

Regulatory Notice

08-80

Best Execution

FINRA Requests Comment on Proposed FINRA Rule Addressing Best Execution

Comment Period Expires: January 29, 2009

Executive Summary

As part of the process of developing a new, consolidated rulebook (the Consolidated FINRA Rulebook), FINRA is requesting comment on proposals relating to FINRA's rule on best execution and interpositioning. There are four primary proposed amendments that are described in this *Notice*:

1. the adoption of a new provision providing that a member firm has met its best execution obligations regarding orders for foreign securities with no U.S. market if certain conditions are met;
2. the replacement of NASD Rule 2320(g) with Supplementary Material addressing a member firm's best execution obligations when handling orders for securities with limited quotation information;
3. the codification of a member firm's obligation to regularly and rigorously review execution quality; and
4. the adoption of Supplementary Material addressing a member firm's obligations when handling an order that the customer has instructed the firm to route to a particular market for execution.

The text of the proposed rule is set forth in Attachment A.

Questions concerning this *Notice* should be directed to the Office of General Counsel, at (202) 728-8071.

December 2008

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

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

Key Topic(s)

- Best Execution
- Directed Orders
- Foreign Securities
- Three Quote Rule

Referenced Rules & Notices

- NASD Rule 2320
- NASD Rule 3110(b)
- NASD IM-2320
- NTM 00-78
- NTM 01-22
- Regulatory Notice 07-40

Action Requested

FINRA encourages all interested parties to comment on the proposals. Comments must be received by January 29, 2009.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposals.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.¹

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.²

Background & Discussion

Proposed Amendments

FINRA is proposing to adopt new FINRA Rule 5310 to address a member firm's best execution obligations. FINRA Rule 5310 would be based largely on NASD Rule 2320 (Best Execution and Interpositioning), and IM-2320 (Interpretive Guidance with Respect to Best Execution Requirements) would be retained as Supplementary Material to the rule.³ FINRA is proposing four notable changes as part of the adoption of FINRA Rule 5310:

- Creating a new provision providing that a member firm has met its best execution obligations regarding orders for foreign securities with no U.S. market if certain conditions are met;

- Replacing NASD Rule 2320(g) (Three Quote Rule) with Supplementary Material that emphasizes that member firms must ensure that they meet their best execution obligations with respect to orders involving illiquid securities with non-transparent pricing;
- Codifying existing guidance regarding the regular and rigorous review of execution quality; and
- Creating Supplementary Material addressing a member firm's best execution obligations when a customer has instructed the firm to route the order to a particular market for execution.

1. Orders for Foreign Securities with No U.S. Market

NASD Rule 2320 does not distinguish between orders for domestic securities and orders for foreign securities, even if there is no U.S. market for the security. Despite Rule 2320's identical requirements for transactions in domestic and foreign securities, markets in foreign jurisdictions often do not have identical best execution requirements as those imposed by Rule 2320 and, in many cases, may not have comparable pre-trade transparency. Consequently, FINRA has determined that continuing to apply a "one-size-fits-all" approach to the handling of all foreign and domestic orders may no longer be appropriate.

As part of transferring NASD Rule 2320 into the Consolidated FINRA Rulebook, FINRA is proposing to adopt a new provision addressing orders for foreign securities with no U.S. market. Under the proposed provision, a firm would be deemed to have met its best execution obligations with respect to an order if:

- (1) the order is for a non-U.S. traded security (defined as any non-exchange-listed security issued by a corporation or other entity incorporated or organized under the laws of any foreign country for which there is no quotation or indication of interest displayed in any quotation medium in the U.S. at the time the member firm receives the order);
- (2) the firm has adopted written policies and procedures regarding its handling of orders for non-U.S. traded securities that are reasonably designed to obtain the most favorable terms available for the customer;
- (3) the firm reviews those policies and procedures at least annually, or more frequently as appropriate, to assess the quality of the execution venues included in the firm's policies and procedures to determine whether they provide for the most favorable terms reasonably available and whether the policies and procedures need to be updated or revised;
- (4) the firm has obtained its customers' consent to its policies and procedures regarding the handling of orders for non-U.S. traded securities;⁴ and
- (5) the firm handles the order in accordance with its policies and procedures.

