

# Regulatory Notice

15-48

## Equity Trading Initiatives: OTC Equity Trading Volume

### SEC Approves Amendments to Publish OTC Equity Volume Executed Outside Alternative Trading Systems

Effective Date: April 2, 2016

#### Executive Summary

Pursuant to rule amendments that will become effective on April 2, 2016, FINRA will expand its alternative trading system (ATS) transparency initiative to publish the remaining equity volume executed over-the-counter (OTC) by FINRA member firms, including the trading activity of non-ATS electronic trading systems and internalized trades. Beginning on Monday, April 25, 2016, data as of April 4, 2016, will be available in accordance with the amendments—free of charge to all users—on FINRA’s website.

The amended rule text is set forth in Attachment A.

Questions concerning this Notice should be directed to:

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- ▶ Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190 or [lisa.horrigan@finra.org](mailto:lisa.horrigan@finra.org).

#### Background & Discussion

FINRA currently makes the volume and trade count information for equity securities executed in an ATS publicly available on the FINRA website.<sup>1</sup> The Securities and Exchange Commission has approved amendments to Rules 6110 and 6610 to expand this transparency initiative by publishing the remaining OTC equity volume (non-ATS volume) by member firm and security.<sup>2</sup>

November 2015

#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

#### Key Topics

- ▶ Alternative Display Facility
- ▶ NMS Securities
- ▶ OTC Equity Securities
- ▶ OTC Reporting Facility
- ▶ Trade Reporting
- ▶ Trade Reporting Facilities

#### Referenced Rules & Notices

- ▶ FINRA Rule 4552
- ▶ FINRA Rule 6110
- ▶ FINRA Rule 6610
- ▶ Regulatory Notice 14-48

A firm's non-ATS volume information will be derived directly from OTC trades reported to FINRA's equity trade reporting facilities.<sup>3</sup> As such, firms do not have any additional reporting requirements as a result of the amendments. FINRA will base a firm's non-ATS volume on trades reported for dissemination purposes (or "tape reports") where the firm is identified as the firm with the trade reporting obligation.<sup>4</sup> A firm's published trading volume information will not include trades for which the firm is the reported contra party, nor will it include trades that are reported solely for clearing or regulatory purposes (or "non-tape reports").

FINRA will publish non-ATS volume information at the firm level and not at the Market Participant Identifier (MPID) level if a firm uses more than one MPID. For firms that use more than one MPID for their non-ATS trading,<sup>5</sup> FINRA will aggregate and publish the non-ATS trading volume for all non-ATS MPIDs belonging to the firm under a single "parent" identifier or firm name.<sup>6</sup>

FINRA will publish on its website weekly volume information (number of trades and shares) by firm and security, with limited *de minimis* exceptions described below, on a two-week or four-week delayed basis in accordance with the time frames specified for ATS volume publication. Specifically, volume information will be published on a two-week delayed basis for NMS stocks in Tier 1 under the NMS Plan to Address Extraordinary Market Volatility (also referred to as the "Limit Up/Limit Down Plan")<sup>7</sup> and a four-week delayed basis for all other NMS stocks and OTC equity securities.<sup>8</sup>

FINRA also will publish aggregate volume totals across all NMS stocks and aggregate volume totals across all OTC equity securities for each calendar month. Monthly aggregate totals will be published on a one-month delayed basis, *e.g.*, totals for the month of June will be published on or about August 1.<sup>9</sup>

## Aggregated De Minimis Volume

For firms executing fewer than on average 200 non-ATS transactions per day during the reporting period (*i.e.*, during the week for weekly volume data or during the month for monthly volume data), FINRA will combine and publish such *de minimis* volume on an aggregated non-attributed basis. For a firm with more than one non-ATS MPID, the total volume across all of its non-ATS MPIDs will be combined for purposes of determining whether the *de minimis* threshold has been met.

Thus, if a firm averages fewer than 200 non-ATS transactions per day across all securities during the reporting period, FINRA will aggregate the firm's volume with that of similarly situated firms. Additionally, because the published volume data will be broken down by security, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA will aggregate the firm's volume in that security with that of similarly situated firms, even if the firm averages more than 200 non-ATS transactions per day across all securities during the reporting period.

FINRA notes that for the weekly non-ATS data, the *de minimis* threshold will be calculated separately for Tier 1 NMS stocks, other NMS stocks and OTC equity securities, and for the monthly non-ATS data, the *de minimis* threshold will be calculated separately for NMS stocks (not broken down by tier) and OTC equity securities.

The following example may assist firms in understanding how the *de minimis* threshold will be applied. Suppose that Firm 1 has non-ATS volume in three Tier 1 NMS stocks for the week:

	<b>Security A</b>	<b>Security B</b>	<b>Security C</b>	<b>Firm 1 Total Tier 1 Stocks</b>
<b># Trades</b>	800	20,000	4,200	25,000
<b># Shares</b>	800,000	1,000,000	10,000	1,810,000
<b>Attributed to Firm 1 in published data?</b>	No	Yes	Yes	Yes

At the firm aggregate level, FINRA will attribute to Firm 1 the total non-ATS volume in all three securities—25,000 trades and 1,810,000 shares. At the security level, however, FINRA only will attribute to Firm 1 the volume in Securities B and C. Because Firm 1 averaged fewer than 200 trades a day in Security A, Firm 1's volume in that security will be aggregated and published on a non-attributed basis with the other *de minimis* firms. If the other *de minimis* firms had a total of 10,000 trades and 200,000 shares in Security A, the published data for Security A will reflect a *de minimis* volume of 10,800 trades and 1,000,000 shares; users of the data will not know that Firm 1 contributed to that volume. By comparing Firm 1's aggregate total for Tier 1 stocks and Firm 1's attributed volume in Securities B and C, users of the data could deduce that Firm 1 had *de minimis* volume, but would not know in which security (or securities).

