regulatory reports to FINRA? **NEW****

**A300.4:** A firm may elect to submit clearing-only, non-regulatory reports to FINRA only if the firm has satisfied its regulatory reporting obligations to FINRA through other submissions (i.e., tape or non-tape regulatory reports). See Rules 7130(g)(4),

7230A(i)(4), 7230B(h)(4) and 7330(h)(4). Firms should refer to [Regulatory Notice 15-51](#) for guidance on submitting clearing-only, non-regulatory reports.

As stated in the Notice, firms that operate an ATS are expressly allowed to use an MPID other than their ATS MPID in clearing-only, non-regulatory reports; however, the firm with the trade reporting obligation under FINRA rules ("executing party") must continue to be identified as such in all clearing-only, non-regulatory reports.

## Section 301: Reporting Step-Outs

### **Q301.1: What is a step-out for purposes of the trade reporting rules?**

**A301.1:** A step-out allows a member to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership. The step-out function was designed and implemented as a service to facilitate the clearing process for members involved in these types of transfers.

For example, member BD1 buys 1000 shares of ABCD security on behalf of its client and reports that trade to the FINRA/NASDAQ TRF and then submits a clearing-only report to the FINRA/NASDAQ TRF to allocate those shares at the same price to that client's account at member BD2. See NTMs [98-40](#) (May 1998) and [05-11](#) (February 2005); FINRA [Regulatory Notice 07-38](#) (August 2007).

### **Q301.2: Are there any restrictions on the submission of non-tape reports for step-outs to a FINRA Facility?**

**A301.2:** Yes. The trade reporting rules prohibit members from submitting to a FINRA Facility any non-tape report (including but not limited to reports of step-outs) associated with a previously executed trade that was not reported to that FINRA Facility. For example, a clearing-only entry for a step-out relating to a trade executed on and reported through the NASDAQ Exchange cannot be submitted to the FINRA/NASDAQ TRF. See Rules 7130(g), 7230A(i), 7230B(h) and 7330(h); FINRA [Regulatory Notice 07-38](#) (August 2007). Members should check with the relevant exchanges to determine whether they support step-out functionality.

**Q301.3: Member BD1 accumulates 10,000 shares of ABCD security by executing the following trades: four separate exchange trades for 2,000 shares each, one OTC trade for 1,000 shares that is reported to TRF A and one OTC trade for 1,000 shares that is reported to TRF B. Can BD1 step-out of the 10,000 shares on TRF A?**

**A301.3:** No. BD1 can only step-out of a trade on a FINRA Facility that was previously reported to that FINRA Facility. Thus, in this example, BD1 can step-out of 1,000 shares on TRF A.

### **Q301.4: What time should be entered in the execution time field on a non-tape report for a step-out?**

**A301.4:** The time that should be entered in the execution time field on the non-tape report should be the time at which the step-out was allocated to another party. Firms must populate this field accurately and should not, for example, use an internal default time (e.g., 12:00 noon) on such reports.

**Q301.5: What time should be entered in the execution time field on non-tape reports of "bulk" step-outs? For example, if member BD1 executes 100 shares at 12:00:00, 100 shares at 12:01:00 and 100 shares at 12:04:00 (and each of these trades is reported to the tape); determines the weighted average price of the three trades and communicates this to member BD2 at 12:20:00; and allocates the shares to BD2 at 12:21:00, what time should be entered in the execution time field on the non-tape report of the step-out?**

**A301.5:** The time that should be entered in the execution time field on the report of a "bulk step-out" should be the time at which the step-out was allocated. Thus, in this example, the time in the execution time field should be 12:21:00.

**Q301.6: My firm is a member and participant of both the FINRA/NASDAQ TRF and the NASDAQ Exchange and reports step-outs to both facilities. How does my firm distinguish between a step-out reported through the FINRA/NASDAQ TRF versus the NASDAQ Exchange?**

**A301.6:** The Automated Confirmation Transaction Service (ACT) is a technology system owned by the NASDAQ Exchange that serves as a mechanism for the submission of certain non-tape reports under the NASDAQ Exchange. ACT also has been licensed for use by the FINRA/NASDAQ TRF as a technology platform for collecting OTC trade reports for public dissemination and regulatory purposes. In this dual role, ACT accepts step-out entries submitted to the NASDAQ Exchange as well as to the FINRA/NASDAQ TRF. However, although they share the ACT technology platform, the NASDAQ Exchange and the FINRA/NASDAQ TRF are separate facilities and are governed by separate rule sets. Thus, when using ACT, firms must be mindful of the facility to which they are submitting step-out entries and must comply with the rules and technology specifications applicable to that facility. For example, firms must indicate on the entry that the step-out is a FINRA step-out or a NASDAQ Exchange step-out as specified in ACT entry protocols. See [NASDAQ Head Trader Alert 2008-019](#) (February 22, 2008).

**Q301.7: Member BD1 purchases 100,000 shares of ABCD on behalf of its customer and the customer instructs BD1 to step-out of 30,000 of those shares to the customer's account at member BD2. BD1 and BD2 have agreed that BD1 will charge a per share fee for this service. Can BD1 include the fee in the price on the clearing-only report submitted to FINRA for purposes of allocating the shares to BD2?**

**A301.7:** No, BD1 cannot include such a fee in the price on a clearing-only report submitted to FINRA. A step-out submitted to FINRA must be allocated at the same price as the previously executed trade and cannot include a fee; however, members can transfer a transaction fee in accordance with Rules 7230A(h) and 7330(i) in connection with a step-out entry submitted to the FINRA/NASDAQ TRF or the ORF, respectively.

**Q301.8: Can my firm transfer the Section 3 fee as part of a step-out?**

**A301.8:** Yes, a firm may transfer the Section 3 fee to another firm as part of a step-out submission. Note that the fee should only be transferred as part of a step-out where the firm stepping out of the position paid the fee on the original trade, i.e., only where the firm is stepping out of an original sell transaction (see FAQs 301.9 - 10).

**Q301.9: Member BD1 buys 10,000 shares of ABCD security from member BD2. BD1 subsequently steps out of the 10,000 shares to member BD3 (BD3 is the firm stepping into the position), and as such, BD1 is identified as the seller and BD3 is identified as the buyer on the step-out submitted to the FINRA Facility. Can a Section 3 fee be transferred as part of the step-out?**

**A301.9:** No. BD1 was on the buy side and therefore not assessed the Section 3 fee on the original trade. Accordingly, the parties cannot designate a fee transfer as part of the step-out from BD1 to BD3. See [Equity Head Trader Alert 2008-019](#).

**Q301.10: Member BD1 sells 10,000 shares of ABCD security to member BD2. BD1 subsequently steps out of the 10,000 shares to member BD3 (BD3 is the firm stepping into the position), and as such, BD1 is identified as the buyer and BD3 is identified as the seller on the step-out submitted to the FINRA Facility. Can a Section 3 fee be transferred as part of the step-out?**

**A301.10:** Yes. In this instance, the parties can elect to transfer the Section 3 fee. BD1 was on the sell side and therefore assessed the Section 3 fee on the original trade. Accordingly, the parties may designate a fee transfer as part of the step-out from BD1 to BD3. See [Equity Head Trader Alert 2008-019](#).

**Q301.11: How should the "step-in" indicator be used?**

**A301.11:** Pursuant to recent amendments, where both sides are submitting a clearing-only report to the ORF (effective on November 17, 2014) or the ADF/TRFs (effective July 13, 2015) to effectuate a step-out, the firm transferring out of the position must report a step-out and the firm receiving the position must report a step-in. For example, member BD1 receives a 100,000 share order from Institution A with instructions to execute the order and step-out 25,000 shares to Institution A's

account at member BD2. BD1 executes the 100,000 share order on several ATs and the executions are reported to the FINRA/NASDAQ TRF. To effectuate the transfer of 25,000 shares of Institution A's position from BD1 to BD2, BD1 would submit an "EP/MM" entry designated as a "step-out" to the FINRA/NASDAQ TRF and BD2 would submit an "OE" entry designated as a "step-in" to the FINRA/NASDAQ TRF. See Rules 7130(g), 7230A(i), 7230B(h) and 7330(h); see also [Regulatory Notice 14-21](#) (May 2014).

**Q301.12: When reporting a step-out (step-in), which firm should be identified as the executing party with the trade reporting obligation?**

**A301.12:** For purposes of reporting a step-out (step-in) to the ORF (effective November 17, 2014) and the ADF/TRFs (effective July 13, 2015), the firm stepping out of (or transferring) the position is the "executing party" with the trade reporting obligation and the firm stepping into (or receiving) the position is the contra party.

**Q301.13: Should the "step-in" indicator be used on a locked-in trade report?**

**A301.13:** No, as noted in FAQ 301.11, the "step-in" indicator is only used where both sides are submitting a clearing-only report to the FINRA Facility. Accordingly, it should not be used when submitting a locked-in clearing report to effectuate a step-out. See [Regulatory Notice 14-21](#) (May 2014).

**Q301.14: A customer sends member BD1 an order to buy 10,000 shares of ABCD security. BD1 sells the shares, as principal, to its customer. The customer subsequently requests that BD1 step out of the customer's purchase of 10,000 shares to member BD2 (BD2 is the firm stepping into the position). When reporting the step-out to FINRA, what side should be identified for BD1 and BD2? Can a Section 3 fee be transferred as part of the step-out?**

**A301.14:** Because BD1 is stepping out of the customer's purchase to BD2, BD1 is identified as the seller and BD2 is identified as the buyer on the step-out reported to FINRA. (By contrast, FAQ 301.9 contemplates BD1 stepping out of a purchase that was executed with the street, not with the customer.) As noted in FAQ 301.8, the Section 3 fee can be transferred where the firm is stepping out of an original sell transaction. In this instance, because BD1 is stepping out of the customer's original purchase, the parties cannot designate a fee transfer as part of the step-out from BD1 to BD2.

**Q301.15: A customer sends member BD1 an order to sell 10,000 shares of ABCD security. BD1 buys the shares, as principal, from its customer. The customer subsequently requests that BD1 step out of the customer's sale of 10,000 shares to member BD2 (BD2 is the firm stepping into the position). When reporting the step-out to FINRA, what side should be identified for BD1 and BD2? Can a Section 3 fee be transferred as part of the step-out?**

**A301.15:** Because BD1 is stepping out of the customer's sale to BD2, BD1 is identified as the buyer and BD2 is identified as the seller on the step-out reported to FINRA. (By contrast, FAQ 301.10 contemplates BD1 stepping out of a sale that was executed with the street, not with the customer.) As noted in FAQ 301.8, the Section 3 fee can be transferred where the firm is stepping out of an original sell transaction. In this instance, because BD1 is stepping out of the customer's original sale, the parties can designate a fee transfer as part of the step-out from BD1 to BD2.

## Section 302: Reporting Riskless Principal Transactions

**Q302.1: What is a "riskless principal" transaction?**

**A302.1:** For purposes of OTC transaction reporting requirements applicable to equity securities, a "riskless principal" transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the same price (the offsetting "riskless" leg). Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; hence, there is no "risk" in the interdependent transactions when completed. See [NTM 99-65](#) (August 1999).

**Q302.2: How are OTC riskless principal transactions reported to FINRA?**

**A302.2:** Members can report OTC riskless principal transactions by submitting a single tape report to a FINRA Facility in the same manner as an agency transaction, marked with a "riskless principal" capacity indicator, excluding the mark-up or mark-down, commission-equivalent or other fee. Alternatively, members can report an OTC riskless principal transaction by submitting two (or more, as necessary) reports: (1) a tape report to reflect the initial leg of the transaction with a capacity of principal; and (2) a non-tape (regulatory or clearing-only) report to reflect the offsetting "riskless" leg of the transaction with a capacity of riskless principal. See Rules 6282(d)(3)(B), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B), NTMs 99-65 (August 1999), 99-66 (August 1999) and 00-79 (November 2000). Where the tape report for an OTC riskless principal trade incorrectly reflects a capacity of "principal," the non-tape report is required under the trade reporting rules.

**Q302.3: If the tape report for the initial leg of a riskless principal transaction is submitted to a FINRA Facility, must the non-tape report for the offsetting "riskless" leg be submitted to that same FINRA Facility?**

**A302.3:** No. The trade reporting rules require that where the tape report for the initial leg of a riskless principal transaction is reported to FINRA, the non-tape report for the offsetting "riskless" leg must also be reported to FINRA; however, in such instance, members are not required to report both legs of the transaction to the same FINRA Facility. See Rules 6282(d)(3)(B), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B).

FINRA amended the trade reporting rules to avoid the unintended consequence of requiring members to be participants in all TRFs in order to comply with the trade reporting rules. See [FINRA Regulatory Notice 07-38](#) (August 2007). For example, members BD1 and BD2 execute an OTC trade, and BD2 is acting as riskless principal for its customer. BD1 submits a tape report to TRF A reflecting BD2's capacity as principal. BD2 would be required to submit a non-tape report reflecting the offsetting customer leg of the transaction and its correct capacity as riskless principal. However, BD2 would not be required to submit the non-tape report to TRF A; BD2 could submit the non-tape report to TRF B. (Where the tape report is properly marked "riskless principal," a non-tape report is not required under the trade reporting rules. See FAQ 302.2.)

FINRA expects that, where possible, members will report both legs of a riskless principal transaction to the same FINRA Facility. See [FINRA Regulatory Notice 07-38](#) (August 2007). Thus, if one member is reporting both legs of the transaction, FINRA expects that the member will report both legs to the same FINRA Facility.

**Q302.4: Can members report riskless principal transactions to FINRA where the initial leg is executed on and reported through an exchange?**

**A302.4:** Yes. Where the initial leg of a riskless principal transaction was previously reported by an exchange for public dissemination, the member would be permitted, but not required, to submit a non-tape report to a TRF or the ADF for the offsetting "riskless" leg. See Rules 6282(d)(3)(B), 6380A(d)(3)(B) and 6380B(d)(3)(B). Similarly, members may, but are not required to, submit a non-tape report to the ORF for the offsetting "riskless" leg of a riskless principal transaction where the initial leg is executed on and reported through a foreign exchange. Members that choose to report such transactions to FINRA must include all data elements required to be reported under the trade reporting rules. Members should not report the exchange trade to FINRA for public dissemination purposes, as that would result in double (tape) reporting of the same transaction. See Rules 6282(f), 6380A(e), 6380B(e) and 6622(g).

**Q302.5: Member BD1 receives an order to buy a security, purchases the security for its own account and then sells the security to satisfy the original order at a different price than the price at which BD1 acquired the security. Does this constitute a "riskless principal" transaction?**

**A302.5:** No. Transactions at different prices are not riskless principal transactions for purposes of the trade reporting rules, even though the transactions may otherwise be "riskless." Thus, each trade, at each respective price, must be reported separately to the tape. See NTMs 99-65 (August 1999), 00-79 (November 2000) and 01-85 (December 2001). See also Section 304 (Reporting Net Trades).



**Q302.6: Member BD1 receives an order to buy a security, purchases the security for its own account and then sells the security to satisfy the original order at the same price; however, the settlement types, and thus the settlement dates, of the two legs of the transaction are different. Does this constitute a "riskless principal" transaction?**

**A302.6:** Yes. A riskless principal transaction for purposes of the trade reporting rules can comprise legs that are of differing settlement types, assuming that the legs are effected at the same price and the transaction is otherwise deemed "riskless" to the member. If, however, the staggered settlements result in the two legs being executed at different prices, then the transaction would no longer qualify as a riskless principal transaction and both legs must be reported to the tape.