2. Three Quote Rule

The Three Quote Rule generally requires member firms that execute transactions in non-exchange-listed securities on behalf of customers to contact a minimum of three dealers (or all dealers if three or fewer) and obtain quotations from those dealers if there are fewer than two quotations displayed on an inter-dealer quotation system that permits quotation updates on a real-time basis. Since the adoption of the Three Quote Rule over twenty years ago, the market for non-exchange-listed securities has changed dramatically. FINRA has found that in certain circumstances the Three Quote Rule can hinder, rather than further, investor protection by causing significant delays in obtaining execution of customer orders. As a result, FINRA has created several exclusions to the Three Quote Rule since it was adopted. For example, in 2000, FINRA determined that where there were two transparent, firm quotes for a security, the costs associated with delayed executions resulting from Three Quote Rule compliance outweighed the benefits of obtaining three telephone quotes.⁵ Consequently, the Three Quote Rule currently applies only to non-exchange-listed securities with one or no public quotation. In 2007, the SEC approved amendments to the Three Quote Rule to exclude certain transactions in non-exchange-listed securities of foreign issuers that are part of the FTSE All-World Index and to exclude certain transactions in Canadian securities executed on a Canadian exchange.⁶

FINRA believes that, although the concerns addressed by the Three Quote Rule are still valid, the current requirements in the Three Quote Rule are overly prescriptive and can often result in unnecessary delay in the execution of a customer's order. Thus, rather than maintain the Three Quote Rule and the various exclusions in their current format, FINRA is proposing to replace the Three Quote Rule with Supplementary Material to proposed FINRA Rule 5310 that emphasizes a firm's best execution obligations when handling an order involving a non-exchange-listed security for which there is limited pricing information available.⁷ The Supplementary Material would require that member firms have written policies and procedures in place to address the steps the firm will take to determine the best market for such a security in the absence of multiple quotations and require that firms document how they complied with those policies and procedures.⁸ The Supplementary Material would specifically note that, when handling orders for such securities, firms should generally seek out other sources of potential liquidity and may need to contact and obtain quotations from other dealers (*e.g.*, other firms that the member firm has traded with in the past in the security).

3. Regular and Rigorous Review of Execution Quality

FINRA is also proposing to add Supplementary Material to proposed FINRA Rule 5310 that would codify a member firm's obligation to regularly and rigorously review execution quality likely to be obtained from different market centers. This longstanding obligation has been published and explained in SEC releases and *NASD Notices to Members*.⁹ FINRA is proposing to codify this guidance as Supplementary Material to the best execution rule so that the obligation appears in the Consolidated FINRA Rulebook itself and can be addressed in a single place. The proposed Supplementary Material would not alter existing requirements; it would merely codify previously published SEC and FINRA guidance on the subject.

4. Customer Instructions Regarding the Routing of Orders

When placing an order with a member firm, customers may specifically instruct the firm to route to a particular market for execution.¹⁰ FINRA is proposing to include Supplementary Material to proposed FINRA Rule 5310 that addresses situations where the customer has, on an unsolicited basis, specifically instructed the firm to route its order to a particular market. Under those circumstances, the firm would not be required to make a best execution determination beyond that specific instruction; however, the Supplementary Material would make clear that firms are still required to process the customer's order promptly and in accordance with the terms of the order. The Supplementary Material would also make clear that where a customer has directed a firm to route an order to another broker-dealer that is also a FINRA member firm, the exception for directed orders would not apply to the receiving broker-dealer to which the order was directed. For example, if a customer of Firm A directs Firm A to route an order to Firm B, Firm B would continue to have best execution obligations to that customer order received from Firm A.

