

Equity Trade Reporting and OATS

SEC Approves Amendments to Equity Trade Reporting and OATS Rules

Effective Dates: OATS: April 7, 2014; ORF: September 15, 2014; ADF and TRFs: (millisecond reporting): September 29, 2014; ADF and TRFs (remaining amendments): First Quarter 2015

Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments to FINRA rules governing the reporting of (i) over-the-counter (OTC) transactions in equity securities to the FINRA facilities;¹ and (ii) orders in NMS stocks and OTC equity securities to the Order Audit Trail System (OATS). The OATS amendments were implemented April 7, 2014, and the ORF amendments will be implemented September 15, 2014. The implementation date for the requirement relating to reporting in milliseconds to the ADF and TRFs is September 29, 2014. The implementation date for the remainder of the ADF and TRF amendments will be announced separately and will be during the first quarter of 2015.

The amended rule text is available in the online FINRA Manual.

Questions regarding this *Notice* may be directed to:

- ▶ Market Regulation Legal Section at (240) 386-5126;
- ▶ FINRA Market Operations at (866) 776-0800;
- ▶ FINRA Product Management at (866) 899-2107;
- ▶ FINRA's OATS Helpdesk at (800) 321-6273; or
- ▶ for legal or interpretive questions, Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190.

May 2014

Notice Type

- ▶ Rule Amendment

Suggested Routing

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

Key Topics

- ▶ Alternative Display Facility (ADF)
- ▶ Form T
- ▶ Intermarket Sweep Orders (outbound)
- ▶ NMS Stocks
- ▶ Non-Business Day Trades
- ▶ Order Audit Trail System (OATS)
- ▶ OTC Equity Securities
- ▶ OTC Reporting Facility (ORF)
- ▶ Prior Reference Price Transactions
- ▶ Step-Outs
- ▶ Stop Stock Transactions
- ▶ T+365 Trades
- ▶ Trade Reporting
- ▶ Trade Reporting Facilities (TRFs)

Referenced Rules & Notices

- ▶ FINRA Rules 6282, 6380A, 6380B, 6420, 6622, 7130, 7140, 7230A, 7230B, 7240A, 7240B, 7330, 7340 and 7440
- ▶ Regulatory Notice 11-03
- ▶ SEC Regulation NMS

Background and Discussion

The SEC approved² amendments to FINRA rules relating to:

- ▶ reporting an additional time field for specified trades;
- ▶ expressing execution time in milliseconds when reporting to the FINRA facilities and OATS;
- ▶ linking reversal reports to the original trade;
- ▶ reporting trades executed on non-business days and trades that are more than one year old;
- ▶ using a new “step-in” indicator; and
- ▶ processing trades submitted to a FINRA facility for clearing.

Reporting an Additional Time Field

FINRA rules currently require that trade reports submitted to the FINRA facilities include the time of trade execution, except where another time is expressly required by rule. Because of enhancements to FINRA facilities to accommodate more than one time entry for a single transaction report, the amendments require firms to reflect two times in reports of stop stock transactions, as defined for purposes of the FINRA trade reporting rules,³ and transactions that reflect an execution price that is based on a prior reference point in time (PRP transactions). Specifically, firms must report (1) the time at which the parties agree to the stop stock price or the prior reference time (*i.e.*, the time currently required by FINRA rules), and (2) the actual time of execution.⁴ Thus, for example, for stop stock transactions, if the parties agree to the stop stock price at 10:00 a.m. and the trade is executed at 11:00 a.m., the trade report would reflect times of 10:00 a.m. and 11:00 a.m. Similarly, for PRP transactions, if a firm executes a market-on-open order at 10:30 a.m., the trade report would reflect times of 9:30 a.m. (the time the market opened) and 10:30 a.m. Stop stock and PRP transactions that are reported more than 10 seconds following execution are marked late. Firms are reminded that if the trade is executed within 10 seconds of the time the parties agree to the stop stock price or within 10 seconds of the prior reference time, then firms should not use the designated modifier and report only the actual time of execution.

