

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
--	--

Description
Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Lisa"/>	Last Name	<input type="text" value="Horrigan"/>
Title	<input type="text" value="Associate General Counsel"/>		
E-mail	<input type="text" value="lisa.horrigan@finra.org"/>		
Telephone	<input type="text" value="(202) 728-8190"/>	Fax	<input type="text" value="(202) 728-8034"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date	<input type="text" value="03/27/2009"/>
By	<input type="text" value="Stephanie Dumont"/>
	(Name)
	<input type="text" value="Senior Vice President and Director of Capital Markets Policy"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On September 12, 2007, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC”) proposed rule change SR-FINRA-2007-012, which proposes to amend FINRA trade reporting rules to require that on any non-tape report (either a non-tape, non-clearing report or clearing-only report)¹ submitted to a FINRA Facility (i.e., the Alternative Display Facility (“ADF”), a Trade Reporting Facility (“TRF”) or the OTC Reporting Facility (“ORF”)) associated with a previously executed trade that was not reported to that same FINRA Facility, members identify the facility or market where the associated trade was reported (the “Related Market Center”).

On December 18, 2007, FINRA filed Amendment No. 1 to (1) make clarifying changes to the original filing of September 12, 2007 to address the Commission staff’s comments; (2) consolidate the proposed and existing rules relating to the submission of non-tape reports associated with previously executed trades; and (3) delete the references and proposed amendments relating to the FINRA/BSE TRF, which closed subsequent to the original filing (the original filing of September 12, 2007, as amended by Amendment No. 1, referred to herein as the “original proposal”).

On December 20, 2007, the SEC published the original proposal for comment in the Federal Register.² The SEC received three comment letters in response to the Federal Register publication.³

FINRA is filing this Partial Amendment No. 2 to (1) address the comments the SEC received in response to the Federal Register publication and propose amendments, where appropriate; and (2) reflect changes to the underlying rule text adopted pursuant to two intervening rule changes (e.g., renumbering the rules and replacing references to “NASD” with “FINRA”), and make conforming changes to the proposed amendments, as

¹ A non-tape report is a report that is submitted to a FINRA Facility, but is not reported to and publicly disseminated by the appropriate exclusive Securities Information Processor. A regulatory report, referred as a “non-tape, non-clearing” report, is submitted to FINRA solely to fulfill a regulatory requirement. A clearing report, referred to 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. Clearing reports also can be used to satisfy a member’s obligation to provide regulatory information to FINRA, if applicable.

² See Securities Exchange Act Release No. 57020 (December 20, 2007), 72 FR 73930 (December 28, 2007) (notice of filing of SR-FINRA-2007-012).

³ See Letter from Securities Industry and Financial Markets Association, dated January 24, 2008 (“SIFMA”); Letter from Citigroup Global Markets dated February 1, 2008 (“Citigroup”); and Letter from Financial Information Forum, dated February 29, 2008 (“FIF”).

applicable.⁴ With this Partial Amendment No. 2, FINRA is including (1) Exhibit 4 (see below), which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 2, marked to show additions to and deletions from the text as proposed in the original proposal; and (2) Exhibit 5 (see below), which reflects the changes to the current rule text that are proposed in this proposed rule change, as amended by this Partial Amendment No. 2.

Background

As discussed more fully in the original proposal, certain transactions are reported to FINRA in related tape and non-tape reports. For example, a riskless principal transaction⁵ can be submitted to FINRA as a single trade report properly marked as riskless principal, or as two separate reports: (1) a tape report to reflect the initial leg of the transaction and (2) a non-tape report to reflect the offsetting, “riskless” leg of the transaction. Similarly, agency transactions where one member acts as agent on behalf of another member, which transactions are the functional equivalent of riskless principal transactions, can also be reported in related tape and non-tape reports. Currently, a non-tape report provides no specific information pertaining to a related tape report and as such, it is difficult for FINRA to determine where the associated trade was reported, especially if that trade was reported to an exchange or another FINRA Facility.