Endnotes

- 1 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See NASD Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. *See* Exchange Act Section 19 and rules thereunder.
- 3 FINRA has filed proposed amendments to the interpositioning provision of the rule (NASD Rule 2320(b)) to move that provision into the broader best execution obligations set forth in NASD Rule 2320(a). The proposed rule change was filed with the SEC on November 27, 2007, but has not yet been published for comment in the *Federal Register*. *See* SR-FINRA-2007-024.
- 4 A firm could receive its customers' consent in any reasonable manner, including negative written consent.
- 5 *See NASD Notice to Members 00-78* (November 2000).
- 6 *See Regulatory Notice 07-40* (August 2007).
- 7 NASD Rule 2320(g)(2) requires members that display priced quotations on a real-time basis for a non-exchange-listed security in two or more quotation mediums that permit quotation updates on a real-time basis to display the same priced quotation in each medium. Paragraph (g)(4) of the rule includes definitions of terms used in paragraph (g)(2). FINRA is proposing to retain paragraph (g)(2) and the relevant definitions in paragraph (g)(4), but move the provisions into the FINRA Rule 6400 Series (Quoting and Trading in OTC Equity Securities) as FINRA Rule 6480.
- 8 NASD Rule 3110(b) (Books and Records) generally requires members to indicate on the customer order ticket how they complied with the Three Quote Rule, if applicable. FINRA is proposing to replace this provision with a more general documentation requirement in the Supplementary Material to proposed FINRA Rule 5310.
- 9 *See, e.g.,* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996); *NASD Notice to Members 01-22* (April 2001).
- 10 When the order is for an NMS security, these orders are often referred to as "directed orders." *See* 17 CFR § 242.600(b)(19). Of note, directed orders are excluded from the order routing statistics required to be produced under Rule 606 of Regulation NMS. *See* 17 CFR § 242.606.

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Attachment A

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

* * * * *

PROPOSED BEST EXECUTION RULE AND SUPPLEMENTARY MATERIAL

[2320] 5310. Best Execution and Interpositioning¹

(a)(1) In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member has used “reasonable diligence” are:

([1]A) the character of the market for the security[,] (e.g., price, volatility, relative liquidity, and pressure on available communications);

([2]B) the size and type of transaction;

([3]C) the number of markets checked;

([4]D) accessibility of the quotation; and

([5]E) the terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member.

(2) In any transaction for or with a customer or a customer of another broker-dealer, no member or person associated with a member shall interject a third party between the member and the best market for the subject security in a manner inconsistent with paragraph (a)(1) of this Rule.

1 The draft text is marked to show changes between NASD Rule 2320 and proposed FINRA Rule 5310. FINRA has previously filed proposed amendments to the interpositioning provisions of NASD Rule 2320 with the SEC. See SR-FINRA-2007-024. The proposed amendments to the interpositioning provisions of the rule, which are also reflected in the draft text, have not been noticed for comment by the SEC. FINRA is not seeking comment on the proposed amendments to the interpositioning provisions of the rule.

[(b)] In any transaction for or with a customer, no member or person associated with a member shall interject a third party between the member and the best available market except in cases where the member can demonstrate that to his knowledge at the time of the transaction the total cost or proceeds of the transaction, as confirmed to the member acting for or with the customer, was better than the prevailing inter-dealer market for the security. A member's obligations to his customer are generally not fulfilled when he channels transactions through another broker/dealer or some person in a similar position, unless he can show that by so doing he reduced the costs of the transactions to the customer.]

[(c)] When a member cannot execute directly with a market [maker] but must employ a broker's broker or some other means in order to [i]ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the [retail firm] member. [Examples of acceptable circumstances are where a customer's order is "crossed" with another retail firm which has a corresponding order on the other side, or where the identity of the retail firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer.]

[(d)] Failure to maintain or adequately staff an over-the-counter order room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business operate to relieve a member of [his] its obligations under this Rule. However, the channeling of customers' orders through a broker's broker or third party pursuant to established correspondent relationships under which executions are confirmed directly to the member acting as agent for the customer, such as where the third party gives up the name of the [retail] firm, are not prohibited if the cost of such service is not borne by the customer.

[(e)] A member through [whom] which an [retail] order is channeled, as described above, and [who] that knowingly is a party to an arrangement whereby the initiating member has not fulfilled [his] its obligations under this Rule, will also be deemed to have violated this Rule.

[(f)] The obligations described in paragraphs (a) through [(e)] above exist not only where the member acts as agent for the account of [his] its customer but also where [retail] transactions are executed as principal and contemporaneously offset.

Such obligations [do not relate to] are distinct from the reasonableness of commission rates, markups or markdowns, which are governed by NASD Rule 2440 and IM-2440.

(f)(1) A member will be deemed to have met the obligations described in paragraphs (a) through (e) above with respect to an order if:

(A) the order is for a non-U.S. traded security;

(B) the member has adopted written policies and procedures regarding its handling of orders for non-U.S. traded securities that are reasonably designed to obtain the most favorable terms available for the customer;

(C) the member reviews those policies and procedures at least annually, or more frequently as appropriate, to assess the quality of execution venues included in the member's policies and procedures to determine whether they provide for the most favorable terms reasonably available and whether the policies and procedures need to be updated or revised;

(D) the member has obtained the consent of the customer to the member's policies and procedures regarding its handling of orders for non-U.S. traded securities; and

(E) the member handles the order in accordance with its policies and procedures.

