

OMB APPROVAL

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Page 1 of 53

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 061

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
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Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Require Members to Report OTC Transactions in Equity Securities Within 30 Seconds of Execution

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By
(Name)

Senior Vice President and Director of Capital Markets
Policy

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA trade reporting rules to (1) require that members report over-the-counter (“OTC”) equity transactions² to FINRA within 30 seconds of execution; (2) require that members report secondary market transactions in non-exchange-listed direct participation program (“DPP”) securities to FINRA within 30 seconds of execution; and (3) make certain conforming changes to the rules relating to the OTC Reporting Facility (“ORF”).

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 15, 2009, the FINRA Board of Governors authorized the filing with the SEC of the proposed rule change as it pertains to the proposed 30-second reporting requirement. The proposed rule change as it pertains to conforming

¹ 15 U.S.C. 78s(b)(1).

² Specifically, OTC equity transactions are: (1) transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS, 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,” as defined in FINRA Rule 6420 (e.g., OTC Bulletin Board and Pink Sheets securities), which are reported through the OTC Reporting Facility (“ORF”). The ADF, TRFs and ORF are collectively referred to herein as the “FINRA Facilities.”

amendments was approved by senior management pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. To allow members sufficient time to make the necessary systems changes, FINRA is proposing that the implementation date will be between six and nine months following the date of Commission approval.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

30-Second Reporting Requirement

Under FINRA trade reporting rules, members generally must report OTC equity transactions that are executed during the hours that the FINRA Facilities are open within 90 seconds of execution.³ Last sale information for such trades is publicly disseminated on a real-time basis. There are certain limited exceptions to this general requirement, including for trades in non-exchange-listed DPP securities, as discussed below.⁴ The 90-second reporting requirement has been in effect since 1982, when OTC trading was more manual in nature. As trading has become increasingly automated, however, the vast majority of trades are now reported in a much shorter period of time. For example, during the period of February 23 through February 27, 2009, overall member compliance with the current 90-second reporting requirement was 99.95% (for all trades submitted to

³ See, e.g., FINRA Rules 6282(a), 6380A(a), 6380B(a) and 6622(a).

⁴ Additionally, FINRA notes that transactions in PORTAL securities, as defined in FINRA Rule 6631, are not subject to the 90-second reporting requirement, but must be reported to the ORF by the end of the day. See FINRA Rule 6633.

a FINRA Facility for public dissemination), and 99.90% of trades were reported in 30 seconds or less.

FINRA is proposing to amend the trade reporting rules to require that members report OTC equity transactions to FINRA within 30 seconds of execution. Specifically, the trade reporting rules would be amended to replace the references to 90 seconds with 30 seconds.⁵ Trades not reported within 30 seconds, unless expressly subject to a different reporting requirement or excluded from the trade reporting rules altogether, would be late. Although members would have 30 seconds to report, FINRA reiterates that – as is the case today – members 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.

Because of the automated nature of trade reporting today, FINRA believes that in the vast majority of circumstances members should have no difficulty complying with the proposed 30-second reporting requirement. However, to better understand the potential limitations some members may face, FINRA is requesting that the SEC solicit comments specifically on whether there are any categories of trades (e.g., trades that are manual in nature) or any firm structures (e.g., smaller firms that may not have automated systems

⁵ 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).

FINRA also is proposing to amend FINRA Rules 6181 and 6623 to replace the reference to 90 seconds with a more general reference to “the required time period” to clarify that these provisions also apply to trades that are subject to a different reporting requirement (e.g., trades executed outside normal market hours).

for trade reporting) that may justify a longer reporting time frame under FINRA rules.⁶

FINRA believes that the proposed rule change will promote consistent and timely reporting by all members and enhance market transparency and price discovery by ensuring that trades are disseminated closer in time to execution. Timely reporting has become even more critical with the implementation of Regulation NMS. A delay in the reporting and dissemination of a transaction could potentially appear to other market participants as a violation of the Regulation NMS Order Protection Rule; if a trade is not reported and disseminated until a full 90 seconds after execution, the best displayed market could have changed between the time of execution and ultimate dissemination of the trade. Additionally, the proposed rule change will ensure that members do not withhold important market information from investors and other market participants for competitive or other improper reasons.⁷

Reporting Requirements Applicable to Trades in Non-Exchange-Listed DPP Securities

Pursuant to FINRA Rule 6643(a)(1), members are required to report trades in non-exchange-listed DPP securities to the ORF by 1:30 p.m. Eastern Time on the next

⁶ FINRA notes that smaller firms that route their orders to another member firm for handling or execution do not have the trade reporting obligation under the “executing party” trade reporting structure that became effective on August 3, 2009. For transactions between members, the “executing party” (which is 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 to FINRA. See Regulatory Notice 09-08 (January 2009).

