

Notices

Regulatory Notices

- 12-48** FINRA Changes the Effective Date for Amendments to TRACE Rules Relating to the Reporting and Dissemination of Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced and Related TRACE Fees in FINRA Rule 7730 from November 5, 2012, to November 12, 2012; **Revised Effective Date: November 12, 2012**
- 12-49** SEC Approves Amendments to NASD Rule 2711 and Incorporated NYSE Rule 472 to Conform to JOBS Act Requirements; **Effective Dates: April 5, 2012, and October 11, 2012**
- 12-50** SEC Approves Amendments to FINRA's Stop Order Rule; **Effective Date: January 21, 2013**
- 12-51** FINRA Changes the Effective Date of the Minimum Quotation Size Pilot for OTC Equity Securities in FINRA Rule 6433 From November 5, 2012, to November 12, 2012; **Revised Effective Date: November 12, 2012**

Information Notices

- 11/20/12** FINRA Reminds Firms of Exercise Cut-Off Time for Weekly Options Expiring on Friday, November 23, 2012
- 11/26/12** Extension of Current Rate for Fees Paid Under Section 31 of the Exchange Act

Trace Reporting and Compliance Engine (TRACE)

FINRA Changes the Effective Date for Amendments to TRACE Rules Relating to the Reporting and Dissemination of Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced and Related TRACE Fees in FINRA Rule 7730 from November 5, 2012, to November 12, 2012

Revised Effective Date: November 12, 2012

On May 21, 2012, in [Regulatory Notice 12-26](#) (May 2012), FINRA announced that amendments to FINRA Rule 6700 Series and TRACE dissemination protocols regarding the reporting and dissemination of transactions in TRACE-eligible securities that are agency pass-through mortgage-backed securities that are traded to be announced (TBA) (TBA transactions) and related amendments to FINRA Rule 7730 regarding TBA transaction data fees would become effective on November 5, 2012.¹ Due to disruptions in normal business operations related to Hurricane Sandy, FINRA has changed the effective date of these TRACE rule amendments from November 5, 2012, to November 12, 2012.²

Similarly, the expiration dates of the pilot programs in FINRA Rules 6730(a)(3)(D)(i) and 6730(a)(3)(E)(i) regarding the reduction in reporting times for TBA transactions have changed from May 10, 2013, to May 17, 2013. The amended rule text with the updated pilot program expiration dates is available at www.finra.org/notices/12.48.

Questions regarding this *Notice* may be directed to:

- ▶ Patrick Geraghty, Director, Market Regulation, at (240) 386-4973; or
- ▶ Elliot Levine, Associate Vice-President and Counsel, Transparency Services, at (202) 728-8405.

November 2012

Notice Type

- ▶ Rule Amendment

Suggested Routing

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

Key Topics

- ▶ Agency Pass-Through Mortgage-Backed Securities Traded To Be Announced (TBA)
- ▶ Asset-Backed Securities
- ▶ Dissemination
- ▶ TRACE Fees
- ▶ Transaction Reporting

Referenced Rules & Notices

- ▶ FINRA Rule 6710
- ▶ FINRA Rule 6730
- ▶ FINRA Rule 6750
- ▶ FINRA Rule 7730

Endnotes

1. See Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (SEC Approval Order of File No. SR-FINRA-2012-020).
2. All the amendments in SR-FINRA-2012-020, including all technical amendments that are not described specifically above, will become effective on November 12, 2012.

Research Analysts and Research Reports

SEC Approves Amendments to NASD Rule 2711 and Incorporated NYSE Rule 472 to Conform to JOBS Act Requirements

Effective Dates: April 5, 2012, and October 11, 2012

Executive Summary

The SEC approved amendments to NASD Rule 2711 and Incorporated NYSE Rule 472 to conform to the requirements of the Jumpstart Our Business Startups Act (JOBS Act) and make certain additional changes to quiet period restrictions consistent with the policies underlying the JOBS Act. Most of the changes to NASD Rule 2711 and Incorporated NYSE Rule 472 are effective retroactively to April 5, 2012; changes to those rules regarding quiet periods after secondary offerings and after the expiration, termination or waiver of a lock-up agreement became effective upon approval by the Securities and Exchange Commission (SEC) on October 11, 2012.

The text of the amended rules is available at www.finra.org/notices/12-49.

Questions concerning this *Notice* should be directed to:

- ▶ Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8451.

