Trade Reporting Notice

Weighted-Average Price/Special Pricing Formula Trade Modifier

Executive Summary

FINRA is issuing new guidance on the use of the weighted-average price/ special pricing formula (.W) trade modifier for reporting certain types of OTC trades in NMS stocks to FINRA. Firms must make the systems changes necessary to properly modify trades in accordance with this guidance no later than October 18, 2010 (60 days from the date of this *Notice*).

Questions regarding this *Notice* may be directed to:

➤ The Legal Section, Market Regulation, at (240) 386-5126; or

➤ FINRA Operations, at (866) 776-0800; or

➤ Office of General Counsel, at (202) 728-8071.

Discussion

Firms must use the weighted-average price/special pricing formula (.W) trade modifier on trade reports submitted to the Alternative Display Facility or a Trade Reporting Facility reflecting the following types of trades:

➤ Qualified contingent transactions, in accordance with the SEC's Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934 and Order Modifying the Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934.

➤ Certain transactions to correct bona fide errors in the execution of customer orders, in accordance with the SEC's Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS.

➤ Certain transactions that offer print protection to displayed customer orders when trades are reported at prices inferior to such orders, in accordance with the SEC's Order Exempting Certain Print Protection Transactions from Rule 611 of Regulation NMS.

Key Topic(s)

➤ Alternative Display Facility
➤ NMS Stocks
➤ Trade Reporting
➤ Trade Reporting Facilities
➤ Trading Halts

Referenced Rules & Notices

➤ FINRA Rule 6121
➤ FINRA Rule 6282
➤ FINRA Rule 6380A
➤ FINRA Rule 6380B
➤ Notice to Members 07-23
➤ Regulatory Notice 10-30
➤ SEC Regulation NMS
➤ Trade Reporting Notice 2/24/2009

FINRA
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FINRA rules require that firms use unique trade modifiers to indicate whether a transaction qualifies for an exception or exemption to Rule 611 of SEC Regulation NMS at the time of the trade.[1] Thus, firms must report the above transactions to FINRA with the appropriate trade modifiers in Trade Modifier Field 2 (Reason for SEC Rule 611 Exception or Exemption).[2]

FINRA believes these types of transactions also are consistent with the intended scope of the .W trade modifier, which is used to indicate that the price of a reported trade may bear no relation to the current market. Accordingly, firms also must use the .W in Trade Modifier Field 4 (SRO Required Detail) when reporting these transactions to FINRA, unless another Field 4 trade modifier applies.

Firms should regularly review their use of trade modifiers to ensure that they are accurately reporting trade information and applicable modifiers on all trade reports submitted to FINRA. Proper use of trade modifiers has become increasingly important because of the recently implemented single-stock trading pause pilot.[3] Specifically, a firm that incorrectly modifies a trade in certain stocks can now trigger a trading pause, and trading in the stock may be unnecessarily halted, which is inconsistent with the intent and purpose of the trading pauses. Because the transactions noted above are not necessarily based on the current market price of the security when reported, FINRA believes that they are not appropriate triggers for a trading pause and should be marked with the .W trade modifier.

Firms must make the systems changes necessary to properly modify trades in accordance with this guidance as soon as possible, and no later than October 18, 2010 (60 days from the date of this *Notice*). In order to avoid the situation where a trading pause is inappropriately triggered in the near term, the FINRA/NASDAQ TRF and FINRA/NYSE TRF will automatically append the .W trade modifier for those trades where the firm has appended in Trade Modifier Field 2 the appropriate modifier for qualified contingent trade, error correction or print protection, and Trade Modifier Field 4 is blank. This automated solution will be ready on or before Tuesday, September 7, 2010. However, the input of modifiers is the obligation of the firm reporting the trade and, as noted above, firms must complete their systems changes by October 18, 2010.

Firms are reminded that the facts and circumstances of the particular trade dictate the appropriate modifier that must be reported in each field.[4] Accordingly, the reporting firm must include in the trade report all of the information that is pertinent to a particular transaction. To determine what modifiers must be included in a particular transaction report, firms should analyze each Trade Modifier Field individually to determine what, if any, modifier is applicable for the transaction that is being reported.

Endnotes

1   *See Notice to Members (NTM) 07-23* (May 2007) and *Trade Reporting Notice 2/24/09.*

2   The Trade Modifier Fields are described more fully in *NTM 07-23* and *Trade Reporting Notice 2/24/09.* For example, although the trade modifier ".V" is generally used in Trade Modifier Field 2 for qualified contingent trades, the specific data entries used to report trades may vary depending upon the specific platform or system used. Firms must review and report in accordance with the applicable system specifications. ADF and TRF technical specifications can be found on the FINRA Web site at *www.finra.org/Industry/Compliance/MarketTransparency/index.htm.*

3   *See* FINRA Rule 6121 and *Regulatory Notice 10-30* (June 2010).

4   *See NTM 07-23, Trade Reporting Notice 2/24/09* and *Trade Reporting Frequently Asked Questions*, FAQ 400.1 at *www.finra.org/Industry/Regulation/Guidance/p038942#400.*