In addition, the amendments require firms to include two times when reporting block transactions using the exception for Intermarket Sweep Orders (ISOs) (outbound) under SEC Rule 611 (Order Protection Rule) of Regulation NMS if the time the firm routed the ISOs is different from the execution time.⁵ Specifically, firms must report the time that all material terms of the transaction are known in the “execution time” field, as they do today. 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).⁶ Firms are reminded that, to comply with SEC Rule 611(b)(6), SEC staff has stated that firms need to use an automated system that is capable of ascertaining current protected quotations and simultaneously routing the necessary ISOs.⁷ Thus, FINRA would expect the “snapshot” time and the time that ISOs are routed to be the same. To the extent that these times differ, or where multiple ISOs are routed and the route times differ, using the “snapshot” time in all instances will eliminate any confusion regarding which time to report.

Expressing Time in Milliseconds (Trade Reporting and OATS)

FINRA trade reporting rules require firms to report execution time to the FINRA facilities in terms of hours, minutes and seconds (*i.e.*, HH:MM:SS).⁸ Similarly, the OATS rules require firms to record order event times in hours, minutes and seconds.⁹ Pursuant to the amendments, firms must express time in milliseconds (*i.e.*, HH:MM:SS:mmm) when reporting trades to the FINRA facilities or order information to OATS, if the firm’s system captures time in milliseconds.¹⁰ However, firms are not required to capture time in milliseconds and are permitted to continue to report time in seconds, if their systems do not capture milliseconds. FINRA notes that if a firm’s system, such as an alternative trading system, captures time in milliseconds, then that system is expected to be capable of reporting in milliseconds. FINRA also notes that as technology advances, FINRA would expect to see over time an increasing percentage of firms both capturing milliseconds and making submissions to the FINRA facilities and OATS reflecting time in milliseconds.

In addition, if a firm submits multiple reports for the same event (*e.g.*, a trade report and an OATS Execution Report), FINRA would expect the time stamps to be both to the second or both to the millisecond, but not one to the second and one to the millisecond. For example, where the firm is reporting execution time in milliseconds, FINRA would match the execution time on the firm’s OATS Execution Report and on its corresponding trade report at the millisecond (not second) level and the time stamps on the two reports must be identical.¹¹ Thus, firms may need to update their systems for OATS reporting to reflect the fact that other systems in the firm use milliseconds so that the times those systems use (if in milliseconds) are accurately reflected in the firm’s OATS reports. As noted above, the amendments do not require firms to use milliseconds or update existing systems to use milliseconds; however, to the extent a firm’s system uses milliseconds, those timestamps should be to the millisecond when they are reported to OATS.

FINRA further notes that the determination whether a trade has been reported late (*i.e.*, outside the 10-second reporting window under FINRA rules) remains at the second level for firms that report execution time in seconds, and for firms that report time in milliseconds, the determination is made at the millisecond level. Thus, for example, a trade with an execution time of 10:01:00 must be reported no later than 10:01:10, and a trade with an execution time of 10:01:00:999 must be reported no later than 10:01:10:999.

Linking Reversal Reports to the Original Trade

FINRA rules require that if a trade that was previously reported to FINRA is cancelled or reversed, firms must report the cancellation or reversal to the same FINRA facility to which the trade was originally reported¹² and must do so within the time frames set forth in the rules.¹³ The amendments require firms to identify the original trade in the reversal report by including the control number the FINRA facility generated and report date for the original trade report.¹⁴ 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.

Firms must maintain sufficient records to enable them to identify the control number and report date for any trades that they reverse, to the extent such information cannot be obtained from the data retained by the FINRA facility.¹⁵

Reporting Non-business Day Trades and T+365 Trades

Pursuant to the amendments, firms are required to report trades executed on non-business days (*i.e.*, weekends and holidays) and trades reported more than 365 days after trade date (T+365) to a FINRA facility. (Today these trades are reported on Form T through FINRA’s Firm Gateway.) Non-business day trades and T+365 trades are assessed regulatory fees under Section 3 of Schedule A to the FINRA By-Laws (Section 3)¹⁶ and are not submitted to clearing by the FINRA facility¹⁷ or disseminated.