**Q302.7: What time should be entered in the execution time field on a non-tape report for the offsetting leg of a riskless principal transaction?**

**A302.7:** The time that should be entered in the execution time field on the non-tape report should be the time at which the offsetting leg of the transaction was allocated to another party. Firms must populate this field accurately and should not, for example, use an internal default time (e.g., 12:00 noon) on such reports.

**Q302.8: What time should be entered in the execution time field on the non-tape report for the offsetting "riskless" leg of a riskless principal transaction that is associated with multiple first legs? For example, if member BD1 buys 100 shares at 12:00:00, 100 shares at 12:01:00 and 100 shares at 12:04:00 (and each of these trades is reported to the tape); determines the weighted average price of the three trades and communicates this to the customer at 12:20:00; and at 12:21:00 allocates the shares to its customer at the weighted average price of the three trades, what time should be entered in the execution time field on the non-tape report of the offsetting leg?**

**A302.8:** The time that should be entered in the execution time field on the non-tape report should be the time at which the offsetting leg of the transaction was allocated. Thus, in this example, the time in the execution time field should be 12:21:00.

**Q302.9: Member BD1, as riskless principal on behalf of member BD2, routes an order to member BD3 for execution OTC. BD3 executes the trade with BD1 and has the trade reporting obligation under FINRA rules. Is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?**

**A302.9:** If the tape report submitted by BD3 does not properly reflect BD1's capacity as riskless principal, then BD1 must submit a non-tape report identifying BD1 and BD2 as the parties to the trade with BD1's capacity marked as riskless principal. If BD1's capacity is properly marked as riskless principal on the tape report, then BD1 would not be required to submit a non-tape report for purposes of correcting its capacity. See Rules 6282(d)(3)(B), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B).

The non-tape reporting requirement (see FAQ 302.11) creates no new reporting obligation for BD1 in this instance because BD1 is not the member with the obligation to report the trade for tape purposes.

**Q302.10: Member BD1 is handling a customer order on a riskless principal basis, and routes its order for handling to member BD2. BD2 handles BD1's order on a riskless principal basis and routes the order for execution to member BD3. BD3 executes the trade and the following reports are submitted to FINRA:**

- Tape Report (submitted by BD3): BD3 vs BD2 (capacity incorrectly marked as principal)
- Non-Tape Report (submitted by BD2): BD2 (capacity correctly marked as riskless principal) vs BD1

**Under FINRA rules, does BD1 have an obligation to submit a non-tape report reflecting the offsetting riskless leg with its customer?**

**A302.10:** No. BD1 is not required to submit a non-tape report reflecting the offsetting leg with its customer. Under FINRA riskless principal reporting requirements, a member has an obligation to submit a non-tape report for the offsetting riskless leg with its customer only if its capacity is incorrectly reflected on the tape report submitted to FINRA. See Rules 6282(d)(3)

(B), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B). In this example, BD1 is not identified on the tape report (BD2 and BD3 are identified on the tape report) and accordingly, BD1 does not have a non-tape reporting obligation.

**Q302.11: Member BD1, as riskless principal on behalf of member BD2, and member BD3 execute an OTC trade. For purposes of this example, BD1 has the trade reporting obligation under FINRA rules and correctly reports its capacity as riskless principal. Is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?**

**A302.11:** Yes. Because BD1 has the obligation under FINRA rules to report the trade for tape purposes, BD1 is required to submit a non-tape report identifying BD1 and BD2 as the parties to the trade to indicate that BD1 was acting on behalf of BD2 (referred to in this Section 302 as the "non-tape reporting requirement"). See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). [See also Regulatory Notice 09-08](#) (January 2009).

**Q302.12: Member BD1, as riskless principal on behalf of member BD2, executes a trade on an exchange, and the trade is reported to the tape by the exchange. Under the non-tape reporting requirement, is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?**

**A302.12:** No. BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate that it was acting as riskless principal on behalf of BD2 because the trade was executed on and reported through an exchange. See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). However, as explained in FAQ 302.4, BD1 may submit a clearing-only report to clear the offsetting leg of the transaction between BD1 and BD2 through a FINRA Facility. [See Regulatory Notice 09-08](#) (January 2009) and [07-38](#) (August 2007).

**Q302.13: Member BD1, as riskless principal on behalf of non-member BD2, and member BD3 execute an OTC trade. For purposes of this example, BD1 has the trade reporting obligation under FINRA rules and correctly reports its capacity as riskless principal. Is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?**

**A302.13:** No. Although BD1 has the obligation under FINRA rules to report the trade for tape purposes, BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate it was acting on behalf of BD2, because BD2 is a non-member. See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). [See also Regulatory Notice 09-08](#) (January 2009).

## Section 303: Reporting Agency Transactions

**Q303.1: Can a broker-dealer (BD1) trade as agent for another broker-dealer (BD2)?**

**A303.1:** Yes, BD1 can act as agent for BD2 and execute BD2's order with a third party, assuming that the trade is not executed in, or does not otherwise pass through, a proprietary account of BD1.

**Q303.2: In an agency transaction where a member acts as agent on behalf of another member, if the tape report is submitted to a FINRA Facility, must the non-tape report for the offsetting leg be submitted to that same FINRA Facility?**

**A303.2:** No. Similar to the riskless principal reporting structure, if the first leg of an agency transaction where a member acts as agent on behalf of another member is an OTC trade, the related tape and non-tape reports are not required to be submitted to the same FINRA Facility. [See FINRA Regulatory Notice 07-38](#) (August 2007). FINRA expects that where possible, members will report both legs of an agency transaction to the same FINRA Facility. Thus, if one member is reporting both legs of the transaction, FINRA expects that the member will report both legs to the same FINRA Facility.

**Q303.3: Member BD1, as agent on behalf of member BD2, executes a trade on an exchange. May BD1 submit a non-tape (regulatory or clearing-only) report to FINRA to reflect the offsetting portion of the agency transaction between BD1 and BD2?**

**A303.3:** Yes. BD1 may submit a non-tape (regulatory or clearing-only) report to FINRA to reflect the offsetting portion of the agency trade between BD1 and BD2. Similar to the riskless principal reporting structure, where the initial leg of the transaction was previously reported by an exchange for public dissemination, the member would be permitted, but not required, to submit a non-tape report to FINRA for the offsetting leg. See FINRA [Regulatory Notice 07-38](#) (August 2007). Members that choose to report such transactions to FINRA must include all data elements required to be reported under the trade reporting rules. Members should not report the exchange trade to FINRA for public dissemination purposes, as that would result in double (tape) reporting of the same transaction. See Rules 6282(f), 6380A(e), 6380B(e) and 6622(g).

**Q303.4: What time should be entered in the execution time field on a non-tape report for the offsetting leg of an agency transaction where a member acts as agent for another member?**

**A303.4:** The time that should be entered in the execution time field on the non-tape report should be the time at which the offsetting leg of the transaction was allocated to another party. Firms must populate this field accurately and should not, for example, use an internal default time (e.g., 12:00 noon) on such reports.

**Q303.5: What time should be entered in the execution time field on the non-tape report for the second leg of an agency transaction that is associated with multiple first legs? For example, if member BD1, as agent on behalf of member BD2, buys 100 shares at 12:00:00, 100 shares at 12:01:00 and 100 shares at 12:04:00 (and each of these trades is reported to the tape); determines the weighted average price of the three trades and communicates this to BD2 at 12:20:00; and at 12:21:00 allocates the shares to BD2 at the weighted average price of the three trades, what time should be entered in the execution time field on the non-tape report of the second leg?**

**A303.5:** The time that should be entered in the execution time field on the non-tape report should be the time at which the offsetting leg of the transaction was allocated. Thus, in this example, the time in the execution time field should be 12:21:00.

**Q303.6: What are the requirements for reporting trades where a member matches, as agent, orders of customers and/or other broker-dealers?**

**A303.6:** The requirements for reporting trades where a member matches, as agent, orders of customers and/or other broker-dealers are discussed in Sections 306, 307 and 308.

**Q303.7: Member BD1, as agent on behalf of member BD2, and member BD3 execute an OTC trade. For purposes of this example, BD1 has the trade reporting obligation under FINRA rules. Under the non-tape reporting requirement is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?**

**A303.7:** Yes. Because BD1 has the obligation under FINRA rules to report the trade for tape purposes, BD1 is required to submit a non-tape report identifying BD1 and BD2 as the parties to the trade to indicate that BD1 was acting on behalf of BD2 (referred to in this Section 303 as the "non-tape reporting requirement"). See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

**Q303.8: Member BD1, as agent on behalf of member BD2, routes an order to member BD3 for execution OTC. BD3 executes the trade and has the trade reporting obligation under FINRA rules. Under the non-tape reporting requirement, is BD1 required to submit a report to FINRA to reflect the offsetting leg between BD1 and BD2?**

**A303.8:** No. BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate that it was acting on behalf of BD2 because BD1 is not the member with the obligation under FINRA rules to report the trade for tape purposes. See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4).

**Q303.9: Member BD1, as agent on behalf of member BD2, executes a trade on an exchange, and the trade is reported to the tape by the exchange. Under the non-tape reporting requirement, is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?**

**A303.9:** No. BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate that it was acting as agent on behalf of BD2 because the trade was executed on and reported through an exchange. See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). However, as explained in FAQ 303.3, BD1 may submit a clearing-only report to clear the offsetting leg of the transaction between BD1 and BD2 through a FINRA Facility. See [Regulatory Notice 09-08](#) (January 2009) and [Regulatory Notice 07-38](#) (August 2007).

**Q303.10: Member BD1, as agent on behalf of non-member BD2, and member BD3 execute an OTC trade. For purposes of this example, BD1 has the trade reporting obligation under FINRA rules. Under the non-tape reporting requirement, is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?**

**A303.10:** No. Although BD1 has the obligation under FINRA rules to report the trade for tape purposes, BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate that it was acting on behalf of BD2, because BD2 is a non-member. See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

**Q303.11: Member BD1 maintains a firm agency allocation account for the sole and exclusive benefit of its customers. BD1 receives a customer order to buy 10,000 shares and, as agent, purchases the shares in 10 separate trades of 1,000 shares each. Each trade is reported to the tape. At the end of the day, BD1 allocates the full 10,000 shares on an average price basis to its customer. Is BD1 required to report – for either tape or non-tape purposes – the allocation of the shares from its agency allocation account to its customer?**

**A303.11:** No. Assuming that the agency allocation account is held for the sole and exclusive benefit of BD1's customers and does not hold any firm proprietary positions at any time, then the allocation of shares from the account to BD1's customer is not required to be reported for tape or non-tape/regulatory purposes.

**Q303.12: A registered investment adviser (RIA) with discretion over multiple customer accounts held at member BD1 places an order with BD1 to buy 10,000 shares. BD1, as agent, purchases the shares in 10 separate trades of 1,000 shares each in an average price allocation account. Each trade is reported to the tape. BD1 later allocates the 10,000 shares on an average price basis to the RIA. At the end of the day, the RIA gives instructions to BD1 to allocate the 10,000 shares to various sub-accounts of its customers at the price BD1 gave the RIA. Is the allocation of the shares to the various sub-accounts of the RIA's customers trade reportable – for either tape or non-tape purposes?**

**A303.12:** No. The allocation of shares to the various sub-accounts of the RIA's customers held at BD1 is not required to be reported for tape or non-tape/regulatory purposes.

**Q303.13: A registered investment adviser (RIA) with discretion over multiple customer accounts places an order with member BD1 to buy 10,000 shares. The customer accounts for which the RIA has discretion are held at BD2. BD1, as agent, purchases the shares in 10 separate trades of 1,000 shares each in an average price allocation account. Each trade is reported to the tape. BD1 later allocates the 10,000 shares on an average price basis to the RIA. At the end of the day, the RIA gives instructions to BD1 to move the shares to BD2 at the price BD1 gave the RIA. Is the movement of shares from BD1 to BD2 for allocation to the various sub-accounts of the RIA's customers trade reportable – for either tape or non-tape purposes?**

**A303.13:** No. The movement of shares from BD1 to BD2 is not required to be reported for tape or non-tape/regulatory purposes.

## Section 304: Reporting Net Trades

**Q304.1: What is a net trade?**

**A304.1:** A net trade is a principal trade in which a broker-dealer, after having received an order to buy (sell) an equity security, purchases (sells) the security at one price and satisfies the original order by selling (buying) the security at a different price. The difference between the price of the initial transaction and the price of the offsetting transaction generally is considered the broker-dealer's compensation.

For net trades by a market maker, the market maker's compensation generally is not separately disclosed on a customer confirmation, however Rule 2124 imposes certain disclosure and consent obligations on the market maker. See NTMs 00-79 (November 2000), 01-85 (December 2001) and 06-47 (September 2006). See also Rule 2124(e), which is discussed in FAQ 304.3. Because a non-market maker's compensation would be separately disclosed on a customer confirmation under SEC Rule 10b-10(a), Rule 2124 does not impose disclosure and consent obligations on non-market makers.

**Q304.2: Member BD1 receives an order to buy a security, purchases the security for its own account and then sells the security to satisfy the original order at a different price than the price at which BD1 acquired the security. How should these trades be reported?**

**A304.2:** Because the two transactions are effected at two different prices, this is considered a net trade and both transactions must be reported to the tape. See [NTM 01-85](#) (December 2001).

**Q304.3: What disclosure requirements apply when a market maker is trading on a net basis with a customer?**

**A304.3:** Pursuant to Rule 2124, a market maker is required to provide disclosure to, and obtain consent from, a customer prior to executing a transaction with a customer on a net basis. The disclosure and consent requirements under the rule apply only to market makers and differ depending on whether the market maker is trading with an institutional or non-institutional customer. See [NTM 06-47](#) (September 2006).

**Q304.4: Does Rule 2124 apply to riskless principal transactions?**

**A304.4:** No. Rule 2124 applies when a market maker, after having received an order to buy (sell) from a customer, purchases (sells) the security as principal at one price and then sells to (buys from) the customer at a different price. By contrast, in a riskless principal transaction, a firm, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price (exclusive of a disclosed commission, mark-up or mark-down) to satisfy that order. The Rule does not apply to riskless principal transactions because the compensation is required to be disclosed on the confirmation pursuant to SEC Rule 10b-10.

## Section 305: As/Of (T+N) Reports

**Q305.1: What is an "as/of" (T+N) report?**

**A305.1:** A report is marked "as/of" (T+N) when reporting a trade that occurred earlier than the current day and was not reported, or when reporting the reversal of a trade from a previous day. See Section 311 (Reporting Corrections, Cancellations and Reversals).

**Q305.2: Should reports of "as/of" (or T+N) trades be marked "media" or "for publication" (i.e., for submission to the tape)?**

**A305.2:** If the trade would have been marked "media" or "for publication" had it been reported on trade date, the "as/of" report should be marked "media" or "for publication." All other "as/of" reports should be marked as "non-media" (i.e., not for submission to the tape).

**Q305.3: Should "as/of" reports include trade report modifiers?**

**A305.3:** Yes, "as/of" reports marked for publication must include trade report modifiers. See Rules 6282, 6380A, 6380B and 6622. Thus, for example, all "as/of" reports for public dissemination should include the modifier denoting that the trade was

reported more than 10 seconds after execution, unless the trade is not subject to the 10-second reporting requirement. "As/of" reports that are not media reported should not include trade report modifiers.