⁴ On September 25, 2008, the SEC approved proposed rule change SR-FINRA-2008-021, pursuant to which the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) were renumbered as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (order approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028; SR-FINRA-2008-029) (the “Consolidation Proposals”). The Consolidation Proposals were implemented on December 15, 2008. See Regulatory Notice 08-57 (October 2008).

On December 22, 2008, FINRA filed for immediate effectiveness proposed rule change SR-FINRA-2008-066 to reflect the closing of the FINRA/NSX TRF. As part of that proposed rule change, FINRA proposed to delete the FINRA Rule 6300B and 7200B Series relating to the FINRA/NSX TRF and to renumber the Rule 6300C and 7200C Series relating to the FINRA/NYSE TRF as the Rule 6300B and 7200B Series. SR-FINRA-2008-066 was operative on January 1, 2009. See Securities Exchange Act Release No. 59175 (December 30, 2008), 74 FR 840 (January 8, 2009) (notice of filing and immediate effectiveness of SR-FINRA-2008-066).

⁵ For purposes of over-the-counter trade 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 (the initial leg) and satisfies the original order by selling (buying) as principal at the same price (the offsetting, “riskless” leg).

The proposed requirement that members include a Related Market Center code on non-tape reports submitted to FINRA would apply where a transaction falls within this exception for riskless principal or agency transactions and either (1) the related tape and non-tape reports are submitted to different FINRA Facilities or (2) the non-tape report is associated with a trade that was reported to the tape through an exchange.

Summary of comments and responses thereto

As noted above, the SEC received three comment letters in response to the Federal Register publication.⁶ The three commenters generally oppose the proposal and assert that the potential costs would outweigh the benefits of the proposal. The commenters' specific arguments are summarized and responded to below.

First, the three commenters raise various arguments about the practical difficulties of complying with the proposed rule change. For example, commenters indicate it would be difficult (if not impossible) to identify multiple exchanges and/or FINRA Facilities where a single non-tape report is associated with multiple executions on multiple markets, e.g., where a member accumulates a position through multiple street-side trades and then executes the accumulated position with a customer on a riskless principal basis. One commenter notes that the possible solutions informally contemplated by FINRA to address this situation, e.g., identifying just one of the execution markets or using a "multiple venues" code, are flawed because there would be little meaningful information derived if members reported this way.⁷ This commenter suggests that the Related Market Center code be required only in instances where there is a one-to-one relationship between a trade and a market center, and in all other instances, firms should be allowed to leave the Related Market Center field blank.⁸

The commenters also indicate that when a firm routes an order, it may not always know where an execution occurred, especially in today's market where orders are often re-routed to comply with SEC Regulation NMS. Thus, while a firm will know where it originally sent the order, it will not necessarily know the ultimate execution destination.⁹ One of the commenters provides the example that an order routed to the NASDAQ Exchange that is routed out will be reported back with "Router," but will not give the actual execution destination.¹⁰

⁶ SIFMA, Citigroup and FIF.

⁷ FIF.

⁸ FIF.

⁹ Two commenters, SIFMA and FIF, noted that these same arguments were raised in the context of NYSE Rule 409(f), in response to which FINRA eliminated the requirement that firms disclose the name of the market on which the transaction was effected on customer confirmations.

¹⁰ FIF.

Similarly, two commenters argue that even if a firm knows that a trade in an NMS stock was executed over-the-counter, the firm may not necessarily know where the trade was reported because FINRA's Uniform Service Bureau/Executing Broker Agreement ("USBEB A") allows the reporting party to report to any TRF or ADF, without providing notice to the other party.¹¹ One of these commenters further asserts that even if Firm A and Firm B agree that Firm B will report all trades on Firm A's behalf to TRF A, there is no guarantee that every trade will in fact be reported to TRF A (e.g., TRF A may have a systems outage or Firm B may have a connectivity problem).¹² Moreover, the commenter argues, even if Firm B notifies Firm A promptly, Firm A may have already submitted one or more non-tape reports with the incorrect Related Market Center code or Firm A, like many firms, may not allow systems changes to be made during the course of the trading day.¹³