In addition, firms must report non-business day trades on an “as/of” basis by 8:15 a.m. the next business day following execution with the unique trade report modifier to denote their execution outside normal market hours; trades not reported by 8:15 a.m. are marked late.¹⁸ 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. All T+365 trades are reported on an “as/of” basis and are marked late.

Using a New “Step-in” Indicator

Today, firms can effectuate a “step-out”¹⁹ by submitting a clearing-only report to a FINRA facility, and FINRA rules prohibit firms 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.²⁰ For every step-out, one firm is stepping out of (or transferring) the position and the other firm is stepping into (or receiving) the position. Pursuant to the amendments, where both sides are submitting a clearing-only report 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. FINRA notes that

the FINRA facilities that offer matching, such as the ORF, will match corresponding “step-out” and “step-in” submissions; the system will not match two “step-in” or two “step-out” submissions.²¹ Firms are reminded that they should not use the step-out and step-in indicators when reporting a riskless principal or agency “flip,” both of which entail a change in beneficial ownership and must be reported to FINRA where specified by rule.

Processing Trades Submitted for Clearing

When firms use the trade acceptance and comparison functionality of a FINRA facility, the reporting party reports the trade and the contra party subsequently either accepts or declines the trade.²² The amendments clarify that rather than being purged from the system at the end of trade date processing, trades that have been declined by the contra party are carried over and remain available for cancellation or correction by the reporting party or subsequent acceptance by the contra party.²³ Thus, for example, if Firm A, as the contra party, erroneously declines the trade report Firm B submits, Firm A could accept the previously declined trade up to T+1.²⁴

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. Firms are reminded that the reporting firm must cancel a declined trade that was previously reported for dissemination purposes to have the trade removed from the tape, *i.e.*, the system does not remove the trade automatically from the tape.²⁵

In addition, the amendments reorganized FINRA rules relating to locking in trades for clearing and clarified that trades that are T+22 or older that remain open are carried over, but are not subject to the automatic lock-in process.²⁶ (Today such T+22 trades are purged from the system, although firms may subsequently resubmit them.)

Implementation

FINRA will implement the amendments as follows:

- ▶ **OATS:** As previously announced, the amendments to the OATS rules were implemented on Monday, April 7, 2014.²⁷
- ▶ **OTC Reporting Facility:** The amendments to the ORF rules will be implemented upon migration of the ORF to the new technology platform on Monday, September 15, 2014. Firms should refer to the [ORF Forms & Documentation](#) page for updated ORF technical specifications.
- ▶ **Alternative Display Facility, FINRA/Nasdaq TRF and FINRA/NYSE TRF:** The implementation date for the requirement relating to reporting in milliseconds to the ADF and TRFs is Monday, September 29, 2014. The implementation date for the remainder of the ADF and TRF amendments has not been set and will be extended beyond the September 30, 2014, date, proposed in SR-FINRA-2013-050, to the first quarter of 2015. Separate notice will be provided once the ADF and TRF implementation date has been set.