**Q305.4: Are "as/of" reports that are submitted to a FINRA Facility disseminated by the appropriate Securities Information Processor (SIP)?**

**A305.4:** Yes, all "as/of" reports of transactions in NMS stocks that are marked "for publication" are disseminated by the appropriate SIP. Effective November 17, 2014, "as/of" reports of transactions in OTC Equity Securities are disseminated by FINRA via the Trade Data Dissemination Service (TDDS) feed. "As/of" reports are not commingled with current trade date reports and do not affect high-low-last sale price statistics.

**Q305.5: "As/of" reports of trades executed on a non-business day (i.e., a weekend or holiday) and T+365 trades are submitted to the ORF (effective November 17, 2014) and to the ADF/TRFs (effective July 13, 2015); such trades are no longer submitted via the "Paper Form" submission process. Are the trades disseminated or submitted to clearing?**

**A305.5:** No, reports of non-business day and T+365 trades are neither disseminated nor submitted to clearing by the FINRA Facility. See [Regulatory Notice 14-21](#).

## **Section 306: Reporting Matches of Customer Orders by a Member (Including an ATS or ECN)**

This Section provides high-level guidance on an executing party's trade reporting obligations when matching orders of customers. For more specific guidance, including with respect to reporting capacity and multiple MPIDs, see the ATS OATS and Trade Reporting guidance that became effective February 2, 2015. The [ATS OATS and Trade Reporting guidance](#) addresses orders from customers, other FINRA members and non-FINRA member broker-dealers and sets forth a number of general reporting principles as well as specific reporting scenarios. The [ATS OATS and Trade Reporting guidance](#) applies irrespective of whether the execution occurs on an ATS. Firms were permitted – but not required – to begin reporting in accordance with that guidance prior to February 2, 2015.

**Q306.1: Member BD1 matches as agent a customer (as defined in Rule 0160(b)(4)) buy order and a customer sell order for the same quantity of shares at the same price. Can this transaction be reported as a cross?**

**A306.1:** Yes. This is an agency cross, also referred to as a dual agency trade. See Rules 6282(d)(2), 6380A(d)(2), 6380B(d)(2) and 6622(d)(2).

**Q306.2: Member BD1 satisfies a customer's order to buy with inventory from BD1's proprietary account. Can this transaction be reported as a cross?**

**A306.2:** BD1 should not report the trade as a cross, but as a principal sale to its customer, unless BD1 has routed the customer order and its proprietary order to an ATS that the firm operates, or to another desk at the firm that uses a separate MPID. In that instance, BD1 could report the trade as a cross executed by the ATS or the desk to which the orders were routed.

**Q306.3: Member BD1 matches as agent the orders of multiple customers on one side with the orders of one or more customers on the other side. For example, BD1 matches as agent a customer buy order for 100,000 shares with three customer sell orders for 50,000 shares, 20,000 shares and 30,000 shares. Should this be reported as a single transaction or separate transactions?**

**A306.3:** If the matches occur in multiple executions, it would not be permissible to report the transactions as a single cross. Each individual execution must be reported separately to the tape. This is a more accurate reflection of the transaction. If,

however, the matches occur in a single execution or a "single event" (e.g., with the press of a button or pursuant to an automated execution algorithm), the transaction must be reported to the tape as a single transaction (e.g., a single cross). Sequential executions—even those occurring very close in time—would not be considered a single event and must be reported separately to the tape.

## **Section 307: Reporting Matches of Broker-Dealer Orders by a Member (Including an ATS or ECN)**

This Section provides high-level guidance on an executing party's tape and non-tape reporting obligations when matching orders of FINRA members. For more specific guidance, including with respect to reporting capacity and multiple MPIDs, see the [ATS OATS and Trade Reporting guidance](#) that became effective February 2, 2015. The ATS OATS and Trade Reporting guidance addresses orders from customers, other FINRA members and non-FINRA member broker-dealers and sets forth a number of general reporting principles as well as specific reporting scenarios. The ATS OATS and Trade Reporting guidance applies irrespective of whether the execution occurs on an ATS. Firms were permitted – but not required – to begin reporting in accordance with that guidance prior to February 2, 2015.

**Q307.1: Member BD1 matches a buy order from member BD2 and a sell order for the same quantity of shares at the same price from member BD3. How should this transaction be reported?**

**A307.1:** BD1 is the executing party and has the trade reporting obligation.

BD1 can report this transaction in one of three ways:

### Alternative #1

Tape report: BD1 reports a cross

Non-tape regulatory report #1: BD1 buys from BD3

Non-tape regulatory report #2: BD1 sells to BD2

### Alternative #2

Tape report: BD1 buys from BD3

Non-tape regulatory report: BD1 sells to BD2

### Alternative #3

Tape report: BD1 sells to BD2

Non-tape regulatory report: BD1 buys from BD3

See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

**Q307.2: Member BD1 matches as agent the orders of multiple members on one side with the orders of one or more members on the other side. For example, BD1 matches as agent a buy order from member BD2 for 100,000 shares with sell orders from members BD3, BD4 and BD5 for 50,000 shares, 20,000 shares and 30,000 shares, respectively. Should this be reported as a single transaction or separate transactions?**

**A307.2:** If the matches occur in multiple executions, it would not be permissible to report the transactions as a single cross. Each individual execution must be reported separately to the tape. This is a more accurate reflection of the transaction. If, however, the matches occur in a single execution or a "single event" (e.g., with the press of a button or pursuant to an automated execution algorithm), the transaction must be reported to the tape as a single transaction (e.g., a single cross). Sequential executions—even those occurring very close in time—would not be considered a single event and must be reported separately to the tape.

If the transaction is a "single event" and BD1 reports the trade as a single cross, BD1 must also submit the following non-tape reports to indicate that BD1 was acting on behalf of the other members:

- 1) BD1 (as agent) sells 100,000 shares to BD2
- 2) BD1 (as agent) buys 50,000 shares from BD3
- 3) BD1 (as agent) buys 20,000 shares from BD4
- 4) BD1 (as agent) buys 30,000 shares from BD5

**Q307.3: Member BD1 matches as agent a buy order from non-member BD2 and a sell order for the same quantity of shares at the same price from non-member BD3. How should this transaction be reported?**

**A307.3:** BD1 should report this as an agency cross. Because BD1 is not acting on behalf of another member, BD1 has no non-tape reporting obligation under FINRA rules. See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4).

**Q307.4: Assume the same facts as FAQ 307.1. Should the execution time on the non-tape report(s) be the same as the execution time on the tape report?**

**A307.4:** Yes. Where a member is matching orders of one or more members and submitting non-tape report(s) to identify the other members that are parties to the trade, the execution time on the non-tape report(s) should be the same as the execution time on the tape report.

**Q307.5: Member BD1 matches a buy order from member BD2 and a sell order for the same quantity of shares at the same price also from member BD2. BD2 is acting as agent on behalf of two different customers, the buyer and seller. Is BD1 required to submit non-tape reports, as necessary, to identify BD2 on both the buy-side and sell-side?**

**A307.5:** Yes, BD1 must submit non-tape reports, as necessary, to identify BD2 on both sides of the trade.

BD1 is the executing party and has the trade reporting obligation (see FAQ 307.1). BD1 can report this transaction in one of three ways:

**Alternative #1**

Tape report: BD1 reports a cross

Non-tape regulatory report #1: BD1 buys from BD2 (as agent)

Non-tape regulatory report #2: BD1 sells to BD2 (as agent)

**Alternative #2**

Tape report: BD1 buys from BD2 (as agent)

Non-tape regulatory report: BD1 sells to BD2 (as agent)

**Alternative #3**

Tape report: BD1 sells to BD2 (as agent)

Non-tape regulatory report: BD1 (as agent) buys from BD2

BD1 must not submit a single report (tape or non-tape) showing BD2, as agent, buying from (selling to) BD2, as agent. See FAQ 200.6.

## **Section 308: Reporting Matches of Member Orders and Customer or Non-Member Orders by a Member (Including an ATS or ECN)**



This Section provides high-level guidance on an executing party's tape and non-tape reporting obligations when matching orders of FINRA members and customers (or non-members). For more specific guidance, including with respect to reporting capacity and multiple MPIDs, see the [ATS OATS and Trade Reporting guidance](#) that became effective February 2, 2015. The ATS OATS and Trade Reporting guidance addresses orders from customers, other FINRA members and non-FINRA member broker-dealers and sets forth a number of general reporting principles as well as specific reporting scenarios. The ATS OATS and Trade Reporting guidance applies irrespective of whether the execution occurs on an ATS. Firms were permitted – but not required – to begin reporting in accordance with that guidance prior to February 2, 2015.

**Q308.1: Member BD1 matches a buy order from member BD2 and a sell order for the same quantity of shares at the same price from a customer. How should this transaction be reported?**

**A308.1:** BD1 is the executing party and has the trade reporting obligation.

BD1 can report this transaction in one of three ways:

Alternative #1

Tape report: BD1 reports a cross

Non-tape regulatory report: BD1 sells to BD2

Alternative #2

Tape report: BD1 sells to BD2

Non-tape regulatory report: Not required

Alternative #3

Tape report: BD1 buys from customer (customers are not identified in trade reports)

Non-tape regulatory report: BD1 sells to BD2

See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

**Q308.2: Member BD1 matches a buy order from member BD2 and a sell order for the same quantity of shares at the same price from non-member BD3. How should this transaction be reported?**

**A308.2:** BD1 is the executing party and has the trade reporting obligation.

BD1 can report this transaction in one of three ways:

Alternative #1

Tape report: BD1 reports a cross

Non-tape regulatory report: BD1 sells to BD2

Alternative #2

Tape report: BD1 sells to BD2

Non-tape regulatory report: Not required

Alternative #3

Tape report: BD1 buys from non-member (non-members are not identified in trade reports)

Non-tape regulatory report: BD1 sells to BD2

See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

**Q308.3: Assume the same facts as FAQ 308.1 or 308.2. Should the execution time on the non-tape report(s) be the same as the execution time on the tape report?**

**A308.3:** Yes. Where a member is matching orders of one or more members and submitting non-tape report(s) to identify the other members that are parties to the trade, the execution time on the non-tape report(s) should be the same as the execution time on the tape report.

## **Section 309: Reporting Customer Price Adjustment Transactions**

**Q309.1: Member BD1 receives a customer order to buy 10,000 shares of a security and purchases the shares on behalf of the customer from BD2 at a price of \$10 per share. After purchasing the shares, BD1 determines that the customer should have received a price of \$9.98 per share. To effect the price adjustment, BD1 sells the shares, as principal, to the customer at \$9.98 per share. The original trade and the sale to the customer at \$9.98 are effected on the same day. How should the transactions be reported?**

**A309.1:** The following must be reported for public dissemination purposes: (1) the original trade between BD1 and BD2 at \$10 per share; and (2) the sale by BD1 to the customer at the price of \$9.98, with the prior reference price (PRP) modifier appended (see FAQ 309.3). Because the trades are effected at two different prices, they are considered two separate trades and both must be reported to the tape.

Note that if BD1 had effected the original trade with BD2 at \$10 on a riskless principal basis and submitted a non-tape report to FINRA to reflect the "riskless" leg of the transaction with its customer, then BD1 would be required to cancel the non-tape report (in addition to reporting as set forth above).

**Q309.2: Member BD1 receives a customer order to buy 10,000 shares of a security and executes 10 trades of 1,000 shares each for an average price of \$10 per share to fill the customer order. After purchasing the shares, BD1 determines that the customer should have received a price of \$9.98 per share. To effect the price adjustment, BD1 sells the 10,000 shares, as principal, to the customer at \$9.98. The original trades and the sale to the customer at \$9.98 are effected on the same day. How should the transactions be reported?**

**A309.2:** The following must be reported for public dissemination purposes: (1) the 10 trades of 1,000 shares each; and (2) the sale by BD1 to the customer at the price of \$9.98, with the prior reference price (PRP) modifier appended (see FAQ 309.3).

**Q309.3: Are members required to use a special trade modifier when reporting trades at the adjusted price?**

**A309.3:** Yes, when reporting trades at the adjusted price (for example the separate trade executed with the customer at \$9.98 in FAQs 309.1 and 309.2) to FINRA, members should append the prior reference price (PRP) modifier in the Trade Modifier Field 4 (SRO Required Detail), unless another Trade Modifier Field 4 modifier applies.

If the trade at the adjusted price is effected on any day other than the date of execution of the original trade (T+N), then the special pricing formula (.W) modifier should be used (instead of the PRP modifier), unless another Trade Modifier Field 4 modifier applies. The .W modifier should be used because the price is not based on the current day's pricing and will not update the high and low sale prices. See FAQ 309.6.

Members are reminded that these trades are subject to the Regulation NMS Order Protection Rule, unless a specific exception or exemption applies. See SEC Rule 611 and applicable guidance, including [SEC Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, FAQ 3.06](#).

**Q309.4: When using the prior reference price (PRP) trade modifier for purposes of reporting trades at the adjusted price, what time should be reflected as the reference time in the trade report?**

**A309.4:** When using the prior reference price (PRP) modifier, members are required to input the reference time (i.e., the prior time in the day used to price the adjusted trade). For example, at 9:55:00 a.m. when the market is at \$9.98, member BD1 receives a market order to buy 1,000 shares of a security. The member, due to error, does not execute the market order until 10:00:00 a.m. when the market is at \$10.00. After purchasing the shares, BD1 determines that the customer should have received a price of \$9.98 per share which was the market price at 9:55:00 a.m. To effect the price adjustment, at 1:00:00 p.m., BD1 executes a new trade with its customer at \$9.98. When reporting this price adjustment trade with the PRP modifier, BD1 should report 9:55:00 a.m. as the prior reference time. Note that this supersedes prior guidance that the prior reference time should be the time of execution of the original trade.

Effective November 17, 2014 (for the ORF) and April 20, 2015 (for the ADF/TRFs), reports with the PRP modifier will reflect the actual execution time in addition to the reference time (see Section 408). Thus, in the example above, when reporting the price adjustment trade with the PRP modifier, BD1 should report 1:00:00 p.m. as the execution time and 9:55:00 a.m. as the prior reference time.

**Q309.5:** Assume that in FAQs 309.1 and 309.2, BD1 acted on an agency or riskless principal basis in executing the original trade(s) on behalf of the customer. Due to the decision to adjust the price and execute the subsequent trade with the customer at the new price, BD1 ultimately acted on a principal basis. Is BD1 required to correct its capacity in the original trade report(s) submitted to FINRA?

**A309.5:** If the FINRA Facility to which the trade was reported allows the correction of capacity without the cancellation of the tape report, then BD1 would be required to correct its capacity in the original trade report(s). Otherwise, in this limited instance, BD1 is not required to correct its capacity in the original trade report(s) submitted to FINRA. However, BD1 must be able to clearly demonstrate that at the time of the original trade, the firm believed that it was acting as agent or riskless principal on behalf of its customer, and it was only after the trade was completed that the decision was made to adjust the price to the customer by trading from a firm account at a different price.

**Q309.6:** On Day 1, Member BD1 receives a customer order to buy 10,000 shares of a security and purchases the shares on behalf of the customer from BD2 at a price of \$10 per share. On Day 2 (or later), BD1 determines that the customer should have received a price of \$9.98 per share, and to effect the price adjustment, BD1 sells the shares, as principal, to the customer at \$9.98 per share. How should the transactions be reported?

