

Odd-Lot Transactions

FINRA Adopts Rule Amendments Relating to Reporting of Odd-Lot Transactions

Effective Date: March 3, 2008

Executive Summary

Effective Monday, March 3, 2008, when reporting odd-lot transactions¹ to a FINRA Trade Reporting Facility (TRF), the Alternative Display Facility (ADF) and the OTC Reporting Facility (ORF) (collectively referred to as the “FINRA Facilities”), firms:

- 1) will no longer use the special “.RO” trade report modifier to indicate that an odd-lot transaction is reported for regulatory transaction fee purposes and
- 2) must report odd-lot transactions marked for media dissemination (*i.e.*, “for publication” or as “tape eligible”), as applicable.

The text of the amended rule language is available at www.finra.org/RulesRegulation/RuleFilings/2007RuleFilings/P037160.

Questions regarding this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; or the Office of General Counsel, at (202) 728-8071.

Background & Discussion

Today, with the exception of OTC Equity Securities, as defined in NASD Rule 6610, firms do not report odd-lot transactions to FINRA for purposes of public dissemination.² Firms are, however, required to report such transactions for regulatory transaction fee purposes and must use a special “.RO” trade report modifier (the “.RO modifier”) to indicate that the transaction is reported pursuant to Section 3 of Schedule A to the By-Laws (Section 3). FINRA uses the .RO modifier to identify odd-lot transactions that are required to be included in FINRA’s calculation of its Section 31 obligation to the Securities and Exchange Commission (SEC).³

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Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Finance
- Legal
- Operations
- Registered Representatives
- Senior Management
- Systems
- Trading

Key Topic(s)

- Alternative Display Facility
- Odd-Lots
- OTC Reporting Facility
- Regulatory Transaction Fees
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- Section 3 of Schedule A to the By-Laws
- NASD Rules 4200, 4200A, 4200C and 4200E
- NASD Rules 4632, 4632A, 4632C and 4632E
- NASD Rule 6610
- NASD Rules 6130, 6130A, 6130C and 6130E
- NASD Rule 6620
- NTM 07-23
- Regulatory Notice 07-38
- Regulation NMS
- Section 31 of the Exchange Act

With the implementation of Regulation NMS and a new trade report messaging format,⁴ firms are required to include the .RO modifier on trade reports of odd-lot transactions in the same information level (or byte) as other regulatory modifiers. Thus, in certain instances, firms may be faced with prioritizing and determining which modifier should be included in the trade report submitted to FINRA. This can lead to confusion, inaccuracies and inconsistencies in trade reporting which, in turn, can impair FINRA's ability to produce a complete and accurate audit trail. FINRA has determined that the .RO modifier can be eliminated because the FINRA Facilities can systematically identify odd-lot transactions based on the number of reported shares.⁵

Accordingly, on October 10, 2007, FINRA filed with the SEC for immediate effectiveness a proposed rule change⁶ to amend its trade reporting rules⁷ to eliminate the requirement that firms use the .RO modifier on reports of odd-lot transactions. FINRA also amended its trade reporting rules⁸ to require that firms report odd-lot transactions marked for media dissemination (*i.e.*, "for publication" or as "tape eligible"), as applicable.⁹ Thus, instead of appending the .RO modifier on reports of odd-lot transactions that are subject to a regulatory transaction fee, firms should mark those reports as "tape eligible." FINRA will include odd-lot trades in covered securities reported as "tape eligible" in the aggregate dollar amount of its covered sales for purposes of calculating its Section 31 obligation to the SEC. However, although odd-lot transactions will be marked "tape eligible," the FINRA Facilities will suppress such transactions from public dissemination.¹⁰

With the exception of the changes described above, firms should continue to report odd-lot transactions as they do today. FINRA is clarifying that firms are not required to mark an odd-lot transaction report as "tape eligible" pursuant to the rule amendments if that report would not be marked with the .RO modifier today. For example, firms should continue to submit non-tape (or clearing-only or non-tape, non-clearing) reports, as applicable, to reflect the offsetting leg of a riskless principal transaction¹¹ or agency transaction where a firm is acting as agent on behalf of another member firm.¹² In such instances, the first leg would be reported to FINRA as "tape eligible" and would be assessed a Section 3 fee, and the second offsetting leg would be reported to FINRA as a non-tape (clearing-only or non-tape, non-clearing) entry and would not be assessed a Section 3 fee.

Additionally, FINRA notes that the rule amendments do not affect the status of odd-lot transactions under Regulation NMS; in particular, the application of the Regulation NMS Order Protection Rule.¹³

The rule amendments become operative on Monday, March 3, 2008.

Endnotes

- 1 For purposes of the trade reporting rules, an odd lot is less than a “normal unit of trading,” which is defined as “100 shares of a security unless, with respect to a particular security, NASD determines that a normal unit of trading shall constitute other than 100 shares.” See NASD Rules 4200, 4200A, 4200C and 4200E.
- 2 See NASD Rules 4632(e), 4632A(i), 4632C(e) and 4632E(f). Pursuant to NASD Rule 6620, odd-lot transactions in OTC Equity Securities are required to be reported to FINRA for purposes of publication.
- 3 Pursuant to Section 31 of the Securities Exchange Act of 1934, 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.
- 4 See *NASD Notice to Members 07-23* (May 2007).
- 5 Firms should note that they are still required to use special trade report modifiers to indicate that away-from-the-market sales and exercises of OTC options are reported in accordance with Section 3 (the “RA” and “RX” modifiers, respectively).
- 6 See Securities Exchange Act Release No. 56669 (October 17, 2007), 72 FR 60398 (October 24, 2007) (notice of filing and immediate effectiveness of SR-FINRA-2007-017).
- 7 See NASD Rules 6130(g), 6130A(c), 6130C(f) and 6130E(f).
- 8 See NASD Rules 4632(e), 4632A(i), 4632C(e) and 4632E(f).
- 9 Firms should consult the applicable technical specifications for details on how to report trades for media dissemination to a particular FINRA Facility, as the specific reporting requirements may differ across facilities.
- 10 FINRA notes that today, with the general exception of certain high-priced securities, transactions of fewer than 100 shares are not publicly disseminated by FINRA or the appropriate exclusive securities information processor.
- 11 See NASD Rules 4632(d)(3)(B), 4632A(e)(1)(C)(ii), 4632C(d)(3)(B), 4632E(e)(3)(B) and 6620(d)(3)(B).
- 12 See *FINRA Regulatory Notice 07-38* (August 2007).
- 13 See Question 7.03, Division of Market Regulation: Responses to Frequently Asked Questions concerning SEC Rule 611 and Rule 610 of Regulation NMS (June 8, 2007 update).

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