

Trade Reporting Notice

Guidance on Reporting Electronic Communications Network (ECN) Transactions

Executive Summary

This *Notice* addresses several inquiries regarding whether FINRA's current trade reporting rules require firms to submit a "non-media report" (*i.e.*, a report that is submitted for clearing or regulatory purposes, but not for public dissemination)¹ to reflect the offsetting leg of an over-the-counter transaction where an ECN matches two FINRA member firms.

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.

Discussion

Generally, there are three parties to a trade executed on an Electronic Communications Network (ECN)—the ECN and the two parties with orders matched on the ECN. Where an ECN is matching two FINRA member firms, the report that is submitted to FINRA for public dissemination (the "media report") identifies the ECN and one of the firms.² For example, an ECN matches the orders of two FINRA members, Firm 1 and Firm 2, and executes the trade. The media report in this example would identify the ECN and one of the firms (*e.g.*, Firm 1) as the executing parties.

Currently, in addition to the media report, many ECNs submit a non-media report to reflect the offsetting leg of the transaction, particularly if the ECN needs to clear that leg through a FINRA facility. Thus, in the example above, the non-media report would identify the ECN and Firm 2 as the executing parties to the trade. This method of reporting is allowable under FINRA trade reporting rules and enhances FINRA's audit trail and staff's ability to surveil for compliance by firms with applicable rules and regulations. However, while such reporting is allowable, presently, FINRA trade reporting rules do not require submission of a non-media report in this instance.

February 19, 2008

Key Topic(s)

- Alternative Display Facility
- Electronic Communications Network (ECN)
- OTC Reporting Facility
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- NASD Rules 6130, 6130C and 6130E

However, it should be noted that FINRA intends to file a proposed rule change in the near future to amend its trade reporting rules to require that non-media report(s) be submitted where necessary to identify a member firm that was a party to the trade and did not appear on the media report. Firms may wish to take this into account before changing any reporting protocols with respect to non-mandatory, but allowable, non-media reports.

Endnotes

- 1 Non-media reports can be (1) “non-media, non-clearing,” meaning that the report is submitted to FINRA solely for regulatory purposes, or (2) “clearing-only,” meaning that the report is submitted to FINRA for clearing; i.e., for submission by FINRA to the National Securities Clearing Corporation (and perhaps also regulatory purposes).
- 2 This *Notice* does not address the issue of whether or when an ECN has the obligation to report a trade to FINRA versus one of the parties to the transaction under the trade reporting rules. *See, e.g.*, NASD Rules 6130(c)(5), 6130C(c)(5) and 6130E(c)(5).