**A309.6:** The following must be reported for public dissemination purposes: (1) the original trade on Day 1 between BD1 and BD2 at \$10 per share; and (2) the sale on Day 2 by BD1 to the customer at the price of \$9.98, with the special pricing formula (.W) modifier appended (see FAQ 309.3). Because the trades are effected at two different prices, they are considered two separate trades and both must be reported to the tape. Note that the trade on Day 2 should not be reported on an "as/of" basis, since the trade was executed on Day 2, and not on Day 1.

**Q309.7:** If the original trade and the trade at the adjusted price are both a special type of transaction that requires a special trade modifier in Trade Modifier Field 4 (SRO Required Detail), e.g., a Stop Stock transaction, should the trade at the adjusted price be reported with the PRP modifier (or .W, if on T+N)?

**A309.7:** No. As noted in FAQ 309.3, the PRP modifier (or .W, if on T+N) should only be used if no other Trade Modifier Field 4 modifier applies. In this instance, if the trade at the adjusted price is, e.g., a Stop Stock transaction, then the trade should be reported with the Stop Stock modifier in Trade Modifier Field 4.

## Section 310: Odd Lot Transactions (formerly Section 604)

**Q310.1:** What is an odd lot for purposes of the trade reporting rules?

**A310.1:** For purposes of the trade reporting rules, an odd lot is less than a "normal unit of trading," which is generally defined as 100 shares of a security unless, with respect to a particular security, the listing market (for NMS stocks) or FINRA (for OTC Equity Securities) determines that a normal unit of trading shall constitute other than 100 shares.

**Q310.2: How should odd lot transactions be reported to FINRA?**

**A310.2:** Odd lot transactions executed OTC should be reported to FINRA as any other OTC transaction in accordance with the trade reporting rules.

**Q310.3: Are odd lot transactions disseminated?**

**A310.3:** Effective December 9, 2013, reports of odd lot transactions that are marked "for publication" or as "tape eligible" are publicly disseminated by FINRA and the securities information processors, as applicable, however, odd lot transactions do not update the high, low and last sale price for the security.

For certain high-priced OTC Equity Securities, FINRA will change the "unit of trade" from 100 shares to one share; transactions in such securities below 100 shares will be disseminated as round lot transactions and will update the high, low and last sale price. See Trade Reporting Notice 3/18/08 (Revised Policy for Disseminating Reports of Fewer Than 100 Shares).

## Section 311: Reporting Cancellations, Corrections and Reversals

**Q311.1: Which firm has the obligation to report the cancellation (or reversal) of an OTC trade that was previously reported to FINRA?**

**A311.1:** The firm that is required to report the original trade to FINRA also has the obligation to report the cancellation (or reversal) in the time frames set forth in the trade reporting rules. See FINRA Rules 6282(g)(1) and 7130(g)(1); 6380A(g)(1) and 7230A(f)(1); 6380B(f)(1) and 7230B(e)(1); and 6622(f)(1) and 7330(f)(1).

**Q311.2: Must cancellations and reversals be reported to the same FINRA Facility to which the original trade was reported?**

**A311.2:** Yes, the trade reporting rules require that firms report cancellations (and reversals) of OTC trades in equity securities to the FINRA Facility used for the original report. See FINRA Rules 6282(g)(1) and 7130(g)(1); 6380A(g)(1) and 7230A(f)(1); 6380B(f)(1) and 7230B(e)(1); and 6622(f)(1) and 7330(f)(1).

**Q311.3: What is the difference between a cancellation and a reversal?**

**A311.3:** Except when reporting to the ORF, as described below, firms report a "cancellation" when trades are cancelled on the date of execution and a "reversal" when trades are cancelled on any day after the date of execution (T+N).

Effective November 17, 2014, member firms can cancel trades reported to the ORF up to three days following submission of the original trade report (Report Date (or RD)+3). Specifically, trade reports will be retained in the ORF system on a rolling four-business day period, inclusive of the day the trade is reported, and will be available for subsequent trade management processing, including cancellation. Cancellation of a trade after the four-day period (i.e., a cancellation on RD+4 or greater) would require submission of a reversal.

**Q311.4: Members BD1 and BD2 execute an OTC trade, and BD1 has the obligation under FINRA rules to report the trade. Because the parties intend to clear the trade outside of the FINRA Facility (e.g., via direct QSR submission to DTCC), BD1 submits a "tape only" report. The parties subsequently break the trade. Is BD1 required to submit a cancellation (or reversal, as applicable)?**

**A311.4:** Yes, BD1 must submit a cancellation (or reversal) to the FINRA Facility to which the trade was originally reported. For any trade reported for public dissemination purposes that ultimately does not clear and settle, reporting firms must submit a cancellation (or reversal, if applicable) to remove the trade from the tape so that the tape accurately reflects that the trade did not take place. This applies to trades declined by the contra party, as well as trades that are locked-in via AGU or

QSR. See [Trade Reporting Notice 7/11/2014: \(Obligation to Report Cancellations of OTC Trades in Equity Securities, Including Trades Declined by the Contra Party\)](#) and [Regulatory Notice 14-21 \(May 2014\)](#).

**Q311.5: Are trade report modifiers required on reports of reversals? (formerly FAQ 305.5)**

**A311.5:** If the original trade report was marked "for publication" or "media" and thus was disseminated, the reversal must also be marked "for publication" or "media." Accordingly, the reversal entry should include all modifiers that are on the original trade report.

**Q311.6: Members BD1 and BD2 execute an OTC trade, and BD1 has the obligation under FINRA rules to report the trade. The parties subsequently agree to reverse the trade. How should the reversal be reported? (formerly FAQ 305.6)**

**A311.6:**BD1 must report the reversal on an "as/of" basis and must identify itself as the reporting member and BD2 as the contra party on the report. The same sides of the market, i.e., the buy and sell sides, should appear on both the original trade report and the reversal report. Thus, if BD1 was the sell-side (and BD2 was the buy-side) on the original trade report, BD1 should identify itself as the sell-side (and BD2 as the buy-side) on the reversal entry. See [Trade Reporting Notice 3/25/13](#). Trade report modifiers should be appended on the reversal entry in accordance with FAQ 311.5.

**Q311.7: When reporting reversals to the ORF (effective November 17, 2014) and the ADF/TRFs (effective July 13, 2015), firms are required to identify the original trade in the reversal report by including the control number generated by the FINRA Facility and report date for the original trade report. If the firm does not provide the control number, will the trade report be rejected?**

**A311.7:** In accordance with system requirements, the control number field is a required field for all reports of reversals, and if it is not populated, then the report will be rejected. However, FINRA will validate the control number only where the original trade was executed after implementation of the amendments. Accordingly, when reversing trades executed prior to implementation, firms are not required to provide an actual control number and instead may insert a "dummy" number to populate the required field. See [Regulatory Notice 14-21](#).

**Q311.8: Member BD1 executes an OTC trade in an NMS stock and reports the trade to the FINRA/NASDAQ TRF. The security subsequently becomes delisted and is no longer an NMS stock (reportable to the TRF), but an OTC Equity Security (reportable to the ORF). If BD1 needs to cancel the trade, to which facility should the cancellation be reported?**

**A311.8:** Generally, cancellations should be reported to the facility to which the original trade was reported, unless there is a system constraint (e.g., the symbol is no longer available). However, if the symbol has been removed from the FINRA/NASDAQ TRF, such that BD1 is unable to report the cancellation, then BD1 should report a reversal to the ORF. Paper Form T should not be used for such purposes.

When reporting the reversal to the ORF, BD1 must identify the Original Control Date to reflect the date the trade was originally reported to the TRF (this date must be prior to the date the security was delisted and moved to the ORF), and in the Reference Reporting Facility field, BD1 must indicate that the trade was originally reported to the TRF. BD1 must also populate the Original Control Number field in the reversal report; however, the ORF will not accept the original control number generated by the TRF, and BD1 would submit a 10-digit "dummy" number that starts with "5" (e.g., 500000000) in that field.

**Q311.9: Members BD1 and BD2 execute a trade in an OTC Equity Security, and BD1 reports the trade to the ORF for public dissemination purposes. Can the parties subsequently correct the trade without canceling the trade report?**

**A311.9:** Yes, as of November 17, 2014, the time in which a trade reported to the ORF can be corrected without canceling the trade has been expanded. Historically, firms could correct a trade only on the same day it was reported. Today, member firms can correct trade reports submitted to the ORF up to three days following submission of the original trade report (Report Date (or RD)+3), without cancelling the original report. Specifically, trade reports will be retained in the ORF system

on a rolling four-business day period, inclusive of the day the trade is reported, and will be available for subsequent trade management processing, including correction. (See also, e.g., OATS Guidance for Error Corrections, Scenario 5.)

Correction of a trade after the four-day period (i.e., correction on RD+4 or greater) would require a combination of a reversal and a new "as/of" trade report.

## **Section 312: Transactions in Exchange-Traded Managed Funds NEW**

**Q312.1: Do the trade reporting rules apply to OTC trades in exchange-traded managed fund shares or "NextShares," as defined under Nasdaq Rule 5745? NEW**

**A312.1:** Yes. NextShares have been approved by the SEC for listing and trading on the Nasdaq exchange. As such, OTC transactions in NextShares are subject to the trade reporting requirements applicable to OTC transactions in other NMS stocks, including, e.g., the requirement to report the trade as soon as practicable, but no later than 10 seconds, following execution. See, e.g., Rules 6282(a) and 6380A(a). Rule 6184 sets forth additional trade reporting requirements specifically applicable to OTC trades in NextShares.

**Q312.2: What FINRA Facilities support the reporting of OTC trades in NextShares? NEW**

**A312.2:** The FINRA/Nasdaq TRF supports the reporting of OTC transactions in NextShares for public dissemination, regulatory and clearing purposes, while the ADF supports reporting for public dissemination and regulatory purposes only. The FINRA/NYSE TRF does not accept reports of trades in NextShares.

**Q312.3: When reporting OTC trades in NextShares to FINRA, should prices be expressed in the "proxy price" format or be based on the Net Asset Value (NAV)? NEW**

**A312.3:** Unless otherwise expressly provided under FINRA rules (the exceptions are discussed in FAQ 312.4), members must use the proxy price format established by Nasdaq—and not the final NAV-based trade price—on all reports of transactions in NextShares submitted to FINRA, including all tape and non-tape reports, intraday clearing reports, as/of reports and reports of reversals. This is required even if the final NAV-based trade price is known at the time of submission (e.g., trades reported on an as/of basis). See Rule 6184(c) and 6184.01.

**Q312.4: When should prices on reports of OTC trades in NextShares not be expressed in proxy price format? NEW**

**A312.4:** Members must report the final NAV-based trade price—and not use the proxy price format—when submitting (1) a "Clearing Copy" report, as defined in Rule 6184(d)(2), following publication of the NAV at the end of the day, or (2) a clearing report for the purpose of transferring a position related to a previously executed trade, such as a step-out, if such clearing report is submitted after publication of the NAV. These are the only instances when the final NAV-adjusted trade price—rather than the price in proxy price format—should be used on reports of trades in NextShares submitted to FINRA.

**Q312.5: Can trades in NextShares be designated for submission through a FINRA Facility to NSCC for clearance and settlement? NEW**

**A312.5:** OTC trades in NextShares can only be designated for submission to NSCC through the FINRA/Nasdaq TRF; otherwise, members that execute such transactions must have an alternative means of clearing (e.g., via direct Qualified Special Representative or "QSR" submission to NSCC). See Rule 6184(d)(1). Members that report transactions in NextShares for submission by the FINRA/Nasdaq TRF to NSCC for clearance and settlement must submit two clearing reports in accordance with FINRA rules:

- a clearing report intraday in the proxy price format; and
-

following publication of the NextShares fund's NAV at the end of the day, a "Clearing Copy" report to reflect the final NAV-based trade price (specifically, firms would use the "Clearing Copy" value in the relevant field(s) on the submission to the FINRA/Nasdaq TRF).

See Rule 6184(d)(2).

**Q312.6: My firm elects to have the FINRA/Nasdaq TRF submit our OTC trades in NextShares to NSCC for clearance and settlement. What pricing information does the TRF send to NSCC and when? NEW**

**A312.6:** Using intraday clearing submissions (which are submitted in the proxy price format), the FINRA/Nasdaq TRF will calculate the contract price of the trade based on the fund's last published Intraday Indicative Value (IIV), as defined under Nasdaq Rule 5745, and submit the transaction in real-time to NSCC for purposes of intraday risk management. Transactions will not clear and settle at the price reported in the proxy price format or the IIV-based price, but instead at the final NAV-based trade price submitted by the reporting member in accordance with Rule 6184(d)(2)(B). See also FAQ 312.5.

**Q312.7: My firm does not have the FINRA/Nasdaq TRF submit our OTC trades in NextShares to NSCC for clearance and settlement. Are we required to submit a regulatory (i.e., non-tape non-clearing) report to FINRA to reflect the final NAV-based trade price after publication of the NAV at the end of the day? NEW**

**A312.7:** No. Firms that do not elect to have the FINRA/Nasdaq TRF submit their OTC trades in NextShares to NSCC for clearance and settlement are only required to submit a tape report in the proxy price format to FINRA (and any subsequent reports necessary to cancel or reverse the trade, if applicable). Firms should not submit a regulatory report to reflect the final NAV-based price of the trade to FINRA. As noted in FAQ 312.8, firms must comply with all applicable NSCC requirements for trades that they clear directly at NSCC.

**Q312.8: My firm clears our OTC trades in NextShares directly at NSCC via QSR. What information must we send to NSCC and when? NEW**

**A312.8:** Members that clear transactions in NextShares directly at NSCC, e.g., via direct QSR submission, must ensure that they submit to NSCC all pricing information, including the IIV-based price on intraday submissions and the final NAV-based trade price after market close, in accordance with NSCC requirements. See Rule 6184.02.

**Q312.9: Is final pricing information publicly available for OTC trades in NextShares that have been reported to the tape in proxy price format? NEW**

**A312.9:** Yes, but only for trades reported to the FINRA/Nasdaq TRF. The FINRA/Nasdaq TRF makes available to market participants a daily FTP file with the final NAV-based trade price for each trade in NextShares reported to the FINRA/Nasdaq TRF for public dissemination purposes. See Rule 6184.02. The file specifications, including the direct FTP directory path, can be found on [Nasdaq's web site](#). The ADF currently does not publish a similar end-of-day file.

**Q312.10: Are there limits on the hours during which trades in NextShares can be executed? NEW**

**A312.10:** Yes. Nasdaq Rule 5745 limits trading in NextShares to Nasdaq's "Regular Market Session," as defined under Nasdaq rules, through 4:00 p.m., i.e., from 9:30 a.m. through 4:00 p.m. OTC trades in NextShares reported with an execution time outside of Regular Market Session hours will be rejected by the FINRA Facility. See Rule 6184(b).

**Q312.11: Where can I find additional information on trading in NextShares? NEW**

**A312.11:** For information on trading in NextShares, including, e.g., NAV-based trading, the proxy price format, the intraday indicative value and proxy price protection, firms should refer to Nasdaq rules and guidance. See, e.g., Nasdaq Rule 5745 and [Nasdaq Frequently Asked Questions: NextShares Exchange-Traded Managed Funds](#).