Two commenters also make the general argument that the proposed rule change could be costly in terms of the systems changes that would be required, citing a very large matrix of programming instructions, as well as market-wide costs, e.g., to create a new messaging standard for market centers to follow.¹⁴ One of these commenters asserts that the list of exchanges, ATSS, ECNs and trading centers would be very long, constantly changing (due to consolidations and additions), expensive for firms to maintain and subject to error.¹⁵ In addition, one commenter argues that firms already are being required to make a number of systems and technology changes, to which significant resources are being allocated.¹⁶

FINRA appreciates the concerns raised by the commenters about the ability of firms to comply with the proposed reporting requirements. FINRA proposed this rule change because it believes these amendments are necessary to the integrity of the audit trail and will help ensure that members are not using non-tape reports to circumvent FINRA or SEC rules (e.g., trade reporting, limit and market order protection, and trade-through rules). Notwithstanding the potential constraints highlighted by the commenters, FINRA believes that when a member submits a non-tape report to FINRA, the member should have an affirmative basis to believe the underlying transaction has been properly reported and disseminated to the tape, whether it be over-the-counter or through an exchange. As discussed below, FINRA is tailoring the proposed reporting requirement in light of some of the informational limitations described by the commenters; however, FINRA does not believe, as the commenters suggest, that this initiative should be

¹¹ SIFMA and Citigroup.

¹² Citigroup.

¹³ Citigroup.

¹⁴ SIFMA and FIF.

¹⁵ FIF.

¹⁶ SIFMA.

abandoned or narrowed because FINRA is unable to achieve a high level of granularity with respect to certain trades. Rather, FINRA expects members to provide as much information as is reasonably available at the time the non-tape report is submitted. FINRA also expects that as technology and the exchange of information improves relating to where trades were executed and reported, members will be able to build upon the existing reporting structure and report more specific information and for a larger universe of trades.

In response to the specific issues raised by the commenters, FINRA is clarifying that it would expect firms to report as follows where a single non-tape report is related to multiple tape reports: (1) where the multiple tape reports were made to a single exchange or, in the case of over-the-counter trades, a single FINRA Facility, that exchange or facility must be properly reflected on the single non-tape report; and (2) where the multiple tape reports were made to different exchanges and/or FINRA Facilities, the member will not be required to identify the specific exchanges or facilities, but will be required to populate the Related Market Center field with a standard indicator representing “multiple venues.” FINRA believes that this is preferable to the suggested approach of leaving the Related Market Center field blank because by selecting “multiple venues,” a member would be affirmatively representing that it has a basis to believe the underlying transactions have been properly reported and disseminated to the tape.

With respect to the commenters’ concern that where a member routes an order to an exchange or to another firm (“routed venue”), the member may not know where the trade was ultimately executed or, in the case of over-the-counter trades, where the trade was ultimately reported, FINRA would expect the member to report information reasonably available to it at the time that it submits the non-tape report.¹⁷ Thus, if the routed venue provides information about where the trade is tape reported, the member should identify the exchange or FINRA Facility, as applicable, on the non-tape report. If, however, the routed venue does not provide such information and the member has no other basis for identifying the relevant exchange or FINRA Facility, the member will be required to populate the Related Market Center field with a standard indicator representing “unknown venue.” By using the “unknown venue” code, a member would be affirmatively representing that the non-tape report is associated with a tape-reported trade execution, and FINRA would expect the member to be able to explain and document the circumstances for using this code (e.g., the execution report from the routed venue does not specify the exchange where the trade was executed, or in the case of over-the-counter trades, the FINRA Facility where the trade was tape reported). In instances where the member knows that multiple tape reports were made to multiple exchanges and/or FINRA Facilities, the member should report “multiple venues” instead of “unknown venue,” even though one or more of the multiple venues may be unknown to the member.

