

Regulatory Notice

12-19

Regulation M

FINRA Announces New Electronic Process for Submission of Notice and Information Relating to Distributions Subject to SEC Regulation M

Effective Date: June 4, 2012

Executive Summary

FINRA is reminding firms of their notification obligations under FINRA Rules 5190 and 6275(f), and FINRA trade reporting rules relating to distributions that are subject to SEC Regulation M. In addition, FINRA is announcing a new process for the electronic submission of the notice and information required under the rules.

Effective June 4, 2012, firms are required to make submissions under Rule 5190, Rule 6275(f) and applicable trade reporting rules in accordance with the new electronic submission process. Prior to the effective date, FINRA will provide access to the system for testing purposes.

Questions regarding this *Notice* may be directed to:

- ▶ Scott Trilling, Deputy Director, Market Regulation Department, at (240) 386-5113;
- ▶ Melissa Springer, Team Leader, Market Regulation Department, at (240) 386-5088;
- ▶ John Scrofani, Director, NY Equities Section of the Market Regulation Department, at (917) 281-3117;
- ▶ FINRA's Regulation M Filings General Inquiry Line, at (240) 386-5560; or
- ▶ Office of General Counsel at (202) 728-8071.

April 2012

Type of Notice

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Corporate Financing
- ▶ Executive Representatives
- ▶ Legal
- ▶ Senior Management
- ▶ Trading
- ▶ Training

Key Topics

- ▶ Alternative Display Facility
- ▶ Distributions
- ▶ NMS Stocks
- ▶ OTC Equity Securities
- ▶ SEC Regulation M
- ▶ Securities Offerings
- ▶ Trade Reporting
- ▶ Unregistered Secondary Distributions

Referenced Rules & Notices

- ▶ FINRA Rule 5190
- ▶ FINRA Rule 6275
- ▶ FINRA Rule 6282
- ▶ FINRA Rule 6380A
- ▶ FINRA Rule 6380B
- ▶ FINRA Rule 6622
- ▶ Regulatory Notice 08-74
- ▶ Regulatory Notice 11-40
- ▶ SEC Regulation M



Financial Industry Regulatory Authority

Background and Discussion

Under FINRA Rules 5190 and 6275(f), firms must provide FINRA notice and information relating to activities in connection with a distribution subject to SEC Regulation M. For example, under Rule 5190(c), a firm that is participating in a distribution subject to a restricted period under Rule 101 of Regulation M must provide notice to FINRA no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances. Under Rule 6275(f), an ADF Market Maker is required to request excused withdrawal status (and rescission of such status) to comply with an applicable restricted period under Regulation M. Currently, firms submit notice and information to FINRA on the Regulation M Restricted Period Notification Form, Regulation M Trading Notification Form or Regulation M Notice of Intent to Impose a Penalty Bid and/or Effect a Syndicate Covering Transaction Form, as applicable, via email, facsimile or a third-party vendor.¹

In addition, under FINRA trade reporting rules applicable to OTC equity transactions,² firms are required to provide notice and information to FINRA when they rely on the exception from the trade reporting requirements for transactions that are part of an “unregistered secondary distribution.”³ Currently, firms provide such notice and information to FINRA on the Regulation M Trading Notification Form.⁴

FINRA is establishing a new process for the electronic submission to FINRA of the notice and information relating to distributions subject to Regulation M required under Rule 5190, Rule 6275(f) and the trade reporting rules. As of June 4, 2012, firms are required to make all such submissions electronically through the FINRA [Firm Gateway](#). After that date, firms can no longer use the forms and processes mentioned above. Through the website, in addition to submitting the required notice and information electronically, firms will be able to view, edit and delete their submissions, as well as view their prior submissions.⁵

Access to the new electronic process will require a FINRA user ID and password administered under the FINRA Entitlement Program. Users should contact their firm’s Super Account Administrator (SAA) to assist with establishing a new FINRA user ID and password, or they can use an existing user ID and password to access the system. SAAs may contact the FINRA Help Desk at (800) 321-6273 with questions.

FINRA notes that firms’ notification obligations under Rule 5190, Rule 6275(f) and the applicable trade reporting rules have not changed. FINRA is merely establishing a new and enhanced process for submitting notice and information under the rules.

FINRA further notes that some firms also may have obligations under the Regulation M-related notification rules of a national securities exchange. With respect to NYSE Rule 5190, NYSE Amex Equities Rule 5190, and NYSE Arca Equities Rule 5190, NYSE and NYSE Amex will publish an Information Memo and NYSE Arca will publish a Regulatory Bulletin relating to the use of FINRA's new electronic process for purposes of complying with those rules. With respect to NASDAQ Exchange rules that expressly require notice to be provided to both FINRA and NASDAQ,⁶ firms must use the new electronic process to make the submission to FINRA. Firms should consult NASDAQ regarding the appropriate forms and processes for submission to NASDAQ under NASDAQ rules.

As noted above, the effective date for the new electronic submission process is Monday, June 4, 2012. Prior to that date, FINRA will provide access to the system for testing purposes and will make a subsequent announcement to notify firms when the system is available.

Endnotes

1. Firms should consult [Regulatory Notice 08-74](#) (December 2008) for a more detailed discussion of the notice and information requirements under Rule 5190, as well as the timing of such notice, the parties that must provide such notice, and the forms and submission processes that currently are in use.
2. OTC equity transactions are transactions effected otherwise than on an exchange in: (1) NMS stocks, which are reported through the Alternative Display Facility (ADF) or a Trade Reporting Facility; and (2) OTC equity securities (*i.e.*, non-NMS stocks), which are reported through the OTC Reporting Facility.
3. See Rules 6282.01, 6380A.01, 6380B.01 and 6622.02.
4. Firms should consult [Regulatory Notice 11-40](#) (August 2011) for a more detailed discussion of the notice and information requirements under Rules 6282.01, 6380A.01, 6380B.01 and 6622.02, as well as the timing of such notice, the parties that must provide such notice, and the forms and submission processes that currently are in use.
5. FINRA notes that while not required under FINRA rules, firms also may submit a request for an Underwriting Activity Report electronically through this system.
6. See, *e.g.*, NASDAQ Rule 4619(e).