Firms can find ATS volume data and non-ATS volume data on the same page of FINRA's website. Specifically, the [ATS Transparency page](#) will be rebranded to "OTC Transparency," and on the existing [ATS Transparency Data page](#), the tabs will be updated to reflect both ATS and non-ATS data.

## Endnotes

1. See Rule 4552. FINRA currently does not publish ATS volume information regarding fixed income securities.
2. See Securities Exchange Act Release No. 76078 (October 5, 2015), 80 FR 61246 (October 9, 2015) (Order Approving File No. SR-FINRA-2015-020). Prior to filing, FINRA solicited comment on the proposal in *Regulatory Notice 14-48* (November 2014).
3. FINRA's equity trade reporting facilities (collectively referred to herein as the "FINRA Facilities") are the Alternative Display Facility (ADF) and the Trade Reporting Facilities (TRFs), to which members report OTC transactions in NMS stocks; and the OTC Reporting Facility (ORF), to which members report transactions in OTC equity securities (*i.e.*, non-NMS stocks such as OTC Bulletin Board and OTC Market securities).
4. Under FINRA rules, in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the "executing party," defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade. See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b).
5. For example, a firm may use separate MPIDs for its proprietary and agency desks.
6. Under FINRA rules, each firm that operates an ATS is required to use a unique MPID for reporting order and trade information to FINRA for that ATS. A firm's ATS volume will continue to be published separately under the unique MPID(s) for each ATS operated by the firm.
7. Tier 1 NMS stocks include those NMS stocks in the S&P 500 Index or the Russell 1000 Index and certain ETPs. See NMS Plan to Address Extraordinary Market Volatility. FINRA will make changes to the Tier 1 NMS stocks in accordance with the indices. Changes to the S&P 500 are made on an as needed basis and are not subject to an annual or semi-annual reconstitution. S&P typically does not add new issues until they have been seasoned for six to twelve months. Russell 1000 rebalancing typically takes place in June.
8. FINRA notes that non-ATS volume data will be displayed in the same format in which ATS volume data is displayed today, *i.e.*, aggregate volume for each firm across all NMS stocks (Tier 1 and all other NMS stocks) and OTC equity securities; aggregate volume for each security across all firms; and volume for each security by each firm (except with respect to *de minimis* volume).
9. FINRA notes that the monthly volume information will cover a single calendar month, whereas the weekly information may span multiple months. For example, monthly volume information for June 2016 will cover trading between June 1 and June 30, whereas weekly volume information will cover trading during the weeks of May 30 through June 3 and June 27 through July 1.

## ATTACHMENT A

Below is the text of the amendments. New language is underlined.

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### **6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

#### **6100. QUOTING AND TRADING IN NMS STOCKS**

##### **6110. Trading Otherwise than on an Exchange**

(a) Members are required to report transactions in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, effected otherwise than on or through a national securities exchange to FINRA. For purposes of the Rule 6100 Series, “otherwise than on an exchange” means a trade effected by a FINRA member otherwise than on or through a national securities exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(b) Trading Information for OTC Transactions in NMS Stocks Executed Outside of Alternative Trading Systems

(1) FINRA will publish on its public web site the Trading Information for each member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) on the following timeframes:

(A) no earlier than two weeks following the end of the Trading Information week, Trading Information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility;

(B) no earlier than four weeks following the end of the Trading Information week, Trading Information regarding NMS stocks that are subject to FINRA trade reporting requirements and are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility; and

(C) no earlier than one month following the end of the Trading Information month, aggregate volume totals across all NMS stocks.

(2) Published Trading Information will be presented on FINRA's web site as follows:

(A) Trading Information will be aggregated for all Market Participant Identifiers (MPIDs) used by a single member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system).

(B) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day across all NMS stocks during the applicable Trading Information period.

(C) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day in an NMS stock during the applicable Trading Information period.

(3) "Trading Information" includes:

(A) the number of shares of an NMS stock executed by the member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA; and

(B) the number of trades in an NMS stock executed by the member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA.

"Trading Information" for purposes of this Rule shall not include any transactions executed within an alternative trading system, which information is published under Rule 4552.

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## 6600. OTC REPORTING FACILITY

### 6610. General

(a) Members are required to report transactions (other than transactions executed on or through an exchange) in OTC Equity Securities, including secondary market transactions in non-exchange-listed Direct Participation Program securities, and Restricted Equity Securities to the OTC Reporting Facility in compliance with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

(b) Trading Information for OTC Transactions in OTC Equity Securities Executed Outside of Alternative Trading Systems

(1) FINRA will publish on its public web site the Trading Information for each member with the trade reporting obligation under Rule 6622(b) on the following timeframes:

(A) no earlier than four weeks following the end of the Trading Information week, Trading Information for OTC Equity Securities; and

(B) no earlier than one month following the end of the Trading Information month, aggregate volume totals across all OTC Equity Securities.

(2) Published Trading Information will be presented on FINRA's web site as follows:

(A) Trading Information will be aggregated for all Market Participant Identifiers (MPIDs) used by a single member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system).

(B) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day across all OTC Equity Securities during the applicable Trading Information period.

(C) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day in an OTC Equity Security during the applicable Trading Information period.

(3) "Trading Information" includes:

(A) the number of shares of an OTC Equity Security executed by the member with the trade reporting obligation under Rule 6622(b) and reported to FINRA;

(B) the number of trades in an OTC Equity Security executed by the member with the trade reporting obligation under Rule 6622(b) and reported to FINRA.

"Trading Information" for purposes of this Rule shall not include any transactions executed within an alternative trading system, which information is published under Rule 4552.

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