¹⁷ To the extent commenters are concerned that firms would have difficulty complying with the proposed rule change on a “real time” basis, FINRA is reiterating that there is no 90-second reporting requirement for non-tape reports under FINRA rules.

FINRA also is clarifying that where a member routes to an exchange and has a reasonable basis for reporting that the trade was executed on that exchange, FINRA would not consider it a violation if, unbeknownst to the member, the trade is ultimately executed somewhere other than the routed exchange. The same approach holds true with respect to reporting to other FINRA Facilities. FINRA staff would take into consideration the circumstances outlined by the commenters (e.g., if Firm A reports an incorrect Related Market Center code on a non-tape report because Firm B has failed to notify it that the associated trade was reported to a different FINRA Facility than the one normally used for reporting Firm A's trades), assuming that the firm can provide sufficient documentation in this regard.

FINRA believes that with these modifications to the proposed reporting requirement, members should be able to populate the Related Market Center field in all instances (i.e., using the specific code identifying the exchange or FINRA Facility where the associated trade was executed and/or reported for tape purposes, a "multiple venues" code or an "unknown venue" code). FINRA would expect that if a member leaves the Related Market Center field blank, the member is making an affirmative representation that the non-tape report and the associated tape report were submitted to the same FINRA Facility. Indeed, that is the only instance in which it would be acceptable for a member to not populate the Related Market Center field.

With respect to the concerns raised about systems changes, FINRA believes the commenters may misunderstand the proposed requirements. The Related Market Center code would not require identification of the specific ATS or ECN on which the trade was executed, but rather would require firms only to identify the exchange on which the trade was executed or the FINRA Facility to which a trade executed over-the-counter was reported (i.e., the ADF, the FINRA/NASDAQ TRF, the FINRA/NYSE TRF or the ORF), if different than the facility to which the firm is submitting the non-tape report. In addition, messaging protocols already are in place today that are used to communicate, among other things, the completed execution of a trade. FINRA expects that these same protocols, and the information derived from them, would be the basis on which a firm would populate the Related Market Center field.

To the extent technological enhancements are required, FINRA intends to provide adequate time for members to make the necessary changes. FINRA is proposing to implement the proposed rule change at least 90 days following implementation on August 3, 2009 of the amendments to FINRA trade reporting rules adopted pursuant to SR-FINRA-2008-011.¹⁸ This amends the original proposal, in which FINRA proposed an implementation date of at least 90 days from the date of SEC approval of the proposed rule change.

Second, one commenter asserts that given that the non-tape report is optional for exchange trades, firms may stop submitting non-tape reports because of the difficulty

¹⁸ See FINRA Regulatory Notice 09-08 (January 2009).

associated with the proposed rule change.¹⁹ FINRA recognizes that members may opt to stop using a FINRA Facility to clear the offsetting legs of riskless principal and agency trades executed on an exchange, but does not believe this potential impact warrants a change to the proposal.

Third, one commenter requests that FINRA defer consideration of the proposal until the trade reporting harmonization process has substantially moved forward.²⁰ FINRA does not dispute the value in harmonizing regulatory reporting requirements where possible. However, there is no specific trade reporting harmonization process currently underway, and FINRA does not believe that it can or should put its regulatory initiatives on hold on the basis of a process that may take place in the future.

Finally, one commenter asserts that many of the non-tape reports are not required under FINRA rules and therefore “it is difficult to comprehend the urgent need of FINRA to tie the tape report together with the non-media report.”²¹ This commenter and one of the other commenters assert that FINRA should rely on manual audits rather than automated trade reporting to get the requisite information.²² As discussed in the original proposal, FINRA staff needs to be able to recreate members’ market activity and to validate that there is, in fact, a tape report associated with a non-tape report to ensure that firms are not using non-tape reports to circumvent FINRA or SEC rules (e.g., trade reporting, limit and market order protection, and trade-through rules). Manual audits are not an efficient and effective way to accomplish this systematically.

¹⁹ FIF.

²⁰ SIFMA.

²¹ Citigroup.

