

Trade Reporting Notice

Trade Reporting Transactions in OTC Equity Securities and Restricted Equity Securities

Executive Summary

FINRA is issuing this *Notice* to remind firms that over-the-counter (OTC) trades in OTC Equity Securities and trades in Restricted Equity Securities under Securities Act Rule 144A must be reported to FINRA in accordance with FINRA trade reporting rules. If a firm executes a trade in a security for which there is no valid OTC symbol, the firm must obtain a symbol so it can fulfill its trade reporting obligations.

Questions regarding this *Notice* should be directed to:

- ▶ Legal Section, Market Regulation, at (240) 386-5126;
- ▶ FINRA Operations, at (866) 776-0800; or
- ▶ Office of General Counsel, at (202) 728-8071.

Discussion

All OTC transactions in OTC Equity Securities must be reported to the OTC Reporting Facility (ORF), in accordance with the FINRA Rule 6600 and 7300 Series, unless they fall within an express exception.¹ The term “OTC Equity Security” is defined in FINRA Rule 6420 as any equity security that is not an “NMS stock”;² provided, however, that the term OTC Equity Security shall not include any “Restricted Equity Security.” Thus, “OTC Equity Security” is broadly defined and could include non-exchange-listed equity securities of issuers that have recently emerged from bankruptcy, have no visible public market or are closely held, and non-exchange-listed contingent value rights.

“Restricted Equity Security” is defined in Rule 6420 as any equity security that meets the definition of “restricted security” as contained in Securities Act Rule 144(a)(3). Transactions in Restricted Equity Securities effected under Securities Act Rule 144A must be reported to the ORF.³ Transactions in Restricted Equity Securities that are not effected under Rule 144A are not reportable.

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Key Topics

- ▶ Non-NMS Stock
- ▶ OTC Equity Security
- ▶ OTC Reporting Facility
- ▶ OTC Symbol
- ▶ Restricted Equity Security
- ▶ Trade Reporting
- ▶ “When, As and If” Issued

Referenced Rules & Notices

- ▶ FINRA Rule 2010
- ▶ FINRA Rule 6420
- ▶ FINRA Rule Series 6600
- ▶ FINRA Rule 6622
- ▶ FINRA Rule Series 7300
- ▶ Regulatory Notice 09-05
- ▶ Securities Act Rule 144
- ▶ Securities Act Rule 144A

From time to time, FINRA receives inquiries about whether certain securities are OTC Equity Securities or Restricted Equity Securities. FINRA is reminding firms that they must have policies and procedures and internal controls in place, including, as necessary, consultation with their counsel, to determine whether FINRA trade reporting obligations are triggered, whether a security meets the definition of OTC Equity Security or Restricted Equity Security and whether any exceptions apply.

In instances where a security does not have a valid OTC symbol assigned, a firm must promptly request that FINRA Operations assign a symbol so that the firm can fulfill its trade reporting obligations. Firms should submit the request on the [OTC Equity Symbol Request Form](#) and must provide all requested information, including a CUSIP number for the security.⁴ (FINRA does not issue OTC symbols for any equity security that does not have a CUSIP number.⁵) If the security does not have a symbol at the time the trade is executed, the trade should be reported to FINRA immediately upon the issuance of the symbol and be marked late, as applicable. If the trade is not reported on the trade date, it should be reported on an “as/of” basis using the original execution date as the trade date.

The fact that a security does not have a valid symbol at the time of execution of the trade does not relieve a firm of its trade reporting obligations under FINRA rules. As noted above, a firm with a trade reporting obligation must promptly take the necessary steps to have a symbol assigned and report the trade. Failure to do so is a violation of FINRA trade reporting rules. Moreover, a pattern and practice of executing reportable trades without obtaining a symbol and reporting the trade to FINRA may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

Firms are reminded that the issuance of an OTC symbol does not otherwise represent a review by FINRA of the tradeability of the security or the adequacy of any disclosures. For example, FINRA receives and processes requests for symbols for “when, as and if issued” contracts; however, the processing and issuance of such symbols does not represent a view by FINRA that the transactions are bona fide and/or subject to (or exempt from) any requirements or prohibitions under the federal securities laws. Those questions are matters of interpretation under the federal securities laws and are neither within the scope of FINRA’s responsibilities under the Uniform Practice Code nor will otherwise be addressed by FINRA as part of the symbol issuance process. Consequently, firms may not rely on the issuance of a trading symbol as permitting, excusing or mitigating any conduct that violates the federal securities laws and/or FINRA rules.⁶ Firms also are reminded of their responsibility to ensure that they comply with the federal securities laws and FINRA rules when participating in unregistered resales of restricted securities.⁷

Endnotes

1. As a general matter, certain transactions and transfers are not reported to FINRA at all (*e.g.*, trades executed and reported through an exchange, including a foreign exchange, and transfers made pursuant to an asset purchase agreement that has been approved by a bankruptcy court), while other transactions are reported to FINRA only for regulatory transaction fee assessment purposes under Section 3 of Schedule A to the FINRA By-Laws (*e.g.*, away from the market sales and transfers in connection with certain corporate control transactions). See FINRA Rule 6622(e).
2. “NMS stock” is defined in Rule 600(b) of SEC Regulation NMS as any NMS security other than an option. “NMS security” is defined as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.”
3. See FINRA Rule 6622(a)(3).
4. See [Trade Reporting FAQ #105.1](#).
Firms should use the OTC Equity Symbol Request Form to request symbols for Restricted Equity Securities. The form includes a box to indicate that the security is restricted, and the requesting firm must submit a letter of tradeability with the request.
5. See [Trade Reporting FAQ #105.4](#).
6. See, *e.g.*, [Uniform Practice Advisory \(UPC # 023-2007\)](#) August 21, 2007.
7. See [Regulatory Notice 09-05](#) (January 2009).