## Trade Report Modifiers and Other Indicators

### Section 400: General

**Q400.1: Is there any guidance relating to the four level or field trade report modifier format for reporting to a FINRA Facility?**

**A400.1:** Yes, members should refer to the [Trade Reporting Modifier Chart](#) (PDF 36 KB) for guidance on how to populate each of the information levels or Trade Modifier Fields. The chart provides the uniform methodology for reporting trade modifiers; however, the specific data entries used to report trades may vary depending upon the specific platform or system used. Therefore, the chart should be read in conjunction with the [applicable technical specifications](#).

The facts and circumstances of the particular trade dictate the appropriate modifier that members must report in each field, and each field must be analyzed separately. Accordingly, the reporting firm must include in the transaction report all of the information that is pertinent to a particular transaction. To determine what modifiers firms must include in a particular transaction report, members should analyze individually each Trade Modifier Field (or column in the above-referenced Trade Reporting Modifier Chart) to determine what, if any, modifier is applicable for the transaction that is being reported.

**Q400.2: Does the four level or field trade report modifier format allow for combinations of modifiers, where appropriate?**

**A400.2:** Yes, the four level or field format allows for combinations of trade report modifiers, including when reporting to the ORF (effective November 17, 2014). For example, a member can report that a transaction is both a weighted average price (.W) and outside market hours (.T) transaction. In the past, when both the .W and .T modifiers applied to a particular transaction, members were instructed to use the .W modifier rather than the .T modifier. Under the four level or field modifier format, both modifiers can be accommodated on the transaction report and must be used if applicable.

**Q400.3: How should members report to FINRA trades that qualify for an exemption or exception from the Regulation NMS requirements?**

**A400.3:** Members should refer to NASD [NTM 07-23](#) (May 2007) and [Trade Reporting Notice 2/24/09](#) (FINRA Announces Two New Trade Reporting Modifiers Related to Regulation NMS) for guidance on the proper use of FINRA's trade report modifiers when reporting certain transactions to FINRA Facilities that are exempt or excepted from SEC Rule 611 of Regulation NMS. See also FAQ 400.5.

**Q400.4: Do the FINRA Facilities automatically append trade report modifiers to trade reports?**

**A400.4:** The FINRA Facilities will automatically append certain trade report modifiers—e.g., the outside market hours (.T) modifier—where Trade Modifier Field 3 is not populated on the trade report submitted by the member. Members should consult the trade reporting rules and technical specifications applicable to the relevant FINRA Facility to determine whether, and under what circumstances, a trade report modifier will be automatically appended by the system.

**Q400.5: When reporting trades to FINRA in securities that qualify under the SEC's Order Exempting Non-Convertible Preferred Securities from Rule 611(a) of Regulation NMS, how should members populate the SEC Rule 611 Trade-Through Exception/Exemption flag?**

**A400.5:** Members should populate the Trade-Through Exception/Exemption flag as "yes" for trades in securities that qualify under the SEC's Order Exempting Non-Convertible Preferred Securities from Rule 611(a) of Regulation NMS. However, there is no Trade Modifier Field 2 (Reason for SEC Rule 611 Exception/Exemption) modifier for such trades and that field should be left blank.

**Q400.6: Is there guidance relating to priority of trade reporting modifiers between Trade Modifier Fields?**

**A400.6:** No. The FINRA Facilities accept modifiers in all applicable Trade Modifier Fields. Accordingly, there is no need for guidance relating to modifier priority between Trade Modifier Fields. See also FAQ 401.2.



## Section 401: Trade Report Modifiers on Reports Submitted to the ORF

**Q401.1: Does the four level or field trade report modifier format apply to reports of trades that are submitted to the ORF?**

**A401.1:** Yes, members reporting trades in OTC Equity Securities and Restricted Equity Securities to the ORF are required to use the four level or field format. However, the Regulation NMS-related trade report modifiers do not apply to transactions in these securities and, accordingly, should not be used when reporting to the ORF. See [NTM 07-23](#) (May 2007). Effective November 17, 2014, the system will no longer restrict the submission of certain modifier combinations on a trade report submitted to the ORF.

**Q401.2: Is the previous guidance in this Section 401 and Equity Trader Alert #2007-24 relating to priority of trade reporting modifiers in reports submitted to the ORF applicable after ORF migration to FINRA's MPP on November 17, 2014?**

**A401.2:** No, after migration to the MPP, the ORF accepts modifiers in Trade Modifier Field 1, Trade Modifier Field 3 and Trade Modifier Field 4; therefore previous guidance relating to modifier priority between Trade Modifier Fields no longer applies. The reporting firm must include in the transaction report all of the information that is pertinent to a particular transaction. Members should analyze each level or Trade Modifier Field individually to determine what, if any, modifier is applicable for the transaction that is being reported.

## Section 402: Stop Stock Transactions

**Q402.1: Is a "Stop Stock" transaction the same as a "Stop Order"?**

**A402.1:** No. A "Stop Stock" transaction is defined under the trade reporting rules as any transaction that meets both of the following conditions: (1) the transaction is the result of an order in which a member and another party agree that the order will be executed at a Stop Stock Price or better; and (2) the order is executed at the Stop Stock Price or better. See Rules 6220, 6320A, 6320B and 6420. Generally, Stop Stock transactions are reported with a special trade report modifier (see FAQ 402.3), and a report of a Stop Stock transaction may be flagged as trade-through exempt, if it qualifies as such under SEC Rule 611 of Regulation NMS.

A "Stop Order" is a market or limit order that does not become effective until a certain market price is reached (e.g., a transaction takes place in the market at that price), after which the order is executable according to its terms and conditions and applicable rules and regulations. For trade reporting purposes, the activated Stop Order is reported when executed, with the actual execution time and price, and unlike Stop Stock transactions, Stop Order transactions are not reported with a special trade report modifier.

**Q402.2: What trade report modifier should members use to report a Stop Stock transaction to a FINRA Facility?**

**A402.2:** Members are required to use a special trade report modifier to specifically identify Stop Stock transactions reported to a FINRA Facility. Stop Stock transactions will be disseminated to the public with the .W trade modifier. See e.g. [Regulatory Notice 10-29](#) (June 2010).

**Q402.3: How should members report a Stop Stock transaction that is executed and reported within 10 seconds of the time the member and the other party agree to the Stop Stock Price?**

**A402.3:** Generally, Stop Stock transactions must be reported with a special trade report modifier as specified by FINRA, and the trade report must include the time at which the member and the other party agreed to the Stop Stock Price in lieu of the actual time the trade was executed. Effective November 17, 2014 (for the ORF) and July 13, 2015 (for the ADF/TRFs), firms

will report the actual time of execution in addition to the time at which the member and the other party agreed to the Stop Stock Price.

However, if the Stop Stock transaction is both executed and reported within 10 seconds of the time the member and the other party agree to the Stop Stock Price, then the special trade report modifier should not be used and the execution time should be the actual time the trade was executed. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). If the reporting firm is relying on an exception or exemption under the Regulation NMS Order Protection Rule, the trade report should be marked accordingly, even if the Stop Stock modifier is not used. As set forth in FAQ 400.1, members should analyze individually each Trade Modifier Field to determine what, if any, modifier is applicable for the transaction that is being reported.

**Q402.4: At 11:00:00 a.m. on Day 1, member BD1 executes a Stop Stock transaction at the Stop Stock Price, which was agreed to at 9:00:00 a.m. that same day. BD1 fails to report the trade until Day 2. What trade report modifier should be used in Trade Modifier Field 4 (the SRO detail modifier field)? What execution time should be used in the trade report?**

**A402.4:** Because BD1 is reporting on Day 2 a trade that was executed on Day 1, BD1 should report the trade on an "as/of" basis with the Stop Stock modifier in Trade Modifier Field 4, a trade date of Day 1 and an execution time of 9:00:00 a.m.

Pursuant to amendments effective November 17, 2014 for the ORF and July 13, 2015 for the ADF/TRFs, BD1 should report the trade on Day 2 on an "as/of" basis with the Stop Stock modifier in Trade Modifier Field 4, a trade date of Day 1, an execution time of 11:00:00 a.m. and a Stop Stock time of 9:00:00 a.m. in the Trade Modifier 4 Time Field.

By contrast, if BD1 had executed the trade on Day 2 at the Stop Stock Price agreed to on Day 1, then BD1 would use the special pricing formula (.W) modifier (not the Stop Stock modifier) in Trade Modifier Field 4. See FAQ 404.7.

**Q402.5 (effective November 17, 2014 for ORF and July 13, 2015 for ADF/TRFs): When my firm negotiates a Stop Stock Price, this is a manual process and the time is captured in seconds; however, my firm's execution system is capable of capturing and reporting execution time in milliseconds. Is it acceptable to submit a report of a Stop Stock transaction with the Stop Stock time in the Trade Modifier 4 Time Field reflected in seconds and the execution time reflected in milliseconds?**

**A402.5:** Yes, it is acceptable to submit a report of a Stop Stock transaction with the Stop Stock time in the Trade Modifier 4 Time Field reflected in seconds and the execution time reflected in milliseconds.

**Q402.6: At 11:00:10 a.m., member BD1 executes a Stop Stock transaction at the Stop Stock Price, which was agreed to at 11:00:00 a.m. BD1 reports the trade at 11:00:15. Should BD1 report the trade with the Stop Stock modifier?**

**A402.6:** Yes, BD1 should report the trade with the Stop Stock modifier. Although the trade was executed within 10 seconds of the time the Stop Stock Price was agreed to (i.e., the Stop Stock Price was agreed to at 11:00:00 and the trade was executed at 11:00:10), it was reported more than 10 seconds after the Stop Stock time (i.e., the trade was reported at 11:00:15). See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a); see also Regulatory Notice 14-21 (May 2014).

## **Section 403: Aggregated or "Bunched" Reports**

**Q403.1: What does the prohibition on aggregation in the trade reporting rules cover?**

**A403.1:** The trade reporting rules prohibit the aggregation of multiple executions into a single tape report (previously reported using the .B modifier). Such prohibition does not apply to the matching or crossing of multiple orders in a single execution (e.g., via an ATS or broker-dealer order management system) or to transactions that are designated as .W (i.e., exchange-for physical, weighted average price or other special pricing formula transactions). Such transactions previously were not reported as bunched or aggregated using the .B modifier. See Rules 6282(f), 6380A(f) and 6380B(h).

**Q403.2: Can members use the .B modifier on any trade reports today?**

**A403.2:** No. The .B modifier cannot be used on trade reports submitted to any FINRA Facility.

## **Section 404: Weighted Average Price/Special Pricing Formula Transactions**

**Q404.1: Member BD1 executes multiple trades to satisfy a customer order and then trades with the customer at a price equal to the volume-weighted average cost of the original trades plus a net difference in accordance with a net trading agreement with its customer. How should BD1 report the trade with its customer?**

**A404.1:** The original trades and the customer leg of the transaction should be reported to the tape, and the report of the customer leg should include the weighted average price (.W) modifier. For example, member BD1 receives an order from a customer to buy 5,000 shares of ABCD security and accumulates the shares through five separate trades. Each of these five trades is reported to the tape. BD1 then sells the 5,000 shares of ABCD to its customer at its volume-weighted average cost with a net difference to reflect the compensation agreement between BD1 and its customer. BD1 should report the sale of 5,000 shares to its customer to the tape with the weighted average price modifier.

**Q404.2: Should a net trade always be marked with a weighted average price (.W) modifier?**

**A404.2:** No. The mark-up of a trade does not in itself qualify a trade to be marked with a weighted average price modifier. A net trade can be marked with this modifier only if, as in the example in FAQ 404.1, the price would qualify as a weighted average price or based on another special pricing formula.

**Q404.3: Member BD1 executes multiple trades to fill a customer order and then trades with the customer at a price equal to the volume-weighted average cost of the original trades. How should BD1 report the trade with its customer?**

**A404.3:** Assuming the transaction meets the riskless principal requirements, the transaction should be reported on a riskless principal basis and the weighted average price (.W) modifier should not be used. For example, member BD1 receives an order from a customer to buy 5,000 shares of ABCD security, and BD1, as principal, accumulates the shares through five separate trades. Each of these five trades is reported to the tape. When BD1, as principal, sells the 5,000 shares of ABCD to its customer at its volume-weighted average cost, BD1 should submit a non-tape report showing the sale of 5,000 shares to the customer; the weighted average price modifier should not be included on the non-tape report. Members should not rely on the guidance provided in NASDAQ [Head Trader Alert 00-53](#) (July 28, 2000), which states that the sale to the customer of 5,000 shares should be reported to the tape with the weighted average price modifier. See NASDAQ [General News: Riskless Principal Negative Consent Letters and .W Modifier](#) (January 31, 2001).

**Q404.4: What modifier should members use in Trade Modifier Field 4 when reporting trades that qualify for the Qualified Contingent Transaction, Error Correction and Print Protection exemptions to Rule 611 of SEC Regulation NMS (Rule 611)?**

**A404.4:** Members are required to use the special pricing formula (.W) modifier when reporting transactions that qualify for the Qualified Contingent Transaction and Print Protection exemptions to Rule 611 to FINRA. See [Trade Reporting Notice 8/19/2010](#).

When reporting transactions that qualify for the Error Correction exemption to Rule 611, members are required to use the prior reference price (PRP) modifier, if the Error Correction transaction is executed and reported on the same day as the original execution, and the .W modifier, if the Error Correction transaction is executed and reported on any day other than the day of the original execution. This guidance supersedes the guidance in Trade Reporting Notice 8/19/2010 with respect to transactions that qualify for the Error Correction exemption to Rule 611.

**Q404.5: Does the guidance in Trade Reporting Notice 8/19/2010 and FAQ 404.4 apply to trades reported to the ORF?**

**A404.5:** Yes. Although the Qualified Contingent Transaction, Error Correction and Print Protection exemptions to Rule 611 of SEC Regulation NMS do not apply to transactions reported to the ORF, if a member is reporting a transaction that otherwise would qualify for such an exemption if it were in an NMS stock, then the member should append the .W or the PRP modifier, as applicable, to the trade report. See [Trade Reporting Notice 8/19/2010](#).

**Q404.6:** At 9:00:00 a.m., member BD1 executes a customer order at the previous day's 4:00:00 p.m. closing price. What trade report modifier should be used in Trade Modifier Field 4 (the SRO detail modifier field) when reporting this trade? What execution time should be used on the trade report?

**A404.6:** Because the trade price is based on the previous day's closing price, the trade should be reported with the special pricing formula (.W) modifier (not the prior reference price (PRP) modifier) and an execution time of 9:00:00 a.m. Note this trade should not be reported on an "as/of" basis, since the trade is being reported on the same day that it was executed. (See OATS FAQ C91.)

**Q404.7:** At 9:00:00 a.m., member B1 executes a Stop Stock transaction at the Stop Stock price, which was agreed to the previous day. What trade report modifier should be used in Trade Modifier Field 4 (the SRO detail modifier field)? What execution time should be used in the trade report?

**A404.7:** Because the transaction relates to a Stop Stock price that was agreed to on a day prior to the date of execution, the trade should be reported with the special pricing formula (.W) modifier (not the Stop Stock modifier) and an execution time of 9:00:00 a.m. Note this trade should not be reported on an "as/of" basis, since the trade is being reported on the same day that it was executed.