²² Citigroup and FIF.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 2, with the proposed changes in the published filing shown as if adopted. Proposed new language in this Partial Amendment No. 2 is underlined; proposed deletions in this Partial Amendment No. 2 are in brackets.¹

* * * * *

**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,
AND FACILITY CHARGES**

7100. ALTERNATIVE DISPLAY FACILITY/TRACS

* * * * *

7130. Trade Report Input

(a) through (c) No Change.

**(d) Submission of Non-Tape Reports Associated With Previously Executed
Trades**

(1) No Change.

(2) Where permitted by subparagraph (1) above, any non-tape report

(either a non-tape, non-clearing report or a clearing-only report) associated with a

¹ This Exhibit 4 reflects the underlying rule text and numbers as amended pursuant to SR-FINRA-2008-021. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (order approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028; SR-FINRA-2008-029).

Pursuant to SR-FINRA-2008-021, the NASD Rule 6100 Series (applicable to both the FINRA/Nasdaq TRF and the OTC Reporting Facility) was amended, as necessary, to form the FINRA Rule 7200A Series (applicable to the FINRA/Nasdaq TRF) and the Rule 7300 Series (applicable to the OTC Reporting Facility). In the original filing, FINRA proposed changes to NASD Rule 6130. In this Partial Amendment No. 2, the proposed changes to NASD Rule 6130 appear as proposed changes to FINRA Rules 7230A and 7330.

previously executed trade(s) that was not reported to TRACS must identify the facility or market where the associated trade(s) was reported, as specified by FINRA. For any such report, members must retain and produce, upon request, documentation relating to the associated trade(s).

* * * * *

7200. TRADE REPORTING FACILITIES

7200A. FINRA/NASDAQ TRADE REPORTING FACILITY

* * * * *

7230A. Trade Report Input

(a) through (h) No Change.

(i) Submission of Non-Tape Reports Associated With Previously Executed Trades

(1) No Change.

(2) Where permitted by subparagraph (1) above, any non-tape report (either a non-tape, non-clearing report or a clearing-only report) associated with a previously executed trade(s) that was not reported to the System must identify the facility or market where the associated trade(s) was reported, as specified by FINRA. For any such report, members must retain and produce, upon request, documentation relating to the associated trade(s).

* * * * *

7200B. FINRA/NYSE TRADE REPORTING FACILITY

* * * * *

7230B. Trade Report Input

(a) through (g) No Change.

(h) Submission of Non-Tape Reports Associated With Previously Executed

Trades

(1) No Change.

(2) Where permitted by subparagraph (1) above, any non-tape report (either a non-tape, non-clearing report or a clearing-only report) associated with a previously executed trade(s) that was not reported to the System must identify the facility or market where the associated trade(s) was reported, as specified by FINRA. For any such report, members must retain and produce, upon request, documentation relating to the associated trade(s).

* * * * *

7300. OTC REPORTING FACILITY

* * * * *

7330. Trade Report Input

(a) through (g) No Change.

(h) Submission of Non-Tape Reports Associated With Previously Executed

Trades

(1) No Change.

(2) Where permitted by subparagraph (1) above, any non-tape report (either a non-tape, non-clearing report or a clearing-only report) associated with a previously executed trade(s) that was not reported to the System must identify the facility or market where the associated trade(s) was reported, as specified by FINRA. For any such report, members must retain and produce, upon request,

documentation relating to the associated trade(s).

* * * * *

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change, as amended by this Partial Amendment No. 2. Proposed new language is underlined; proposed deletions are in brackets.¹

* * * * *

**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,
AND FACILITY CHARGES**

7100. ALTERNATIVE DISPLAY FACILITY/TRACS

* * * * *

7130. Trade Report Input

(a) through (c) No Change.

