Regulatory Notice 09-54

Trade Reporting

SEC Approves Amendments Requiring Related Market Center Indicator in Non-Tape Reports Submitted to FINRA

Effective Date: March 1, 2010

September 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Senior Management
- Systems
- Trading
- Training

Key Topic(s)

- Agency Trades
- Alternative Display Facility
- NMS Stocks
- Non-Tape Reports
- OTC Equity Securities
- OTC Reporting Facility
- Related Market Center
- Riskless Principal Trades
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 7130
- FINRA Rule 7230A
- FINRA Rule 7230B
- FINRA Rule 7330
- Regulatory Notice 07-38

Executive Summary

Effective Monday, March 1, 2010, firms submitting a non-tape report (either a non-tape, non-clearing report or clearing-only report) to the Alternative Display Facility (ADF), a Trade Reporting Facility (TRF) or the OTC Reporting Facility (ORF) (referred to herein as the "FINRA Facilities") associated with a previously executed trade that was not reported to that same FINRA Facility must identify the facility or market where the associated trade was reported for dissemination purposes (the "Related Market Center").

The text of the amendments can be found at: *www.finra.org/rulefilings/2007-012*.

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.

Financial Industry Regulatory Authority

Background and Discussion

New Related Market Center Reporting Requirement

Certain over-the-counter (OTC) equity transactions (including OTC transactions in NMS stocks and OTC equity securities, such as OTC Bulletin Board and Pink Sheets securities) are reported to FINRA in related tape and non-tape reports.[1] For example, a riskless principal transaction[2] can be submitted to FINRA as a single tape 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. Agency transactions in which a firm acts as agent on behalf of another member firm also are reported in related tape and non-tape reports. Under FINRA rules, firms are not required to submit related tape and non-tape reports to the same FINRA Facility for such riskless principal and agency transactions.[3]

Because a non-tape report provides no specific information linking it to a related tape report, it is difficult for FINRA to determine with certainty where the associated trade was reported, especially if that trade was reported through an exchange or to another FINRA Facility. In this regard, on May 12, 2009, the SEC approved amendments[4] to FINRA trade reporting rules to require that firms identify the Related Market Center in any non-tape report (either a non-tape, non-clearing report or clearing-only report) submitted to a FINRA Facility associated with a previously executed trade that was not reported to that same FINRA Facility.[5] In addition, firms are required to retain and produce to FINRA, upon request, documentation relating to the associated trade (*e.g.*, a confirmation from the exchange identifying the "street side" of a riskless principal transaction).

For example, if the initial leg of a riskless principal (or agency) transaction is executed on and reported through Exchange A and a firm submits a non-tape report for the offsetting leg of the transaction to a FINRA Facility, the non-tape report must include the unique indicator to identify Exchange A as the Related Market Center. By way of further example, if the initial leg is executed OTC and reported to TRF A and a firm submits a non-tape report for the offsetting leg to another FINRA Facility, the non-tape report must include the unique indicator to identify TRF A as the Related Market Center. Finally, if, for example, the initial leg is executed on and reported through a foreign exchange and a firm submits a non-tape report for the offsetting leg to a FINRA Facility, the non-tape report must include the unique indicator to identify "foreign exchange" as the Related Market Center.

When a firm submits a non-tape report to FINRA, the firm should have an affirmative basis to believe the underlying transaction has been properly reported to the tape, and FINRA expects firms to provide as much information pertaining to the Related Market Center as is available at the time the non-tape report is submitted. FINRA notes that the submission of non-tape reports is not subject to the 90-second reporting requirement under FINRA trade reporting rules. Thus, firms have until the end of the day on trade date to submit non-tape reports with the required Related Market Center information, unless a shorter reporting time is required under other FINRA rules.[6]

Populating the Related Market Center Field in Specific Reporting Scenarios

Provided below is guidance to assist firms in populating the Related Market Center field in specific reporting scenarios. For ease of reference, this guidance also is summarized in the chart at the end of this *Notice*. Firms must consult the applicable technical specifications for the FINRA Facility to which they are reporting for information on the specific data entries for a particular Related Market Center.[7]

FINRA expects that with this guidance, firms will 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). If a firm leaves the Related Market Center field blank, it is making an affirmative representation that the non-tape report and the associated tape report were submitted to the same FINRA Facility. In fact, that is the only instance in which it is acceptable for a firm not to populate the Related Market Center field.