## Section 405: Related Market Center

**Q405.1:** When is the Related Market Center indicator required?

**A405.1:** Members must use the Related Market Center (RMC) indicator when submitting a non-tape report for the offsetting leg of a riskless principal or agency transaction to a FINRA Facility that is related to a tape report that was not submitted to that same FINRA Facility. The RMC indicator identifies the market or facility where the associated tape report was submitted. See [Regulatory Notice 09-54](#) (September 2009) and [Trade Reporting Notice 2/8/2010](#).

**Q405.2:** Is there any guidance on how to populate the Related Market Center field?

**A405.2:** Yes, members should refer to [Regulatory Notice 09-54](#) (September 2009), [Trade Reporting Notice 2/8/2010](#) and the [Related Market Center Chart](#) (PDF 33 KB) (originally published in Trade Reporting Notice 2/8/2010) for guidance on how to populate the Related Market Center field.

**Q405.3:** Member BD1 submits a non-tape report that is associated with three tape reports. BD1 does not know where any of the tape reports were made. What RMC indicator should BD1 use in the non-tape report?

**A405.3:** BD1 should use the "unknown venue" indicator, because although BD1 knows that the non-tape report is associated with multiple tape reports, BD1 does not know that the tape reports were made through different exchanges and/or FINRA Facilities. It is possible that all three tape-reported trades in this example occurred on and were reported through the same exchange or were executed OTC and reported to the same FINRA Facility. Thus, use of the "multiple venues" indicator in this instance would not be appropriate.

**Q405.4:** Member BD1 submits a non-tape report that is associated with three tape reports. BD1 knows that one of the tape-reported trades occurred on the NYSE and one was executed OTC and submitted to the FINRA/NASDAQ TRF; however, BD1 does not know where the third tape report was made. What RMC indicator should BD1 use in the non-tape report?

**A405.4:** BD1 should use the "multiple venues" indicator, because BD1 knows that multiple tape reports were made through different exchanges and/or FINRA Facilities, even though one is unknown to the firm.

**Q405.5: Member BD1 submits a non-tape report that is associated with three tape reports. BD1 knows that one of the tape-reported trades occurred on the NYSE, but does not know where the other two tape reports were made. What RMC indicator should BD1 use in the non-tape report?**

**A405.5:** BD1 should use the "unknown venue" indicator, because although BD1 knows that the non-tape report is associated with multiple tape reports, BD1 does not know that multiple tape reports were made through different exchanges and/or FINRA Facilities. It is possible that the other two tape-reported trades in this example also occurred on the NYSE. Thus, use of the "multiple venues" indicator in this instance would not be appropriate.

## Section 406: Price Override Indicator

**Q406.1: What is the price override indicator?**

**A406.1:** The price override indicator is used in trade reports only after a trade has been rejected by a FINRA Facility because the reported trade price falls outside the price validation parameters established by FINRA. Following rejection of a trade, the reporting firm must review the trade to determine its accuracy; if accurate, the firm can resubmit the trade with a price override indicator. (If the firm realizes the trade price was reported in error, then it must re-report the trade with the correct price.) By using this indicator, the reporting firm is confirming that the price it originally entered is correct, even though it is away from the current market. After the trade has been resubmitted with the price override indicator, it is price validated a second time with significantly wider parameters. See [Trade Reporting Notice 9/17/2010](#).

**Q406.2: Can my firm program its system to automatically append the price override indicator to its trade reports?**

**A406.2:** No. The purpose of the price override function is to reduce the likelihood that erroneously reported trade prices are disseminated to the tape. As stated in [Trade Reporting Notice 9/17/2010](#), firms must not report trades in a manner designed to circumvent this important system and operational protocol. If a firm programs its system to automatically append the price override indicator - either before or after rejection of the trade - it would not be performing the necessary price check required by FINRA's price validation protocol. Rejection of a trade outside the price validation parameters requires that the reporting firm confirm that the reported price is, in fact, the correct price as agreed upon by the parties. As noted in FAQ 406.1 and [Trade Reporting Notice 9/17/2010](#), by using the price override indicator, the reporting firm is confirming that the price it originally entered is correct, even though it is away from the current market.

To the extent this process (i.e., rejection of the trade by the FINRA Facility and re-entry of that trade by the reporting firm) results in a late reported trade, FINRA will take this into account when enforcing the rules on timely trade reporting. See [Trade Reporting Notice 9/17/2010](#).

## Section 407: Short Sale and Short Sale Exempt Indicators

**Q407.1: Members BD1 and BD2 execute a trade. BD1 has the trade reporting obligation and BD2 is selling short (or short exempt). Is BD1 responsible for showing that BD2 is selling short (or short exempt) in the trade report submitted to FINRA?**

**A407.1:** Yes; if BD2 will not have an opportunity to submit its own trade information by using the acceptance and comparison functionality, then BD1 must indicate in the trade report that BD2 was selling short (or short exempt). If the parties are using the acceptance and comparison functionality, then BD2 would indicate that it was selling short (or short exempt) when submitting its own trade information; BD1 would not be responsible for providing such information. See Rules 7130(d), 7230A(d), 7230B(d) and 7330(d). See also FAQ 204.4.

**Q407.2: Member BD1 executes a trade with its customer (or a non-member broker-dealer). BD1 has the trade reporting obligation and the customer (or non-member broker-dealer) is selling short (or short exempt). Is BD1 responsible for showing that the customer (or non-member broker-dealer) is selling short (or short exempt) in the trade report submitted to FINRA?**

**A407.2:** Yes, BD1 is responsible for showing that the customer (or non-member broker-dealer) is selling short (or short exempt) in the trade report. See Rules 7130(d), 7230A(d), 7230B(d) and 7330(d).

**Q407.3: When reporting a trade as a "cross" to FINRA, should the tape report be marked with the short sale (or short sale exempt) indicator, if applicable?**

**A407.3:** Yes, tape reports of cross trades must be marked with the short sale (or short sale exempt) indicator, if applicable. See Rules 7130(d), 7230A(d), 7230B(d) and 7330(d). In addition, if the short (or short exempt) seller is another FINRA member, the non-tape report identifying the FINRA member must also contain the short sale (or short sale exempt) indicator. See FAQ 407.5; see also the [ATS OATS and Trade Reporting guidance](#) that became effective February 2, 2015. The ATS OATS and Trade Reporting guidance applies irrespective of whether the execution occurs on an ATS.

This guidance is effective February 2, 2015. Firms were permitted – but not required – to begin reporting in accordance with this guidance prior to February 2, 2015.

**Q407.4: Member BD1 matches as agent a buy order from a customer (or non-member broker-dealer) with an order to sell short (or short exempt) for the same quantity of shares at the same price from another customer (or non-member broker-dealer). How should this transaction be reported?**

**A407.4:** BD1 is the executing party and has the trade reporting obligation. BD1 should report this trade as an agency cross (see FAQ 306.1) and should include the short sale (or short sale exempt) indicator in the tape report.

**Q407.5: Member BD1 matches as agent a buy order from member BD2 and an order to sell short (or short exempt) for the same quantity of shares at the same price from member BD3. How should this transaction be reported?**

**A407.5:** BD1 is the executing party and has the trade reporting obligation. (See FAQ 307.1.)

BD1 can report this transaction in one of three ways, and because the party selling short (or short exempt), BD3, is a FINRA member, BD1 should include the short sale (or short sale exempt) indicator in the tape report and, if submitted, the non-tape report that identifies BD3 as the seller:

#### Alternative #1

Tape report: BD1 reports a cross—short sale (or short sale exempt) indicator

Non-tape regulatory report #1: BD1 buys from BD3—short sale (or short sale exempt) indicator

Non-tape regulatory report #2: BD1 sells to BD2—no short sale (or short sale exempt) indicator

#### Alternative #2

Tape report: BD1 buys from BD3—short sale (or short sale exempt) indicator

Non-tape regulatory report: BD1 sells to BD2—no short sale (or short sale exempt) indicator

#### Alternative #3

Tape report: BD1 sells to BD2—short sale (or short sale exempt) indicator

Non-tape regulatory report: BD1 buys from BD3—short sale (or short sale exempt) indicator

This guidance is effective February 2, 2015, and supersedes previous guidance that members should only include the short sale (or short sale exempt) indicator in the report (tape or non-tape) that identifies BD3 as the seller. Firms were permitted – but not required – to begin reporting in accordance with this guidance prior to February 2, 2015. See also the [ATS OATS and Trade Reporting guidance](#).

**Q407.6: Assume the same facts as FAQ 407.5. For purposes of this example, BD1 elects to report under Alternative #2 (i.e., the tape report shows BD1 and BD3 as the parties to the trade). BD1 fails to include the short sale (or short sale exempt) indicator in the tape report. Can BD1 submit a non-tape report to show that BD3 was selling short (or short exempt)?**

**A407.6:** No. If the FINRA Facility to which the trade was reported allows trade information to be corrected without cancellation of the original tape report, then BD1 would be required to correct the report to include the short sale (or short sale exempt) indicator. Otherwise, if BD1 identifies BD3 in the tape report, but fails to include the short sale (or short sale exempt) indicator in that report, BD1 must cancel and replace the original tape report with a new tape report that includes the short sale (or short sale exempt) indicator. In such instance, BD1 would not be required to cancel an associated clearing-only report, assuming that BD1 submits a tape only cancellation and then re-reports the trade between BD1 and BD3, with the short sale (or short sale exempt) indicator, as tape only.

**Q407.7: Assume the same facts as FAQ 407.5. For purposes of this example, BD1 elects to report under Alternative #3 (i.e., the non-tape report shows BD1 and BD3 as the parties to the trade). BD1 fails to include the short sale (or short sale exempt) indicator in the non-tape report. Can BD1 submit a second non-tape report to show that BD3 was selling short (or short exempt)?**

**A407.7:** No. If the FINRA Facility to which the trade was reported allows trade information to be corrected without cancellation of the original non-tape report, then BD1 would be required to correct the report to include the short sale (or short sale exempt) indicator. Otherwise, if BD1 identifies BD3 in the non-tape report, but fails to include the short sale (or short sale exempt) indicator in that report, BD1 must cancel and replace the original non-tape report with a new non-tape report that includes the short sale (or short sale exempt) indicator. In such instance, BD1 would not be required to cancel the original tape report.

**Q407.8: Member BD1 matches a buy order from member BD2 and an order to sell short (or short exempt) for the same quantity of shares at the same price from a customer (or non-member broker-dealer). How should this transaction be reported?**

**A407.8:** BD1 is the executing party and has the trade reporting obligation. (See FAQ 308.1.)

BD1 can report this transaction in one of three ways, and because the party that is selling short (or short exempt) is not a member, BD1 should include the short sale (or short sale exempt) indicator only in the tape report under all three alternatives:

**Alternative #1**

Tape report: BD1 reports a cross—short sale (or short sale exempt) indicator

Non-tape report: BD1 sells to BD2—no short sale (or short sale exempt) indicator

**Alternative #2**

Tape report: BD1 sells to BD2—short sale (or short sale exempt) indicator

Non-tape report: Not required

**Alternative #3**

Tape report: BD1 buys from customer (or non-member)—short sale (or short sale exempt) indicator

Non-tape report: BD1 sells to BD2—no short sale (or short sale exempt) indicator

**Q407.9: Member BD1 matches a buy order from a customer (or non-member broker-dealer) and an order to sell short (or short exempt) for the same quantity of shares at the same price from member BD2. How should this transaction be reported?**

**A407.9:** BD1 is the executing party and has the trade reporting obligation. (See FAQ 308.1.)

BD1 can report this transaction in one of three ways, and because the party selling short (or short exempt), BD2, is a FINRA member, BD1 should include the short sale (or short sale exempt) indicator in the tape report and, if submitted, the non-tape report that identifies BD2 as the seller:

**Alternative #1**

Tape report: BD1 reports a cross—short sale (or short sale exempt) indicator

Non-tape report: BD1 buys from BD2—short sale (or short sale exempt) indicator

**Alternative #2**

Tape report: BD1 buys from BD2—short sale (or short sale exempt) indicator

Non-tape report: Not required

**Alternative #3**

Tape report: BD1 sells to customer or non-member—short sale (or short sale exempt) indicator

Non-tape report: BD1 buys from BD2—short sale (or short sale exempt) indicator

This guidance is effective February 2, 2015, and supersedes previous guidance that members should only include the short sale (or short sale exempt) indicator in the report (tape or non-tape) that identifies BD2 as the seller. Firms were permitted – but not required – to begin reporting in accordance with this guidance prior to February 2, 2015. See also the [ATS OATS and Trade Reporting guidance](#).

**Q407.10: Member BD1's customer wants to sell 100 shares of ABCD, and BD1 will handle the customer's order on a riskless principal basis. The customer is long the 100 shares of ABCD; however, BD1 does not have 100 shares of ABCD in its proprietary account. Is BD1 required to mark its sale to the street with the short sale (or short sale exempt) indicator?**

**A407.10:** Yes. Even though BD1's customer is long the shares, since BD1 does not have the shares in its proprietary account, it must use the short sale (or short sale exempt) indicator when routing the order to the street for execution. Accordingly, the trade report(s) showing the sale from BD1 to the street must include the short sale (or short sale exempt) indicator.

**Q407.11: Member BD1 is long 500 shares of XYZ security. If BD1 executes a single OTC sell transaction for 600 shares of XYZ in compliance with applicable Regulation SHO requirements and SEC guidance, should BD1 mark the entire sell transaction as short in the trade report submitted to FINRA?**

**A407.11:** Yes. BD1 should report the entire 600 share sell transaction as "short" and must not report the transaction as "long." See [SEC Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO FAQ 2.4\(A\)](#).

If, in this example, BD1 executed two separate OTC sell transactions (one for 500 shares and one for 100 shares), then BD1 would submit two trade reports to FINRA, and the short sale indicator should be appended only to the report reflecting the 100 share transaction.

**Q407.12: Member BD1 is long 500 shares of XYZ security. BD1 routes an on-close sell order for 500 shares and marks the order long. BD1 subsequently routes an order to sell 200 shares of XYZ to BD2, marked as a short sale, which is executed OTC before the first order (i.e., the on-close order) is executed. In this scenario, BD2 has the trade reporting obligation under FINRA rules. If BD1 is reporting the trade on behalf of BD2, or is reporting its side of the trade using the acceptance functionality of the FINRA Facility, should BD1 report the sale of 200 shares of XYZ to FINRA as a long or short sale?**

**A407.12:** The trade report should be consistent with the marking of the underlying order in compliance with Regulation SHO and SEC guidance. In this example, BD1's order to sell 200 shares is properly marked as a short sale, in accordance with



SEC guidance. See [SEC Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO FAQ 2.5](#). Accordingly, the trade should be reported to FINRA as a short sale, notwithstanding that BD1 is long more than 200 shares in its inventory account at the time of execution, because the on-close order has not yet been executed.

**Q407.13: Member BD1 is long 500 shares of XYZ security. BD1 routes an on-close sell order for 500 shares and marks the order long. BD1 subsequently sells 200 shares of XYZ out of its proprietary account to fill a customer buy order for 200 shares. Should the sale of 200 shares of XYZ to the customer be reported to FINRA as a long or short sale?**

**A407.13:** In this scenario, the trade should be reported to FINRA as a short sale. Notwithstanding that there is no order underlying the sale, the firm should trade report in a manner consistent with the guidance set forth for order marking in [SEC Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO FAQ 2.5](#).

