

Regulatory Notice

08-51

Reporting of Transactions in Foreign Securities

SEC Approves Amendments to FINRA's Transaction Reporting Rules to Require Prompt Last Sale Reporting of Transactions in Foreign Securities

Effective Date: October 27, 2008

Executive Summary

Effective October 27, 2008, the reporting and dissemination of over-the-counter (OTC) transactions in all OTC Equity Securities (including domestic securities, foreign securities and ADRs) will be treated consistently. Consequently, beginning on that date, member firms will be required to report transactions in foreign securities within 90 seconds of execution (unless a specific exception applies), and FINRA will disseminate last sale information regarding those transactions on a real-time basis. The text of NASD Rule 6620, as amended, is set forth in Attachment A to this *Notice*.

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

Background & Discussion

On August 8, 2008, the SEC approved amendments to FINRA's transaction reporting rules to eliminate the different reporting and dissemination treatment of transactions in OTC Equity Securities.¹ As a result of these amendments, beginning October 27, 2008, transactions in all OTC Equity Securities (including domestic securities, foreign securities and ADRs) will be treated in the same manner, from both a reporting and a dissemination standpoint.² Consequently, beginning on that date, transactions in foreign securities generally must be reported within 90 seconds of execution, and FINRA will disseminate last sale information regarding those transactions on a real-time basis.³

September 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Trading

Key Topic(s)

- Foreign Securities
- Transaction Reporting

Referenced Rules & Notices

- NASD Rule 6610
- NASD Rule 6620
- Section 3 of Schedule A to the By-Laws
- Section 31 of the Securities Exchange Act of 1934

Prior to the amendments approved by the SEC, NASD Rule 6620(a) generally required that transactions in some OTC Equity Securities—domestic equity securities, ADRs, and Canadian issues, including those that are not registered with the SEC and otherwise subject to financial reporting—that were executed between 8:00 a.m. and 8:00 p.m. Eastern Time be reported to the OTC Reporting Facility within 90 seconds of execution.⁴ Foreign securities other than ADRs and Canadian issues were excluded from the 90-second reporting requirement and were required to be reported by 1:30 p.m. Eastern Time the day after the transaction was executed.⁵ Although not required, member firms were permitted to report transactions in foreign securities within 90 seconds of execution.⁶ Beginning October 27, 2008, this distinction in reporting obligations will be eliminated, and OTC transactions in foreign securities will be subject to the same reporting requirements that have been in place for domestic securities, Canadian issues, and ADRs pursuant to NASD Rule 6620.

In addition, there is a disparity in the way FINRA disseminates last sale information of OTC equity transactions to the marketplace. Although last sale information for transactions in domestic OTC Equity Securities reported pursuant to Rule 6620 is disseminated on a real-time basis, irrespective of whether the security was registered with the SEC, there is no uniformity in the dissemination of last sale information for transactions in ADRs and foreign securities. By requiring 90-second reporting for foreign securities transactions (unless a specific exception applies), FINRA also will begin uniformly disseminating trading information for all OTC Equity Securities on a real-time basis, providing improved transparency to the OTC market. Consequently, beginning October 27, 2008, FINRA will begin disseminating information for all reported transactions in OTC Equity Securities on a real-time basis if the transaction is required to be reported within 90 seconds of execution.

Endnotes

- 1 See Securities Exchange Act Release No. 58331 (August 8, 2008), 73 FR 47990 (August 15, 2008) (Order Approving SR-FINRA-2008-016). NASD Rule 6610(d) defines “OTC Equity Security” as “any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.” The term specifically excludes “restricted securities,” as defined in SEC Rule 144(a)(3) under the Securities Act of 1933, and any securities designated in the PORTAL Market. See NASD Rule 6610(c). The amendments do not change the reporting requirements for transactions in direct participation program securities, which are not required to be reported within 90 seconds of execution. See NASD Rule 6920(a).
- 2 The single exception is for transactions in foreign equity securities that are reported to a foreign regulator. See NASD Rule 6620(g)(2)(B). Transactions in foreign equity securities executed on and reported to a foreign securities exchange are also excepted from the FINRA reporting requirements. See NASD Rule 6620(g)(2)(A).
- 3 Section 31 of the Securities Exchange Act of 1934 requires FINRA to pay transaction fees and assessments to the SEC for sales transacted by or through its members otherwise than on a national securities exchange of securities subject to prompt last sale reporting (pursuant to the rules of the SEC or FINRA). This fee is designed to recover the costs related to the government’s supervision and regulation of the securities markets and securities professionals. To recover the costs of FINRA’s Section 31 obligation, FINRA assesses a regulatory transaction fee on its members under Section 3 of Schedule A to the FINRA By-Laws (Section 3 Fee), the amount of which is set in accordance with Section 31. Prior to the amendments described in this *Notice*, transactions in foreign securities (other than ADRs and Canadian issues) were not required to be reported “promptly” and were, therefore, excluded from the Section 3 Fee. The requirement to report transactions in foreign securities to FINRA within 90 seconds of execution will result in those transactions being subject to the Section 3 Fee. For the most recent fee rate, see *FINRA Information Notice 03/10/08*.
- 4 See NASD Rule 6620(a).
- 5 See NASD Rule 6620(a)(3)(C)(iii).
- 6 See NASD Rule 6620 n.1.

ATTACHMENT A

Below is the text of the rule changes. New language is underlined; deletions are in brackets.

FINRA has proposed renumbering NASD Rule 6620 as Rule 6622 in the Consolidated FINRA Rulebook. *See* SR-FINRA-2008-021.

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6000. NASD SYSTEMS AND PROGRAMS

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6600. OVER-THE-COUNTER EQUITY SECURITIES

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6620. Transaction Reporting

(a) When and How Transactions are Reported

(1) through (2) No change.

(3) Transaction Reporting Outside Normal Market Hours

(A) through (B) No change.

(C) Last sale reports of transactions in OTC Equity Securities executed outside the hours of 8:00 a.m. and 8:00 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions in [American Depositary Receipts (ADRs), Canadian issues, or domestic] OTC Equity Securities that are executed between midnight and 8:00 a.m. Eastern Time shall be transmitted to the OTC Reporting Facility between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date and be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. as .T trades. The party responsible for reporting on trade date, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below; and

(ii) Last sale reports of transactions in [ADRs, Canadian issues, or domestic] OTC Equity Securities that are executed between 8:00 p.m. and midnight Eastern Time shall be transmitted to the OTC Reporting Facility on the next business day (T+1) between 8:00 a.m. and 8:00 p.m. Eastern Time, and be designated as “as of” trades to denote their execution on a prior day. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below.]; and]

[(iii) Last sale reports of transactions in foreign securities (excluding ADRs and Canadian issues) shall be transmitted to the OTC Reporting Facility on T+1 regardless of time of execution.¹ Such reports shall be made between 8:00 a.m. and 1:30 p.m. Eastern Time in the same manner as described in subparagraph (3)(B)(ii) above.]

(4) through (9) No change.

(b) through (g) No change.

[1] Member firms that have the operational capability to report transactions in foreign securities (excluding ADRs and Canadian issues) within 90 seconds of execution, between the hours of 8:00 a.m. and 5:15 p.m. Eastern Time, may do so at their option. If a firm chooses this option, it need not report the same transaction(s) on T+1 as prescribed by subsection (ii)(c).]