In situations where there is a one-to-one relationship between associated tape and non-tape reports (that are not submitted to the same FINRA Facility), the following guidance applies. Where a single non-tape report is related to a single tape report, the firm must identify in the non-tape report the specific exchange or FINRA Facility to which the associated tape report was submitted. Where the initial leg of the transaction was executed on and reported through a foreign exchange, the firm must include a standard indicator for "foreign exchange"; firms are not required to identify the specific foreign exchange in the Related Market Center field.

In all other situations where there is not a one-to-one relationship between associated tape and non-tape reports, the following guidance applies. Where multiple tape reports are made to a single exchange or, in the case of OTC trades, a single FINRA Facility, that exchange or facility must be properly reflected in the associated non-tape report(s). Where multiple tape reports are made to different exchanges and/or FINRA Facilities, the firm is not required to identify the specific exchanges or facilities in the associated non-tape report(s), but is required to populate the Related Market Center field with a standard indicator representing "multiple venues." By selecting "multiple venues," a firm is affirmatively representing that it has a basis to believe the underlying transactions have been properly reported to the tape by more than one exchange or facility.

Firms have indicated to FINRA that where an order is routed to an exchange or to another firm ("routed venue"), a firm may not know where the trade was ultimately executed or, in the case of OTC trades, where the trade was ultimately reported. If the routed venue provides information about where the trade is tape reported, the firm must identify the exchange or FINRA Facility, as applicable, in the associated non-tape report(s). If, however, the routed venue does not provide such information and the firm has no other basis for identifying the relevant exchange or FINRA Facility, the firm must populate the Related Market Center field with a standard indicator representing "unknown venue." By using the "unknown venue" code, a firm is affirmatively representing that the non-tape report is associated with a tape-reported trade execution, and the firm must 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 OTC trades, the FINRA Facility where the trade was tape reported). In instances where the firm knows that multiple tape reports were made to multiple exchanges and/or FINRA Facilities, the firm must report "multiple venues" instead of "unknown venue"—even though one or more of the multiple venues may be unknown to the firm.[8]

Tape Report	Populate Related Market Center Field in Associated Non-Tape Report With Indicator for...
Single tape report through a single exchange or FINRA Facility	Specific exchange or facility
Single tape report through a single foreign exchange	"Foreign exchange"
Multiple tape reports through a single exchange or FINRA Facility	Specific exchange or facility
Multiple tape reports through one or more foreign exchanges	"Foreign exchange"
Multiple tape reports through different exchanges and/or FINRA Facilities	"Multiple venues"
Routed venue provides information about where the trade was ultimately executed and/or reported	Specific exchange or facility
Routed venue does not provide information about where the trade was ultimately executed and/or reported	"Unknown venue"
Multiple tape reports through different exchanges and/or FINRA Facilities and one or more are unknown to the firm	"Multiple venues"
Non-tape report and associated tape report(s) submitted to the same FINRA Facility	Leave Related Market Center field blank (only instance this field is permitted to be blank)

Endnotes

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 to 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 firms to clear and settle transactions; information reported to FINRA in a clearing report is transmitted by FINRA to the National Securities Clearing Corporation for clearance and settlement. Clearing reports also can be used to satisfy a firm's obligation to provide regulatory information to FINRA, if applicable.

2 For purposes of OTC trade reporting requirements applicable to equity securities, a "riskless principal" transaction is a transaction in which a firm, 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).

3 *See Regulatory Notice 07-38* (August 2007).

4 *See* Securities Exchange Act Release No. 59905 (May 12, 2009), 74 FR 23455 (May 19, 2009) (order approving SR-FINRA-2007-012).

5 *See* FINRA Rules 7130(d), 7230A(i), 7230B(h) and 7330(h).

6 *See Trade Reporting Frequently Asked Questions*, FAQ 102.2, at *www.finra.org/tradereportingfaq*.

7 The applicable technical specifications can be found on the FINRA Web site at:*www.finra.org/Industry/Compliance/MarketTransparency/index.htm*.

8 FINRA notes that where a firm 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 firm, the trade is ultimately executed somewhere other than the routed exchange. The same approach holds true with respect to reporting to other FINRA Facilities. *See supra* note 4.