**Q407.14: Member BD1 matches a single customer order to buy 400 shares with a customer order to sell short 200 shares and a second customer order to sell short exempt 200 shares in a single execution. BD1 reports a single cross for 400 shares for tape purposes. Should BD1 use the short sale or the short sale exempt indicator on the tape report?**

**A407.14:** In this instance, if BD1 effects the transaction in a single execution and reports a single cross for 400 shares, then BD1 should use the short sale (and not the short sale exempt) indicator on the tape report. If BD1 effects the transaction in two separate executions, then BD1 should report one cross for 200 shares with the short sale indicator and a second cross for 200 shares with the short sale exempt indicator.

## Section 408: Prior Reference Price Transactions

**Q408.1: Member BD1 receives a market-on-open customer order and guarantees the opening price. At 9:30:00 a.m. the market opens. At 9:35:00 a.m., BD1 receives the opening price information and executes the trade. What trade report modifier should be used in Trade Modifier Field 4 (the SRO detail modifier field)? What execution time should be used in the trade report?**

**A408.1:** BD1 should report the trade with the prior reference price (PRP) modifier in Trade Modifier Field 4 and an execution time of 9:30:00 a.m.

Pursuant to amendments effective November 17, 2014 for the ORF and July 13, 2015 for the ADF/TRFs, BD1 should report the trade with the prior reference price (PRP) modifier in Trade Modifier Field 4, an execution time of 9:35:00 a.m. and a reference time of 9:30:00 a.m. in the Trade Modifier 4 Time Field. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a); [Regulatory Notice 14-21](#) (May 2014). (See OATS FAQ C90.)

**Q408.2: Member BD1 receives a market-on-open order and guarantees the opening price. At 9:30:00 a.m. the market opens. At 9:30:05 a.m., BD1 receives the opening price information and executes the trade. Should BD1 report the trade with the prior reference price (PRP) modifier?**

**A408.2:** No, in this instance, BD1 should not report the trade with the PRP modifier because the trade was executed and reported within 10 seconds of the prior reference time, i.e., 9:30:00 a.m. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a); see also [Regulatory Notice 14-21](#) (May 2014).

**Q408.3: On Day 1, member BD1 receives a market-on-open customer order and guarantees the opening price. Also on Day 1, at 9:30:00 a.m. the market opens, and at 9:35:00 a.m., BD1 receives the opening price information and executes the trade. BD1 fails to report the trade until Day 2. What trade report modifier should be used in Trade Modifier Field 4 (the SRO detail modifier field)? What execution time should be used in the trade report?**

**A408.3:** Pursuant to amendments effective November 17, 2014 for the ORF and July 13, 2015 for the ADF/TRFs, BD1 should report the trade on Day 2 on an "as/of" basis with the PRP modifier in Trade Modifier Field 4, a trade date of Day 1, an execution time of 9:35:00 a.m. and a reference time of 9:30:00 a.m. in the Trade Modifier 4 Time Field.

By contrast, if BD1 had executed the trade at 8:00 a.m. on Day 2 and based the price on Day 1's opening price, then BD1 should use the special pricing formula (.W) modifier (not the PRP modifier) in Trade Modifier Field 4. In that instance, BD1 would report a trade date of Day 2 and an execution time of 8:00 a.m. See FAQ 404.6.

**Q408.4: At 9:00:00 p.m. on Day 1, member BD1 executes a customer order at the 4:00:00 p.m. closing price from earlier that day. Because the FINRA Facilities are closed at the time of trade execution, BD1 reports the trade on an "as/of" basis by 8:15 a.m. on Day 2, in accordance with the trade reporting rules. What trade report modifier should be used in Trade Modifier Field 4 (the SRO detail modifier field)? What execution time should be used in the trade report?**

**A408.4:** Pursuant to amendments effective November 17, 2014 for the ORF and July 13, 2015 for the ADF/TRFs, when reporting the trade on an "as/of" basis on Day 2, BD1 should use the PRP modifier in Trade Modifier Field 4, a trade date of Day 1, an execution time of 9:00:00 p.m. and a reference time of 4:00:00 p.m. in the Trade Modifier 4 Time Field.

**Q408.5: When reporting trades that are based on a prior reference price, when should firms use the PRP modifier and when should firms use the .W modifier?**

**A408.5:** When reporting trades based on a prior reference price, firms should use the PRP modifier when the reference price occurred on the date of execution (e.g., a trade is priced at the opening price from earlier on the date of execution (see FAQ 408.1) or a trade is executed to give the customer a better price from earlier on the date of execution (see FAQ 309.1)). Trades reported with the PRP modifier will update the high and low prices for the security, but not the last sale price, unless the trade is the first or only trade of the day.

When reporting trades based on a prior reference price, firms should use the .W modifier when the reference price occurred on a day other than the date of execution (e.g., a trade is priced at the previous day's closing price (see FAQ 404.6) or a trade is executed to give the customer a better price from a day prior to the date of execution (see FAQ 309.6)). Trades reported with the .W modifier will not update the high, low or last sale prices for the security.

**Q408.6: How should members report a prior reference price transaction that is executed and reported within 10 seconds of the time the prior reference time?**

**A408.6:** Generally, prior reference price transactions must be reported with a special trade report modifier (PRP) as specified by FINRA, and the trade report must include the prior reference time in lieu of the actual time the trade was executed. Effective November 17, 2014 (for the ORF) and July 13, 2015 (for the ADF/TRFs), firms will report the actual time of execution in addition to the prior reference time.

However, if the transaction is both executed and reported within 10 seconds of the prior reference time, then the special trade report modifier should not be used and the execution time should be the actual time the trade was executed. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). If the reporting firm is relying on an exception or exemption under the Regulation NMS Order Protection Rule, the trade report should be marked accordingly, even if the PRP modifier is not used. As set forth in FAQ 400.1, firms should analyze individually each Trade Modifier Field to determine what, if any, modifier is applicable for the transaction that is being reported.

**Q408.7: Member BD1 receives a market-on-open order and guarantees the opening price. At 9:30:00 a.m., the market opens. At 9:30:10 a.m., BD1 receives the opening price information and executes the trade. BD1 reports the trade at 9:30:15. Should BD1 report the trade with the prior reference price (PRP) modifier?**

**A408.7:** Yes, BD1 should report the trade with the PRP modifier. Although the trade was executed within 10 seconds of the prior reference time (i.e., the reference time is 9:30:00 a.m. and the trade was executed at 9:30:10), it was reported more than 10 seconds after the prior reference time (i.e., the trade was reported at 9:30:15). See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a); see also Regulatory Notice 14-21 (May 2014).

## Transactions Not Reported to FINRA

### Section 500: General

#### Q500.1: What transactions do not get reported to FINRA for publication or regulatory purposes?

**A500.1:** The trade reporting rules expressly provide that certain types of transactions are not to be reported to FINRA for publication or regulatory purposes, including: (1) transactions reported on or through an exchange; (2) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution (for purposes of this trade reporting exception, "distribution" has the meaning set forth under SEC Regulation M) (see Section 501); (3) transactions made in reliance on Section 4(2) of the Securities Act of 1933; (4) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and (5) purchases of securities off the floor of an exchange pursuant to a tender offer. These exceptions are consistent with the express exceptions under the Consolidated Transaction Association Plan and NASDAQ Unlisted Trading Privileges Plan, which provide that such transactions shall not be reported to the tape. See Rules 6282(f)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

FINRA trade reporting rules contain certain additional exceptions. First, where securities are transferred pursuant to an asset purchase agreement (APA), such transfer is not reportable if (1) the APA is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters; and (2) the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA. See Rules 6282(f)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

Second, transfers of equity securities for the sole purpose of creating or redeeming an instrument that shows ownership of or otherwise tracks the underlying securities transferred (e.g., American Depositary Receipts (ADRs) and exchange-traded funds (ETFs)) are not reportable. See Section 502.

Finally, Rule 6622 contains a general exception for trades executed on an exchange and, pursuant to Rule 6622(g), the trade reporting requirements of Rule 6622 do not apply to transactions in foreign equity securities if: (1) the transaction is executed on and reported to a foreign securities exchange; or (2) the transaction is executed OTC in a foreign country and is reported to the regulator of securities markets for that country. See NTM 07-25 (May 2007). See also Section 700.

See "Reporting Transactions for Regulatory Purposes" below for a discussion of the transactions that are not required to be reported to FINRA for publication purposes, but must be reported for regulatory purposes.

A member must have policies and procedures and internal controls in place to determine whether a transaction qualifies for an exception under the trade reporting rules.

### Section 501: Transactions That Are Part of a Distribution

#### Q501.1: What does the trade reporting exception for transactions that are part of a securities distribution encompass?

**A501.1:** Under the trade reporting rules, firms are not required to report to FINRA—for dissemination or regulatory purposes—transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution. For purposes of this trade reporting exception, "distribution" has the meaning set forth under SEC Regulation M. See Rules 6282(f)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

Notwithstanding the foregoing, firms that would otherwise have the trade reporting obligation under FINRA rules must provide notice to FINRA that they are relying on the exception for transactions that are part of an "unregistered secondary distribution." See FAQ 501.3.

**Q501.2: For purposes of the trade reporting rules, what does the term "distribution" mean?**

**A501.2:** For purposes of the trade reporting rules, "distribution" has the meaning set forth under SEC Regulation M. A "distribution" is defined under Rule 100 of Regulation M as "an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods."

**Q501.3: What are the notice requirements for firms relying on the exception for unregistered secondary distributions?**

**A501.3:** Firms that would otherwise have the trade reporting obligation under FINRA rules must provide notice to FINRA that they are relying on the exception for transactions that are part of an "unregistered secondary distribution." The firm also must provide the following information to FINRA for each transaction that is part of the unregistered secondary distribution and not trade reported:

- > security name and symbol;
- > execution date;
- > execution time;
- > number of shares;
- > trade price; and
- > FINRA member firms that are parties to the trade.

See Rules 6282.01, 6380A.01, 6380B.01 and 6622.02.

Members should refer to [Regulatory Notice 11-40](#) (August 2011) for the specific notice requirements, including the timing of such notice. See also [Regulatory Notice 12-19](#) (April 2012).

**Q501.4: Are transactions that are part of a secondary shelf distribution reportable?**

**A501.4:** Yes, pursuant to the trade reporting rules, transactions that are part of a secondary shelf distribution must be reported to FINRA. Transactions that are part of a primary shelf distribution are not reportable. See Rules 6282(f)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

## **Section 502: Transfers of Equity Securities to Create or Redeem Instruments such as ADRs and ETFs**

**Q502.1: Is the transfer of equity securities for the purpose of creating an instrument such as an American Depositary Receipt (ADR) or exchange-traded fund (ETF) reportable?**

**A502.1:** No, firms are not required to report the transfer of equity securities for the sole purpose of creating or redeeming an instrument such as an ADR or ETF that shows ownership of or otherwise tracks the underlying securities transferred. See Rules 6282(f)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1). See also [Regulatory Notice 11-40](#) (August 2011).

**Q502.2: Member BD1 is an authorized participant of an ETF. BD1 transfers securities to the ETF and in return receives ETF creation units. Is the transfer of the shares and receipt of ETF creation units by BD1 reportable?**

**A502.2:** No. Neither the transfer of equity securities from BD1 to the ETF nor the transfer of ETF creation units from the ETF to BD1 is reportable. See Rules 6282(f)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1). See also [Regulatory Notice 11-40](#)

(August 2011). The transfers in this example (from BD1 to the ETF, and from the ETF to BD1) are not reportable, irrespective of whether BD1 is acting as principal, agent or riskless principal in effecting the transfers.

**Q502.3: Assume the same facts as FAQ 502.2, and in this example, BD1 is acting as riskless principal on behalf of its customer. After receiving the ETF creation units, BD1 transfers or "flips" the ETF creation units to its customer. Is this flip reportable?**

**A502.3:** No. In this example, the flip of ETF creation units from BD1 to its customer is not reportable.

**Q502.4: Assume the same facts as FAQ 502.2; however, BD1 must first purchase the underlying securities that will be transferred to the ETF. If BD1 purchases the underlying securities in an OTC trade (or series of OTC trades), is this reportable?**

**A502.4:** Yes, an OTC purchase of the underlying securities must be reported to FINRA for dissemination purposes in accordance with the trade reporting rules.

**Q502.5: Assume the same facts as FAQ 502.2. After receiving the ETF creation units, BD1, as principal, sells ETF shares in the secondary market. Is this sale reportable?**

**A502.5:** Yes, any OTC sale of ETF shares in the secondary market must be reported to FINRA for dissemination purposes in accordance with the trade reporting rules.

**Q502.6: If an ADR is being created instead of an ETF in FAQs 502.2 through 502.5 and 502.7 (i.e., ordinary shares are converted into the ADR), would the answer be the same in each of those FAQs?**

**A502.6:** Yes, the trade reporting rules and the above guidance apply equally to the creation and redemption of ADRs and ETFs.

**Q502.7: Member BD1 is an authorized participant of an ETF. BD1's customer transfers the underlying shares to BD1 for purposes of creating ETF shares. BD1 has existing ETF shares in its proprietary account and rather than creating new ETF shares, BD1 transfers the ETF shares in its inventory to its customer in exchange for the underlying shares. Are these transactions reportable?**

**A502.7:** Yes. These are two separate transactions: (1) the sale of the underlying securities from the customer to BD1 and (2) the sale of the ETF shares from BD1 to its customer. Accordingly, each transaction must be reported separately to FINRA for public dissemination purposes pursuant to the trade reporting rules.

## **Reporting Transactions for Regulatory Purposes**

### **Section 600: General**

**Q600.1: Are there certain transactions that are not required to be reported for public dissemination purposes, but nonetheless must be reported to FINRA for regulatory purposes?**

**A600.1:** Yes. Transactions where the buyer and seller have agreed to a price substantially unrelated to the current market for the security (also referred to as "away from the market sales"), purchases or sales of securities effected upon the exercise of an OTC option, and transfers of proprietary securities positions effected in connection with certain corporate control transactions must not be reported to FINRA for publication purposes, but must be reported for purposes of assessing a regulatory transaction fee under Section 3 of Schedule A to the By-Laws (Section 3). See Rules 6282(f)(2), 6380A(e)(2), 6380B(e)(2) and 6622(e)(2). Members must submit non-tape reports to FINRA with respect to such transactions and must denote, in the manner specified by FINRA, that the transactions are reported for regulatory and not dissemination purposes. See Rules 7130(f), 7230A(g), 7230B(f) and 7330(g); NTM 06-39 (August 2006). See also Sections 601 (Away from the

Market Sales), 602 (Transactions Effected Upon the Exercise of Options) and 603 (Transfers of Proprietary Securities Positions in Connection with Certain Corporate Control Transactions).

Reports of trades executed on a non-business day (i.e., a weekend or holiday) and T+365 trades must be reported to the ORF (effective November 17, 2014) and to the ADF and TRFs (effective July 13, 2015); they are no longer reported on "Paper Form T." Such transactions are subject to regulatory transaction fees, but are not disseminated (or submitted to clearing) by the FINRA Facility. See [Regulatory Notice 14-21](#).

Transactions in Restricted Equity Securities effected pursuant to SEC Rule 144A must be reported to FINRA for regulatory purposes, however, such transactions are not subject to regulatory transaction fees, nor are they disseminated to the tape. See [Regulatory Notice 10-26](#) (May 2010).