(2) For purposes of this paragraph (f):

(A) the term "non-U.S. traded security" means any non-exchange-listed security issued by a corporation or other entity incorporated or organized under the laws of any foreign country for which there is no quotation or indication of interest displayed in any quotation medium in the United States at the time the member receives the order; and

(B) the term "quotation medium" means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

[(g)(1) Except as provided in subparagraph (3) below, in any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security (as defined in the Rule 6600 Series), a member or person associated with a member shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.]

[(2) Members that display priced quotations on a real-time basis for a non-exchange-listed security in two or more quotation mediums that permit quotation updates on a real-time basis must display the same priced quotations for the security in each medium.]

[(3) The requirements described in subparagraph (1) above shall not apply:]

[(A) when two or more priced quotations for a non-exchange-listed security are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis; or]

[(B) to any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security of a foreign issuer that is part of the FTSE All-World Index if such transaction is executed during the regular business hours of the foreign market for the foreign security and no trading halt or other similar trading or quoting restriction is in effect in any foreign market on which such foreign security is listed; or]

[(C) to any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security that is listed on a Canadian exchange, provided that (i) such order is executed by the member or a person associated with the member on a Canadian exchange in an agency or riskless principal capacity; and (ii) the member or a person associated with the member conducts, pursuant to NASD Rule 2320(a) and the duty of best execution, regular and rigorous reviews of the quality of the execution of such orders in such securities.]

[(4) Definitions]

[For purposes of this paragraph (g):]

[(A) The term “inter-dealer quotation system” means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.]

[(B) The term “quotation medium” means any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.]

[(5) Pursuant to the Rule 9600 Series, the staff, for good cause shown, after taking into consideration all relevant factors, may exempt any transaction or classes of transactions, either unconditionally or on specified terms, from any or all of the provisions of this paragraph if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest.]

* * * * *

[IM-2320. Interpretive Guidance with Respect to Best Execution Requirements]²

... Supplementary Material:

[Rule 2320(a) requires, among other things, that a member or person associated with a member comply with Rule 2320(a) when customer orders are routed to it from another broker/dealer for execution. This Interpretive Material addresses certain interpretive questions concerning the applicability of the best execution rule.]

.01 Execution of Customer Market Orders.— A member must make every effort to execute a customer market order that it receives fully and promptly.

.02 Definition of “Market.”— [The term “market” has been in the text of Rule 2320 since its adoption, but it is an undefined term.] For the purposes of Rule 5310 and the accompanying Supplementary Material [2320], the term “market” or “markets” is to be construed broadly, and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security. This expansive interpretation is meant to both inform broker[/]-dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best execution obligations and to promote fair competition among broker[/]-dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a firm’s best execution obligations.

² The draft text is marked to show changes between IM-2320 and the Supplementary Material to proposed FINRA Rule 5310.

.03 Best Execution and Debt Securities.— Rule 5310(a)(1)(D) [2320(a)(4)] provides that one of the factors used to determine if a member has used reasonable diligence in exercising best execution is the “accessibility of the quotation.” [“location and accessibility to the customer’s broker/dealer of primary markets and quotations sources.”] In the context of the debt market, this means that, when quotations are available, [NASD] FINRA will consider the [“]accessibility of such quotations[”] when examining whether a member has used reasonable diligence. For purposes of debt securities, the term “quotation” refers to either dollar (or other currency) pricing or yield pricing. [NASD notes, however, that a]Accessibility is only one of the non-exhaustive reasonable diligence factors set out in Rule 5310(a)(1) [2320]. In the absence of accessibility, members are not relieved from taking reasonable steps and employing their market expertise in achieving the best execution of customer orders.

.04 Best Execution and Executing Brokers.— [Lastly, NASD is clarifying that a] A member’s duty to provide best execution in any transaction “for or with a customer of another broker[/]-dealer” does not apply in instances when another broker[/]-dealer is simply executing a customer order against the member’s quote. [Stated in another manner, t]The duty to provide best execution to customer orders received from other broker[/]-dealers arises only when an order is routed from the broker[/]-dealer to the member for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in which the member is acting solely as the buyer or seller in connection with orders presented by a broker[/]-dealer against the member’s quote, as opposed to those circumstances in which the member is accepting order flow from another broker[/]-dealer for the purpose of facilitating the handling and execution of such orders.