Endnotes

1. Specifically, the FINRA facilities are the Alternative Display Facility (ADF) and the Trade Reporting Facilities (TRFs), to which firms report OTC transactions in NMS stocks; and the OTC Reporting Facility (ORF), to which firms report transactions in OTC equity securities, as defined in FINRA Rule 6420 (*i.e.*, equity securities that are not NMS stocks), as well as transactions in restricted equity securities, as defined in FINRA Rule 6420, effected pursuant to Securities Act Rule 144A.
2. See Securities Exchange Act Release No. 71623 (February 27, 2014), 79 FR 12558 (March 5, 2014) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA-2013-050).
3. “Stop stock transaction” means a transaction resulting from an order in which a firm and another party agree that the order will be executed at a stop stock price or better, which price is based upon the prices at which the security is trading at the time the firm receives the order. See Rules 6220, 6320A, 6320B and 6420.
4. See paragraphs (F) and (G) of Rules 6282(a)(4), 6380A(a)(5), 6380B(a)(5) and 6622(a)(5).
5. FINRA notes that this requirement applies only when reporting OTC transactions in NMS securities to the ADF or a TRF and is not applicable to reporting to the ORF.
6. As FINRA noted in [NASD Member Alert: Guidance Relating to “Execution Time” for Purposes of Compliance with NASD Trade Reporting Rules](#) (June 13, 2007), in surveilling for compliance with SEC Rule 611(b)(6) in this context, firms should compare routed ISOs with the protected quotations that were displayed at the time of routing.
7. SEC staff has further indicated that it does not believe it would be possible for manual routing of an ISO to comply with the requirement in Rule 611(b)(6). See SEC Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS (April 4, 2008 update), FAQ 3.03: Executing and Reporting Block Trades Pursuant to ISO Exception.
8. See, *e.g.*, Rules 6282(c)(5), 6380A(c)(5), 6380B(c)(5) and 6622(c)(5).
9. See Rule 7440(a)(2). Rule 7450 generally requires all applicable order information required to be recorded under Rule 7440 to be reported to OATS. Although Rule 7440(a)(2) requires order event times to be recorded to the second, FINRA published guidance in 2011 in connection with the expansion of OATS to all NMS stocks stating that firms that capture time in milliseconds should report time to OATS in milliseconds. See [Regulatory Notice 11-03](#) (January 2011); see also OATS Reporting Technical Specifications, Cover Memo, at iv (May 3, 2011 ed.). The amendments codify this guidance into Rule 7440(a)(2).
10. See Rules 6282.04, 6380A.04, 6380B.04, 6622.04, 7130.01, 7230A.01, 7230B.01, 7330.01 and 7440(a)(2).
11. OATS uses four fields, including the execution time stamp, to link an OATS Execution Report or OATS Combined Order/Execution Report to the corresponding trade report.
12. See Rules 7130(g), 7230A(i), 7230B(h) and 7330(h).
13. See, *e.g.*, Rules 6282(g)(2), 6380A(g)(2), 6380B(f)(2), and 6622(f)(2) and (f)(3).
14. See subparagraph (3) in Rules 6282(g), 6380A(g) and 6380B(f) and subparagraph (4) in Rule 6622(f).

15. The FINRA facilities retain historic trade data and the amount of data retained varies among the facilities.
16. Pursuant to Section 31 of the Exchange Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership in accordance with Section 3.
17. See Rules 7140(b), 7240A(b), 7240B(b) and 7340(b).
18. See Rules 6282(a)(2), 6380A(a)(2), 6380B(a)(2) and 6622(a)(2). Similarly, under Rule 6622(a)(3), any Securities Act Rule 144A transaction in a restricted equity security that is executed on a non-business day must be reported by the time the ORF closes the next business day.
19. A step-out allows a member firm to allocate all or part of a client's position from a previously executed trade to the client's account at another firm. 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 firms involved in these types of transfers. See [Trade Reporting FAQ 301.1](#).
20. See Rules 7130(g), 7230A(i), 7230B(h) and 7330(h). Thus, for example, a firm cannot use one TRF to step out of an OTC trade that was originally reported to another TRF.
21. For purposes of reporting step-outs/step-ins to the FINRA facilities, 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.
22. Alternatively, one firm may submit a locked-in trade on behalf of the other firm, if the firms have the requisite agreements in place (*i.e.*, AGU or QSR). In that instance, the trade acceptance and comparison functionality would not be used.
23. See Rules 7140(a)(2), 7240A(a)(2) and 7340(a)(2).
24. FINRA notes that where trades are not locked-in pursuant to agreement, contra parties are required to accept or decline a trade within 20 minutes after execution, and FINRA generally expects contra parties to complete the process of accepting or declining a trade, including any subsequent updates, within that time frame. See Rules 7130(b), 7230A(b) and 7330(b).
25. See Rules 7140(a)(2), 7240A(a)(2) and 7340(a)(2).
26. See Rules 7140(a)(3), 7240A(a)(3) and 7340(a)(3).
27. See the March 21, 2014, OATS Report, "[Firms Capturing Time in Milliseconds Required to Report to OATS in Milliseconds Beginning April 7, 2014.](#)"

Each firm is required to report its side to effectuate a step-out; however, if the two firms have the proper agreements in place (*i.e.*, an Automatic Give-Up (AGU) or Qualified Special Representative (QSR) agreement), the step-out can be effectuated with only one submission. The amendments do not affect the process for effectuating a step-out with a single submission via AGU or QSR.