## Section 601: Away from the Market Sales

### Q601.1: What is an "away from the market" sale?

**A601.1:** "Away from the market sale" for purposes of Rules 6282(f), 6380A(e), 6380B(e) and 6622(e) applies to transactions that occur without reference to current market pricing and investment, commercial or trading considerations. Given the underlying goals of transaction reporting, FINRA interprets the exception from the trade reporting rules for away from the market sales very narrowly, and the mere fact that a trade has occurred outside of the current inside would not, in and of itself, qualify for the exception. See [NTM 05-11](#) (February 2005). Gifts and inheritances where the shares must be transferred by giving nominal consideration would be deemed away from the market sales. For example, Party 1 wants to give Party 2 50 shares of ABCD security, but to have the shares transferred correctly, Party 2 must "buy" them for a nominal value that is unrelated to the share price. Member BD1 effects the sale from Party 1 to Party 2 and would be required to submit a non-tape report to FINRA with the .RA trade report modifier.

**Q601.2: Would the sale of a block of stock at a discount reflecting the risk in purchasing such a large block constitute an "away from the market sale" under the trade reporting rules, such that it would not be reportable to the tape?**

**A601.2:** No. Trades at a discount (or a premium) are not considered "away from the market sales" under Rules 6282(f), 6380A(e), 6380B(e) and 6622(e). Members are reminded that trades at a discount (or premium) are subject to the Regulation NMS Order Protection Rule. See SEC Rule 611.

**Q601.3: If shares are acquired or sold as part of a structured transaction and the price is not based on the current market (e.g., the month-end closing price or the volume-weighted average price for the month), would this be considered an away from the market sale?**

**A601.3:** No, this would not be considered an away from the market sale because it was based on investment, commercial or trading considerations.

**Q601.4: How should an away from the market sale be reported?**

**A601.4:** Members should report away from the market sales by submitting a non-tape report with a special trade report modifier (.RA) to denote that the transaction is reported for regulatory transaction fee assessment purposes. Such transactions must be reported by the close of the FINRA Facility on trade date, and can be entered for clearing or non-clearing. See Rules 7130(f), 7230A(g), 7230B(f) and 7330(g).

## Section 602: Transactions Effected Upon the Exercise of Options

**Q602.1: BD1 buys an option to purchase stock and later decides to exercise the option. Is the purchase effected upon the exercise of the option a reportable event?**

**A602.1:** Except as discussed in FAQ 602.2, the purchase or sale of a security effected upon the exercise of an option pursuant to the terms thereof should not be reported to FINRA. See Rules 6282(f), 6380A(e), 6380B(e) and 6622(e).

**Q602.2: Under what circumstances should a transaction effected pursuant to the exercise of an option be reported to FINRA?**

**A602.2:** Members must submit non-tape reports to FINRA with respect to certain transactions that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the By-Laws, including transactions effected pursuant to the exercise of an OTC option. See Rules 7130(f), 7230A(g), 7230B(f) and 7330(g); [NTM 06-39](#) (August 2006). Specifically, members must report transactions resulting from the exercise of options settled by physical delivery and not listed or traded on a national securities exchange (i.e., unlisted or conventional options). Thus, the requirement does not apply to transactions resulting from the exercise of cash-settled or exchange-listed options.

**Q602.3: How should transactions effected pursuant to the exercise of an OTC option be reported to FINRA?**

**A602.3:** Members should report transactions effected pursuant to the exercise of an OTC option by submitting a non-tape report with a special trade report modifier (.RX) to denote that the transaction is reported for regulatory transaction fee assessment purposes. Such transactions must be reported by the close of the FINRA Facility on trade date, and can be entered for clearing or non-clearing. Rules 7130(f), 7230A(g), 7230B(f) and 7330(g).

## **Section 603: Transfers of Proprietary Securities Positions in Connection With Certain Corporate Control Transactions**

**Q603.1: To what types of transfers does this trade reporting exception apply?**

**A603.1:** Members are not required to report to FINRA for purposes of publication transfers of proprietary positions where the transfer (1) is effected in connection with a merger or direct or indirect acquisition and (2) is not in furtherance of a trading or investment strategy. While such transfers are not reportable for publication purposes, members nonetheless must report them to FINRA for regulatory purposes and for purposes of assessing applicable regulatory transaction fees and/or trading activity fees. See Rules 6282(f)(2) and 7130(c); 6380A(e)(2) and 7230A(g); 6380B(e)(2) and 7230B(f); and 6622(e)(2) and 7330(g).

Members should refer to [Regulatory Notice 09-21](#) (April 2009) for the specific reporting requirements-including the requirement to provide FINRA advance written notice-that members must follow when relying on this exception.

**Q603.2: Member BD1 acquires all of the assets of BD2. In connection with this corporate control transaction, BD1 and BD2 consolidate their separate sales and trading businesses onto a single platform and, along with the migration of sales and trading personnel, clients and systems and technology, BD2's proprietary positions are transferred to BD1. Must this transfer be reported for publication purposes?**

**A603.2:** No. In this instance, the transfer from BD2 to BD1 is not reportable for publication purposes, but must be reported to FINRA for regulatory purposes.

**Q603.3: Member BD1 and BD2 are wholly owned by the same parent company and operate separately. BD1 owns 100,000 shares of ABCD security and the value of ABCD has increased substantially since BD1 purchased the shares. As part of an investment strategy, BD1 sells the shares to BD2. Must this transfer be reported for publication purposes?**

**A603.3:** Yes. In this instance, the sale from BD1 to BD2 must be reported to FINRA for publication purposes.

**Q603.4: Member BD1's parent company acquires a non-broker-dealer financial institution, and as part of the corporate control transaction, the financial institution's proprietary positions are transferred to BD1. Must this transfer be reported for publication purposes?**

**A603.4:** No. In this instance, the transfer from the financial institution to BD1 is not reportable for publication purposes, but must be reported to FINRA for regulatory purposes.

**Q603.5: Member BD1's parent company acquires two new subsidiaries, Sub 1 and Sub 2, both of which are non-broker-dealer financial institutions, and, as part of the corporate control transaction, the proprietary positions of Sub 1 are transferred to Sub 2. Sub 1 and Sub 2 have custodial accounts at BD1, and BD1 facilitates the transfer. Must this transfer be reported for publication purposes?**

**A603.5:** No. In this instance, the transfer from Sub 1 to Sub 2, facilitated by BD1, is not reportable for publication purposes, but must be reported to FINRA for regulatory purposes.

**Q603.6 (effective November 17, 2014 for the ORF and July 13, 2015 for the ADF/TRFs): Are members required to report proprietary position transfers under this exception with the .RA modifier in Trade Modifier Field 4?**

**A603.6:** No, as of the effective dates above, member firms will no longer use the .RA modifier when reporting proprietary position transfers. Instead, members must use the special processing flag. Use of this flag must be authorized by FINRA Market Operations prior to submission of the trades. This guidance supersedes the guidance in [Regulatory Notice 09-21](#) (April 2009) as it relates to use of the .RA modifier.

## Foreign Securities Transactions

### Section 700: Reporting Transactions in Foreign Securities

**Q700.1: Are members required to report trades in foreign securities to FINRA?**

**A700.1:** Rule 6622 requires members to report transactions in OTC Equity Securities, the definition of which includes foreign equity securities. However, Rule 6622(g) excludes from the reporting requirements transactions in foreign equity securities if (1) the transaction is executed on and reported through a foreign securities exchange or (2) the transaction is executed OTC and reported to the regulator of a foreign securities markets. See [NTM 07-25](#) (May 2007). For purposes of the trade reporting rules, a "foreign equity security" is any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

**Q700.2: What should a member do if it trades a foreign equity security OTC that does not have a U.S. symbol, but is reportable under Rule 6622?**

**A700.2:** Rule 6622(c)(1) requires that a last sale report include the symbol of the OTC Equity Security that is the subject of the trade. In those situations where the security does not have a valid U.S. symbol, the member must promptly request that FINRA assign a symbol in accordance with [FAQ 105.1](#).

**Q700.3: If a member effects a trade in a foreign security that must be reported to FINRA, can the member report the trade in a foreign currency if the trade was effected in that currency?**

**A700.3:** No. All trades reported to FINRA must be reported in U.S. dollars. When converting the currency, a member is permitted to use any reasonable business practice for the conversion. The member should document its practice regarding currency conversion and must apply the methodology consistently. See [NTM 07-25](#) (May 2007).

**Q700.4: Member BD1 receives an order from its customer to buy a foreign security, purchases the foreign security for its own account in the foreign country and the transaction is reported by a foreign market. BD1 then sells the**



**security to its customer at the same price, adjusted solely to reflect the conversion to U.S. dollars, at which BD1 acquired the security on a riskless principal basis. How should the transaction be reported?**

**A700.4:** Because the first leg of the transaction is reported by a foreign market, it should not be reported to FINRA. Assuming the transaction meets the riskless principal requirements, it is permissible to submit to FINRA a non-tape report for the offsetting leg of the transaction, but it is not required. For example, BD1 executes a trade on a Canadian exchange at \$1 Canadian per share and the transaction is reported through the Canadian exchange. As discussed in FAQ 700.1, BD1 is not required to report this trade to FINRA because it was executed and reported in the foreign country. The trade at \$1 Canadian per share converts to \$1.40 US per share and BD1 sells the shares to its customer OTC in the U.S. at \$1.40. BD1 may, but would not be required to, submit a non-tape report to the ORF for the offsetting customer leg at \$1.40 with a capacity of riskless principal.

**Q700.5: Member BD1 receives an order from its customer to buy a foreign security, purchases the foreign security for its own account and the transaction is reported in the foreign country. BD1 then sells the security OTC in the U.S. to satisfy the original customer order at a different price, in addition to any change in price due to currency conversion, from which BD1 acquired the security. How should the transactions be reported?**

**A700.5:** Because the two transactions are effected at two different prices, this is considered a net trade and both transactions must be reported. See FAQ 304.2. For example, BD1 executes a trade in Canada at \$1 Canadian per share and the transaction is reported in Canada. As discussed in FAQ 700.1, BD1 is not required to report this trade to FINRA because it was executed and reported in the foreign country. The trade at \$1 Canadian per share converts to \$1.40 US per share and BD1 sells the shares to its customer OTC in the U.S. at \$1.41. BD1 must report the transaction at \$1.41 to the ORF.

**Q700.6: Member BD1 executes a transaction on behalf of member BD2 in a foreign security on a foreign exchange, which is reported to the foreign exchange. BD1 wants to charge a fee to member BD2 for the currency conversion into U.S. dollars. Can BD1 report the offsetting leg of the transaction with BD2 via the ORF and add the currency conversion fee to the per share price?**

**A700.6:** No, BD1 cannot use the ORF for a back office function such as charging a currency conversion fee. For example, BD1 executes a trade in Canada for \$1 Canadian per share and the transaction is reported in Canada. The trade at \$1 Canadian per share converts to \$1.40 US per share. BD1 adds a \$.01 per share fee for the currency conversion. BD1 cannot submit a report to the ORF to reflect a transaction with BD2 at \$1.41. While it may be permissible for BD1 to charge its customer a reasonable fee for the currency conversion, such fee cannot be transferred via the ORF.

**Q700.7: Member BD1 and member BD2 execute a trade in a foreign security OTC and BD1 reports the trade to the regulator of the foreign securities market. Does BD2 have an obligation to report its side of the transaction to the ORF under Rule 7330(b) as an order-entry (OE)-side submission?**

**A700.7:** No. As discussed in FAQ 700.1, BD1 would have no obligation to report the transaction to the ORF because it has reported the transaction to the regulator of the foreign securities market. In addition, BD2 would have no obligation to report its side of the transaction to the ORF where BD1 reported the transaction to the regulator of the foreign securities market.

**Q700.8: Are transactions in foreign securities subject to real-time reporting and dissemination?**

**A700.8:** Yes, transactions in foreign securities are subject to the same reporting requirements as other OTC Equity Securities (unless expressly exempt from reporting under Rule 6622(g)), and FINRA disseminates last sale information for transactions in foreign securities, as well as ADRs and Canadian issues, on a real-time basis. See Regulatory Notice 08-51 (September 2008).

**Q700.9: Member BD1 receives an order from its customer to buy a foreign security and routes the order to a non-member foreign affiliate for execution. The foreign affiliate executes the order in the foreign market and the transaction is reported by the foreign market. The foreign affiliate sells the security to BD1 at a different price than the price reported in the foreign market. BD1 fills the customer order at the same price at which BD1 bought the**

**security from its foreign affiliate (except for any change in price due to currency conversion). Must the transaction between BD1 and the foreign affiliate be reported to FINRA?**

**A700.9:** Yes, because the transaction by the foreign affiliate on the foreign market and the transaction between the foreign affiliate and BD1 are effected at two different prices, they are considered separate transactions and therefore, the transaction between BD1 and the foreign affiliate must be reported to FINRA. See FAQ 304.2. For example, BD1's affiliate executes the trade in Canada at \$1 Canadian per share and the transaction is reported in Canada. The trade at \$1 Canadian per share converts to \$1.40 US per share, and BD1's affiliate sells the shares to BD1 at \$1.41. BD1 must report the transaction with its affiliate at \$1.41 to the ORF. Because BD1 is the member, BD1 has the obligation to report the trade, notwithstanding that the affiliate, and not BD1, added its fee to the share price. In a trade between a member and non-member, the member has the reporting obligation. BD1 is not required to report the customer leg of the transaction, assuming that BD1's customer is within the definition under Rule 0160 and BD1 gives the customer the same price at which BD1 bought the security from its foreign affiliate. (See OATS FAQ C92.)

## **Section 701: Dually Listed Securities**

**Q701.1: How should a member report a trade for a dually listed security (i.e., a security that is listed on both a foreign securities exchange and a national securities exchange in the U.S.)?**

**A701.1:** The location and manner in which the trade is effected dictates whether and how the trade must be reported. Because dually listed securities are listed on a national securities exchange, they do not fall within the definition of "OTC Equity Securities" for purposes of the Rule 6620 Series. Consequently, transactions in dually listed securities should never be reported to the ORF. If a member effects an OTC transaction in a dually listed security, the trade must be reported to a TRF or the ADF. If a member effects a trade in a dually listed security on the foreign exchange and the trade is reported through that exchange, the member is not required to report the trade to FINRA because the trade was executed "on or through an exchange," namely, the foreign exchange. See Rules 6282(f), 6380A(e) and 6380B(e).

## **Section 702: ADR "Swap" Transactions**

**Q702.1: How should a member report a "cross-book" transaction (i.e., a transaction where the member "swaps" ordinary shares and American Depositary Receipts (ADRs) between two customers)?**

**A702.1:** OTC "cross-book" transactions, also known as ADR swap transactions, must be reported to FINRA. In these types of transactions, a member matches holders of ADRs with holders of the foreign ordinary equity security (referred to as the "ordinary" or "ordinaries") in the same company. To effect the "swap," the member typically will execute the equivalent of two cross transactions in the two securities between the holders. Because the ADRs and the ordinary shares are separate securities and they are executed in separate transactions, both the ADR and the foreign ordinary share transactions must be reported separately to FINRA for public dissemination pursuant to the trade reporting rules. See [NTM 07-25](#) (May 2007).

The conversion of ordinary shares into an ADR and the conversion of an ADR into ordinary shares are not OTC transactions for purposes of the trade reporting rules. Consequently, these types of conversions are not reportable to FINRA. See [Regulatory Notice 11-40](#) (August 2011) and [NTM 07-25](#) (May 2007).

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