(d) Submission of Non-Tape Reports Associated With Previously Executed Trades

(1) Members shall not submit to TRACS any non-tape report (either a non-tape, non-clearing report or a clearing-only report), including but not limited to reports of step-outs and reversals[]], associated with a previously executed trade that was not reported to TRACS, unless such report is submitted, pursuant to

¹ This Exhibit 5 reflects the underlying rule text and numbers as amended pursuant to SR-FINRA-2008-021. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (order approving SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028; SR-FINRA-2008-029).

Pursuant to SR-FINRA-2008-021, the NASD Rule 6100 Series (applicable to both the FINRA/Nasdaq TRF and the OTC Reporting Facility) was amended, as necessary, to form the FINRA Rule 7200A Series (applicable to the FINRA/Nasdaq TRF) and the Rule 7300 Series (applicable to the OTC Reporting Facility). In the original filing, FINRA proposed changes to NASD Rule 6130. In this Partial Amendment No. 2, the proposed changes to NASD Rule 6130 appear as proposed changes to FINRA Rules 7230A and 7330.

Rule 6282(e), to reflect the offsetting riskless portion of a riskless principal transaction.

(2) Where permitted by subparagraph (1) above, any non-tape report (either a non-tape, non-clearing report or a clearing-only report) associated with a previously executed trade(s) that was not reported to TRACS must identify the facility or market where the associated trade(s) was reported, as specified by FINRA. For any such report, members must retain and produce, upon request, documentation relating to the associated trade(s).

* * * * *

7200. TRADE REPORTING FACILITIES

7200A. FINRA/NASDAQ TRADE REPORTING FACILITY

* * * * *

7230A. Trade Report Input

(a) through (h) No Change.

(i) **Submission of Non-Tape Reports Associated With Previously Executed**

Trades

(1) Members shall not submit to the System any non-tape report (either a non-tape, non-clearing report or a clearing-only report), including but not limited to reports of step-outs and reversals[]], associated with a previously executed trade that was not reported to the System, unless such report is submitted, pursuant to Rule 6380A(d), to reflect the offsetting riskless portion of a riskless principal transaction.

(2) Where permitted by subparagraph (1) above, any non-tape report

(either a non-tape, non-clearing report or a clearing-only report) associated with a previously executed trade(s) that was not reported to the System must identify the facility or market where the associated trade(s) was reported, as specified by FINRA. For any such report, members must retain and produce, upon request, documentation relating to the associated trade(s).

* * * * *

7200B. FINRA/NYSE TRADE REPORTING FACILITY

* * * * *

7230B. Trade Report Input

(a) through (g) No Change.

(h) Submission of Non-Tape Reports Associated With Previously Executed

Trades

(1) Members shall not submit to the System any non-tape report (either a non-tape, non-clearing report or a clearing-only report), including but not limited to reports of step-outs and reversals[]], associated with a previously executed trade that was not reported to the System, unless such report is submitted, pursuant to Rule 6380B(d), to reflect the offsetting riskless portion of a riskless principal transaction.

(2) Where permitted by subparagraph (1) above, any non-tape report (either a non-tape, non-clearing report or a clearing-only report) associated with a previously executed trade(s) that was not reported to the System must identify the facility or market where the associated trade(s) was reported, as specified by FINRA. For any such report, members must retain and produce, upon request,

documentation relating to the associated trade(s).

* * * * *

7300. OTC REPORTING FACILITY

* * * * *

7330. Trade Report Input

(a) through (g) No Change.

(h) Submission of Non-Tape Reports Associated With Previously Executed

Trades

(1) Members shall not submit to the System any non-tape report (either a non-tape, non-clearing report or a clearing-only report), including but not limited to reports of step-outs and reversals[]], associated with a previously executed trade that was not reported to the System, unless such report is submitted, pursuant to Rule 6622(d), to reflect the offsetting riskless portion of a riskless principal transaction.

(2) Where permitted by subparagraph (1) above, any non-tape report (either a non-tape, non-clearing report or a clearing-only report) associated with a previously executed trade(s) that was not reported to the System must identify the facility or market where the associated trade(s) was reported, as specified by FINRA. For any such report, members must retain and produce, upon request, documentation relating to the associated trade(s).

* * * * *