Background & Discussion

The JOBS Act, which was signed into law on April 5, 2012, is intended to, among other things, help facilitate capital formation for “emerging growth companies” (EGCs) by improving the information flow about EGCs to investors. To that end, Section 105(b) of the JOBS Act amended Section 15D of the Securities Exchange Act (Exchange Act) to prohibit the SEC or any national securities association from adopting or maintaining any rule or regulation in connection with an initial public offering (IPO) of an EGC that:

November 2012

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Investment Banking
- ▶ Legal
- ▶ Research
- ▶ Senior Management

Key Topics

- ▶ JOBS Act
- ▶ Quiet Periods
- ▶ Research
- ▶ Solicitation

Referenced Rules & Notices

- ▶ NASD Rule 2711
- ▶ Incorporated NYSE Rule 472

- ▶ restricts, based on functional role, which associated persons of a broker, dealer or member of a national securities association, may arrange for communications between an analyst and a potential investor; or
- ▶ restricts a securities analyst from participating in any communication with the management of an EGC that is also attended by any other associated person of a broker, dealer or member of a national securities association whose functional role is other than as securities analyst.

Section 105(d) further amends the Exchange Act to prohibit the SEC or any national securities association from adopting or maintaining any rule or regulation that prohibits a broker or dealer from publishing or distributing any research report or making a public appearance, with respect to the securities of an EGC either:

- ▶ within any prescribed period of time following the initial public offering date of the emerging growth company; or
- ▶ within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date.

These provisions became effective upon signature of the president on April 5, 2012. On August 22, 2012, the SEC's Division of Trading and Markets provided guidance on these provisions in the form of Frequently Asked Questions. The amendments approved by the SEC conform the applicable provisions of NASD Rule 2711 to the JOBS Act requirements in accordance with the SEC staff guidance.¹

Arranging and Participating in Communications

NASD Rule 2711(c)(4)² prohibits a research analyst from participating "in efforts to solicit investment banking business," including any "pitches" for investment banking business or other communications with companies for the purpose of soliciting investment banking business. The SEC staff guidance interprets the JOBS Act to now allow, in connection with an IPO of an EGC, research analysts to attend meetings with issuer management that are also attended by investment banking personnel, including pitch meetings, but not "engage in otherwise prohibited conduct in such meetings," including "efforts to solicit investment banking business." The guidance further explains that a research analyst that attends a pitch meeting "could, for example, introduce themselves, outline their research program and the types of factors that the analyst would consider in his or her analysis of a company, and ask follow-up questions to better understand a factual statement made by the emerging growth company's management." Accordingly, the amendments create an exception to NASD Rule 2711(c)(4) to reflect this guidance.³

The SEC staff guidance states that under Section 105(b) of the JOBS Act, an associated person of a broker-dealer, including investment banking personnel, may arrange communications between research analysts and investors in connection with an IPO of an EGC. As an example, the guidance states that an investment banker could forward a list of clients to a research analyst “that the analyst could, at his or her own discretion and with appropriate controls, contact.” The guidance acknowledges that FINRA does not have a rule that directly prohibits this activity and further states that such activity, without more, would not constitute conduct by investment banking personnel to directly or indirectly direct a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, in violation of NASD Rule 2711(c)(6).⁴ As such, this JOBS Act provision required no conforming rule change.

Quiet Periods

Section 105(d) of the JOBS Act expressly permits publication of research and public appearances any time after the IPO of an EGC or prior to the expiration of any lock up agreement. While the JOBS Act refers only to the “expiration” of a lock-up agreement, the guidance states that Congress intended for the JOBS Act provisions to apply equally to the period before a “waiver” or “termination” of a lock-up agreement. Thus, in accordance with SEC staff guidance on this JOBS Act provision, the rule change amends NASD Rule 2711 to eliminate the following quiet periods with respect to an IPO of an EGC:

- ▶ NASD Rule 2711(f)(1)(A),⁵ which imposes a 40-day quiet period after an IPO on a member that acts as a manager or co-manager of such IPO;
- ▶ NASD Rule 2711(f)(2),⁶ which imposes a 25-day quiet period after an IPO on a member that participates as an underwriter or dealer (other than manager or co-manager) of such an IPO; and
- ▶ NASD Rule 2711(f)(4)⁷ with respect to the 15-day quiet period applicable to IPO managers and co-managers prior to the expiration, waiver or termination of a lock-up agreement, or any other agreement that such member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of an IPO.

The SEC staff guidance notes that the JOBS Act makes no reference to quiet periods after a secondary offering or during a period of time after expiration of a lock-up agreement. Accordingly, the guidance concludes that NASD Rule 2711(f)(1)(B),⁸ which imposes a 10-day quiet period on managers and co-managers following a secondary offering and the remaining portion of NASD Rule 2711(f)(4)⁹ relating to quiet periods after the expiration, termination or waiver of a lock up agreement, remain fully in effect. Nonetheless, the guidance expresses the SEC staff’s belief that the policies underlying the JOBS Act are equally applicable to quiet periods during these other times. FINRA agreed that elimination of those quiet periods would advance the policy objectives of the JOBS Act and therefore NASD Rules 2711(f)(1)(B) and (f)(4) have been amended accordingly.¹⁰

Effective Dates

The changes to NASD Rules 2711(c)(4), (f)(1)(A), (f)(2) and (f)(4) (with respect to the 15-day quiet period *before* the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472 are effective retroactively to April 5, 2012. The changes to NASD Rules 2711(f)(1)(B) and (f)(4) (with respect to the 15-day quiet period *after* the expiration, termination or waiver of a lock-up agreement) and the corresponding changes to Incorporated NYSE Rule 472 became effective upon SEC approval of the rule change on October 11, 2012.

