

Trade Reporting

SEC Approves Amendments to Require Reporting of OTC Trades in Equity Securities Within 30 Seconds of Execution

Effective Date: November 1, 2010

Executive Summary

Effective Monday, November 1, 2010, firms are required to report over-the-counter transactions in equity securities¹ to FINRA within 30 seconds of execution. The new reporting time frame also applies to trade cancellations that currently are subject to 90-second reporting, as well as stop stock and prior reference price trades.

Also effective as part of the November 1, 2010, changes, firms are required to report secondary market transactions in non-exchange-listed direct participation program securities within 30 seconds of execution. Therefore, such transactions will be subject to regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws.

Firms that rely on manual trade reporting processes may qualify for an additional six months for implementation, as described in this *Notice*.

The text of the amendments is available at www.finra.org/rulefilings/2009-061.

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.

April 2010

Notice Type

- Rule Amendment

Suggested Routing

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

Key Topics

- Alternative Display Facility
- Direct Participation Program Securities
- NMS Stocks
- OTC Equity Securities
- OTC Reporting Facility
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 2010
- FINRA Rule 6282
- FINRA Rule 6380A
- FINRA Rule 6380B
- FINRA Rule 6622
- FINRA Rule 7130
- FINRA Rule 7230A
- FINRA Rule 7230B
- FINRA Rule 7330
- Schedule A to the FINRA By-Laws

Background and Discussion

30-Second Trade Reporting Requirement

The SEC recently approved amendments to require firms to report over-the-counter (OTC) transactions in equity securities that are executed during the hours that the FINRA trade reporting facilities are open within 30 seconds of execution.² Trades not reported within 30 seconds of execution, unless expressly subject to a different reporting requirement or excluded from the trade reporting rules altogether, are late.

Thus, the amendments reduce the reporting time frame from 90 to 30 seconds, and all references to 90 seconds in FINRA trade reporting rules are replaced with 30 seconds.³ The amendments also apply to trade cancellations that currently are subject to 90-second reporting. Specifically, trades executed during normal market hours and canceled during normal market hours on trade date must be reported within 30 seconds of cancellation. Additionally, the amendments apply to stop stock and prior reference price trades. If the trade is executed within 30 seconds of the time the parties agree to the stop stock price, the stop stock modifier should not be used. Similarly, if the trade is executed within 30 seconds of the prior reference point in time, firms should not use the prior reference price modifier.

FINRA reminds firms that they must report trades as soon as practicable and cannot withhold trade reports; *e.g.*, by programming their systems to delay reporting until the last permissible second. Additionally, FINRA reiterates the importance of timely reporting. A pattern and practice of late reporting may be considered inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

Reporting Trades in Non-Exchange-Listed DPP Securities

Pursuant to the amendments, firms are required to report secondary market transactions in non-exchange-listed direct participation program (DPP) securities to FINRA within 30 seconds of execution.⁴ For purposes of the 30-second reporting requirement, the “date of execution” and the “time of execution” are defined under the amendments (as well as current rules) as the date and time, respectively, when the parties to a transaction in a DPP have agreed to all of the essential terms of the transaction, including the price and number of units to be traded.⁵

As a result of the amendments, transactions in non-exchange-listed DPPs are now subject to regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws (Section 3).⁶

Implementation Schedule

The amendments above become effective pursuant to the following implementation schedule:

Phase I implementation date (for all firms other than qualifying Manual Reporting Firms): Monday, November 1, 2010

Phase II implementation date (for qualifying Manual Reporting Firms only): Monday, May 2, 2011

A “Manual Reporting Firm” is a firm that uses a manual process such as WeblinkACT (also commonly referred to as the NASDAQ or ACT workstation) for all, or substantially all, of its trade reporting of OTC trades. Firms with automated processes that—on occasion—manually report trades do not fall within the scope of this definition and must comply with the Phase I implementation date for all of their trade reporting.⁷

Firms must submit advance written notice to FINRA that they are a “Manual Reporting Firm” and thereby qualify for Phase II implementation, and they must include a description of their current manual process. Such notice should be submitted at least 30 business days prior to the Phase I implementation date—by September 20, 2010—to FINRA’s Market Regulation Department:

FINRA
Market Regulation Department
Attn: Director of Trade Reporting
9509 Key West Avenue
Rockville, MD 20850

Firms with manual trade reporting systems that do not provide advance notice must comply with the amendments beginning on November 1, 2010.

Prior to May 2, 2011, qualifying Manual Reporting Firms are required to report as promptly as practicable—and in no event more than 90 seconds—following trade execution.⁸ However, as of November 1, 2010, all trades reported more than 30 seconds after execution will be modified as late for reporting and dissemination purposes. In this way, market participants will have certainty that any trade disseminated as timely reported was executed within the prior 30 seconds.

Effective May 2, 2011, all firms must comply with the 30-second trade reporting requirement.

Endnotes

- 1 Specifically, these are (1) transactions in NMS stocks effected otherwise than on an exchange, which are reported through the Alternative Display Facility (ADF) or a Trade Reporting Facility (TRF); and (2) transactions in OTC equity securities (*e.g.*, OTC Bulletin Board, Pink Sheets and non-exchange-listed direct participation program securities), which are reported through the OTC Reporting Facility (ORF).

FINRA notes that “OTC equity security” does not include restricted securities under Securities Act Rule 144(a)(3). Hence, transactions in these securities are not subject to 90-second reporting, nor are they impacted by the amendments discussed herein. See SR-FINRA-2010-003.
- 2 See Securities Exchange Act Release No. 61819 (March 31, 2010), 75 FR 17806 (April 7, 2010) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of File No. SR-FINRA-2009-061).
- 3 See FINRA Rules 6282(a); 6380A(a) and (g); 6380B(a) and (f); 6622(a) and (f); 7130(b); 7230A(b); 7230B(b); and 7330(b).
- 4 See FINRA Rule 6622. These transactions are no longer subject to a separate rule series (the FINRA Rule 6640 Series has been deleted in its entirety) and must be reported as any other OTC equity security pursuant to the FINRA Rule 6620 and 7300 Series.
- 5 See FINRA Rule 6622.01.
- 6 Pursuant to Section 31 of the Exchange Act, 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.
- 7 In other words, firms with automated trade reporting processes cannot qualify for Phase I implementation for some trades and Phase II implementation for other trades.
- 8 These firms also will continue to be subject to all other reporting time frames under FINRA rules (*e.g.*, the obligation to report trades executed between midnight and 8 a.m. by 8:15 a.m. Eastern Time on trade date).

Additionally, FINRA notes that qualifying Manual Reporting Firms will be required to report transactions in non-exchange-listed DPPs within 90 seconds of execution, and such transactions will be subject to Section 3 fees.