.05 Use of a Broker’s Broker.— Paragraph (b) of the Rule provides that when a member cannot execute directly with a market but must employ a broker’s broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the member. Examples of acceptable circumstances are where a customer’s order is “crossed” with another firm that has a corresponding order on the other side, or where the identity of the firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer.

.06 Orders Involving Non-Exchange-Listed Securities with Limited Quotation

Information.— Although the best execution requirements in Rule 5310 apply to orders in all securities, markets for securities differ dramatically. One of the areas in which a member must be especially diligent in ensuring that it has met its best execution obligations is with respect to customer orders involving non-exchange-listed securities for which there are limited quotations available. Each member must have written policies and procedures in place that address the steps the member will take to determine the best inter-dealer market for such a security in the absence of multiple quotations and must document its compliance with those policies and procedures. For example, a member should analyze pricing information based on other data, such as previous trades in the security, to determine whether the resultant price to the customer is as favorable as possible under prevailing market conditions. In these instances, a member should generally seek out other sources of potential liquidity, which may include contacting and obtaining quotations from other dealers (e.g., other firms that the member has traded with in the past in the security).

.07 Customer Instructions Regarding Order Handling.— If a member receives an unsolicited instruction from a customer to route that customer's order to a particular market for execution, the member is not required to make a best execution determination beyond the customer's specific instruction. Members are, however, still required to process that customer's order promptly and in accordance with the terms of the order. Where a customer has directed that an order be routed to another specific broker-dealer that is also a FINRA member, the receiving broker-dealer to which the order was directed would be required to meet the requirements of Rule 5310 with respect to its handling of the order.

.08 Regular and Rigorous Review of Execution Quality.—

(a) No member can transfer to another person its obligation to provide best execution to its customers' orders. A member that routes customer orders to other broker-dealers for execution on an automated, non-discretionary basis, as well as a member that internalizes customer order flow, must have procedures in place to ensure the member periodically conducts regular and rigorous reviews of the quality of the executions of its customers' orders (as opposed to an order-by-order review). The review must be conducted on a security-by-security, type-of-order bases (e.g., limit order, market order, and market on open order). At a minimum, a member should conduct such reviews on a quarterly basis; however, members should consider, based on the firm's business, whether more frequent reviews are needed.

(b) In conducting its regular and rigorous review, a member must determine whether any material differences in execution quality exist among the markets trading the security and, if so, modify the member's routing arrangements or justify why it is not modifying its routing arrangements. To assure that order flow is directed to markets providing the most beneficial terms for their customers' orders, the analysis must compare, among other things, the quality of the executions the member is obtaining via current order routing and execution arrangements (including the internalization of order flow) to the quality of the executions that the member could obtain from competing markets. In reviewing and comparing the execution quality of its current order routing and execution arrangements to the execution quality of other markets, a member should consider the following factors:

(1) material price improvement opportunities (i.e., the difference between the execution price and the best quotes prevailing at the time the order is received by the market);

(2) material differences in price disimprovement (i.e., situations in which a customer receives a worse price at execution than the best quotes prevailing at the time the order is received by the market);

(3) the likelihood of execution of limit orders;

(4) the speed of execution;

(5) the size of execution;

(6) transaction costs;

(7) customer needs and expectations; and

(8) the existence of internalization or payment for order flow arrangements.

(c) An introducing firm that routes its order flow to its clearing firm or other executing broker-dealer can rely on the clearing or executing firm's regular and rigorous review as long as the statistical results and rationale of the review are fully disclosed to the introducing firm and the introducing firm periodically reviews how the clearing or executing firm is conducting that review, as well as the results of that review.

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PROPOSED FINRA MULTIPLE QUOTATION RULE

6480. Displaying Priced Quotations in Multiple Quotation Mediums³

(a) Members that display priced quotations on a real-time basis for a non-exchange-listed security in two or more quotation mediums that permit quotation updates on a real-time basis must display the same priced quotations for the security in each medium.

(b) For purposes of paragraph (a), the term “quotation medium” means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

³ Proposed FINRA Rule 6480 adopts the requirements previously codified in NASD Rule 2320(g)(2) and (g)(4).