Endnotes

1. FINRA notes that the SEC staff guidance interprets the JOBS Act provisions as applicable to Incorporated NYSE Rule 472 to the same extent as NASD Rule 2711. As such, the proposed rule change makes corresponding amendments to Incorporated NYSE Rule 472.
2. *See also* Incorporated NYSE Rule 472(b)(5).
3. A corresponding exception is created for Incorporated NYSE Rule 472(b)(5).
4. *See also* Incorporated NYSE Rule 427(b)(6)(ii).
5. *See also* Incorporated NYSE Rule 472(f)(1).
6. *See also* Incorporated NYSE Rule 472(f)(3).
7. *See also* Incorporated NYSE Rule 472(f)(4).
8. *See also* Incorporated NYSE Rule 472(f)(2).
9. *See also* Incorporated NYSE Rule 472(f)(4).
10. A corresponding change is made to Incorporated NYSE Rule 472(f).

Stop and Stop Limit Orders

SEC Approves Amendments Relating to Stop Orders

Effective Date: January 21, 2013

Executive Summary

The SEC approved new FINRA Rule 5350 (Stop Orders), which replaces the stop order provisions of FINRA Rule 6140(h).¹ The rule provides that any order labeled as a “stop order” or a “stop limit order” must be triggered based upon a transaction at the stop price, but permits firms to offer alternative order types with different triggers (*e.g.*, a stop order triggered by a quotation at the stop price) so long as the order type is not labeled as a stop order and is clearly distinguishable from a stop order.

The text of the rule can be found in the [online FINRA Manual](#).

Questions regarding this *Notice* should be directed to:

- ▶ Racquel L. Russell, Assistant General Counsel, Office of General Counsel, at (202) 728-8363; or
- ▶ Scott B. Trilling, Director, Market Regulation, at (240) 386-5113.

Background and Discussion

New FINRA Rule 5350, which applies to orders in NMS stocks² and OTC Equity Securities,³ provides that a firm may, but is not obligated to, accept a stop order or stop limit order. Similar to former Rule 6140(h), which is replaced by Rule 5350, Rule 5350(a) states that a “stop order” is an order to buy (or sell) that becomes a market order to buy (or sell) when a transaction occurs at or above (below) the stop price, and a “stop limit order” is an order to buy (or sell) that becomes a limit order to buy (or sell) at the limit price when a transaction occurs at or above (below) the stop price.⁴

November 2012

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Systems
- ▶ Trading and Market Making
- ▶ Training

Key Topics

- ▶ Handling of Customer Orders
- ▶ Stop Orders
- ▶ Stop Limit Orders

Referenced Rules

- ▶ FINRA Rule 5350
- ▶ FINRA Rule 6140
- ▶ FINRA Rule 6420
- ▶ SEC Regulation NMS

Rule 5350.01 further provides that firms may accept order types that activate as a market or limit order using an event other than a transaction at the stop price as the trigger (*e.g.*, using a quotation at the stop price). However, in such cases, the order cannot be labeled a “stop order” or a “stop limit order” and must be clearly distinguishable from a “stop order” or a “stop limit order” (*e.g.*, an alternative order type that triggers using a quotation at the stop price may be labeled a “stop quotation order” or “stop quote order”). If a firm chooses to offer such an alternative order type, it must disclose to the customer, in paper or electronic form, prior to the time the customer places the order (*e.g.*, at account opening), a description of that order type including the triggering event.⁵

A firm that routes to another broker-dealer or exchange other order types using an alternative trigger in accordance with Rule 5350.01 must take reasonable steps to ensure that the order is handled or executed by the other broker-dealer or exchange in accordance with the terms of the order as communicated to the customer placing the order.

New Rule 5350 becomes effective on January 21, 2013.

Endnotes

1. See Securities Exchange Act Release No. 67778 (September 4, 2012), 77 FR 55517 (September 10, 2012) (Order Approving SR-FINRA-2012-026).
2. “NMS stock” means any “NMS security” other than an option. “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan or an effective national market system plan for reporting transactions in listed options. See Rule 600(b)(46) and (47) of SEC Regulation NMS.
3. “OTC Equity Security” means any equity security that is not an “NMS stock” as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term “OTC Equity Security” shall not include any Restricted Equity Security. See FINRA Rule 6420 (Definitions). “OTC Equity Security” does not include options.
4. Rule 5350 does not apply to “not held” stop or stop limit orders.
5. Where a firm permits customers to engage in securities transactions online, the firm also must post the required disclosures on the its website in a clear and conspicuous manner.

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OTC Equity Quotation Size

FINRA Changes the Effective Date of the Minimum Quotation Size Pilot for OTC Equity Securities in FINRA Rule 6433 From November 5, 2012, to November 12, 2012

Revised Effective Date: November 12, 2012

On August 3, 2012, in [Regulatory Notice 12-37](#) (August 2012), FINRA announced that amendments to FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities), which simplifies the existing tier structure, facilitates the display of customer limit orders pursuant to FINRA Rule 6460 (Display of Customer Limit Orders), and expands the scope of the rule to encompass quotations displayed by non-market-makers,¹ would become effective on November 5, 2012. Due to disruptions in normal business operations related to Hurricane Sandy, FINRA has changed the effective date of this amendment from November 5, 2012, to November 12, 2012. The revised end date of the pilot is November 12, 2013.

The text of the rule can be found in the [online FINRA Manual](#).

Questions regarding this *Notice* should be directed to Racquel Russell, Assistant General Counsel, Office of General Counsel, at (202) 728-8363.

Endnotes

1. See Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving Amendments to Minimum Quotation Size Requirements for OTC Equity Securities).

November 2012

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Systems
- ▶ Trading and Market Making

Key Topics

- ▶ Minimum Quotation Size
- ▶ OTC Equity Securities
- ▶ Quotations

Referenced Rules

- ▶ FINRA Rule 6433
- ▶ FINRA Rule 6460

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Information Notice

FINRA Reminds Firms of Exercise Cut-Off Time for Weekly Options Expiring on Friday, November 23, 2012

The national options exchanges will close at 1:00 p.m. Eastern Time (ET) on Friday, November 23, 2012 (the Friday after Thanksgiving), which will modify the exercise cut-off time for expiring weekly options. FINRA reminds firms that pursuant to FINRA Rule 2360(b)(23)(A)(viii), if a national options exchange or The Options Clearing Corporation announces a modified time for the close of trading in standardized equity options, then the deadline for an option holder to make a final decision to exercise or not exercise an expiring option will be 1 hour 30 minutes after the announced close of trading for that day instead of the 5:30 p.m. ET deadline. **Accordingly, option holders must make a final decision to exercise or not exercise options expiring on November 23, 2012, by 2:30 p.m. ET.**

Questions regarding this *Notice* may be directed to Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, at (202) 974-2974.

November 20, 2012

Suggested Routing

- ▶ Compliance
- ▶ Institutional
- ▶ Legal
- ▶ Operations
- ▶ Options
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Exercise Cut-Off Time
- ▶ Expiration
- ▶ Standardized Equity Options
- ▶ Weekly Options

Referenced Rules & Notices

- ▶ FINRA Rule 2360

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Information Notice

Extension of Current Rate for Fees Paid Under Section 31 of the Exchange Act

Executive Summary

Since October 1, 2012, the SEC has been operating under a continuing resolution for fiscal year 2013. As such, the Section 31 rate applicable to specified securities transactions on the exchanges and in the over-the-counter market will remain at \$22.40 per million dollars until the SEC's regular fiscal budget is approved and firms are advised of the final date for implementing a rate change.

Finance-related questions should be directed to Sheila Gregory, Accounting Manager, Finance, at (240) 386-5388.

Legal and interpretive questions should be directed to Brant Brown, Associate General Counsel, at (202) 728-6927.

Background and Discussion

As announced by the Securities and Exchange Commission (SEC) in [Fee Rate Advisory #2 for Fiscal Year \(FY\) 2013](#), the SEC is operating under a continuing resolution through March 27, 2013. The Fee Rate Advisory specifies that the fee paid under Section 31 of the Securities Exchange Act of 1934 (Exchange Act) will remain at the current rate of \$22.40 per million.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC will be required to publish a revised fee rate 30 days after the SEC's regular appropriation for FY 2012 is enacted, and this new fee rate will become effective 60 days after the appropriation is enacted. Until this time, the Section 31 fee rate will remain at the current rate of \$22.40 per million.

FINRA obtains its Section 31 fees from member firms, in accordance with Section 3 of Schedule A to the By-Laws. Section 3 specifies that the amount assessed on firms will be determined periodically in accordance with Section 31 of the Exchange Act.

November 26, 2012

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Trading

Key Topic

- ▶ Section 31 Fee
- ▶ Regulatory Transaction Fee

Referenced Rules & Notices

- ▶ Section 3 of Schedule A to the By-Laws
- ▶ Section 31 of the Securities Exchange Act of 1934

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