⁷ FINRA reiterates the importance of timely reporting and reminds members that 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.

business day (T+1) after the date of execution; members that have the operational capability to report transactions within 90 seconds of execution may do so at their option. Transaction information for such trades is not disseminated on a real-time trade-by-trade basis, but is included in end-of-day summary information disseminated twice daily. By contrast, under FINRA rules, OTC trades in exchange-listed DPP securities are reported to a TRF or the ADF and are subject to the 90-second reporting requirement (just like any other OTC trade in an NMS stock).⁸ The inconsistency in the reporting and dissemination of DPPs can create confusion for market participants, especially when an exchange-listed DPP is delisted and dissemination of trading in the security goes from real-time to only twice daily.

FINRA is proposing to amend the trade reporting rules to require that transactions in non-exchange-listed DPP securities be reported within 30 seconds of execution to conform to the reporting requirements applicable to other OTC transactions, including those in exchange-listed DPP securities. Specifically, the proposed rule change would delete the FINRA Rule 6640 Series (Reporting Transactions in Direct Participation Program Securities) in its entirety, and secondary market transactions in non-exchange-listed DPPs would be reported to FINRA as any other OTC Equity Security pursuant to the FINRA Rule 6620 and 7300 Series. In addition, the proposed rule change would amend (1) FINRA Rule 6610 to clarify that secondary market transactions in non-exchange-listed DPPs are included in the OTC Equity Security transactions that must be reported to the ORF; (2) FINRA Rule 6420 to add “direct participation program” as a defined term (the proposed definition is identical to the definition in current FINRA Rule

⁸ See, e.g., FINRA Rules 6282(a), 6380A(a) and 6380B(a).

6642); (3) FINRA Rule 6622 to include as Supplementary Material the definitions of “date of execution” and “time of execution” for DPP transactions (the proposed definitions are identical to the definitions in current FINRA Rule 6642); and (4) FINRA Rules 6530, 6550, 7310, 7330 and 7410 to delete or replace references to DPPs and the FINRA Rule 6640 Series, as applicable.

FINRA notes that transactions in non-exchange-listed DPPs currently are not subject to regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws (“Section 3”) because they are not subject to prompt last sale reporting under FINRA rules.⁹ As a result of the proposed rule change, transactions in non-exchange-listed DPPs would become subject to Section 3 regulatory transaction fees.

FINRA believes the proposed rule change would enhance market transparency and promote consistency in trade reporting and dissemination.

Proposed Conforming Amendments

The proposal to reduce the reporting time to 30 seconds requires amendments to a number of subparagraphs within paragraph (a) of FINRA Rule 6622 relating to the ORF. In this filing, FINRA is proposing certain additional changes to these subparagraphs to conform, to the extent practicable, to the rules relating to the ADF and TRFs.

Specifically, FINRA is proposing to reorganize FINRA Rule 6622(a) (When and How Transactions are Reported) to conform to the current format and structure of the

⁹ Pursuant to Section 31 of the 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.

rules relating to the ADF and TRFs.¹⁰ The requirements in paragraphs (a)(1) and (a)(2), which apply separately to OTC Market Makers and Non-Market Makers, respectively, would be combined in paragraph (a)(1) and apply to all “OTC Reporting Facility Participants,” as defined in proposed paragraph (n) of FINRA Rule 6420. Additionally, consistent with the ADF and TRF rules, FINRA is proposing to amend FINRA Rule 6622(a) to delete the labels (e.g., “.W”) for the trade report modifiers that members are required to use when reporting trades to the ORF. FINRA Rule 6622(a) would identify the types of transactions that must have a unique modifier associated with them and such modifiers would be labeled in the ORF technical specifications rather than in the rules.

Proposed paragraph (a)(5) of FINRA Rule 6622 would enumerate the transactions for which members must use a special trade report modifier and would clarify that members must include such modifiers on all trade reports, including reports of “as/of” trades.¹¹ In addition, proposed paragraph (a)(5) would expressly provide that in the event that the rules require multiple modifiers on any given trade report, members are to report in accordance with guidance published by FINRA regarding priorities among modifiers.¹² Members that report in accordance with such guidance will not be in violation of the trade reporting rules for failing to use a particular modifier.

FINRA notes that most of the trade report modifiers referred to in proposed paragraph (a)(5) already are required under current FINRA Rule 6622(a). However, proposed subparagraphs (B) through (D) would require members to use special trade

¹⁰ See FINRA Rules 6282(a), 6380A(a) and 6380B(a).

¹¹ See, e.g., FINRA Rules 6282(a)(4), 6380A(a)(5) and 6380B(a)(5).

¹² See, e.g., FINRA Rules 6380A(a)(5) and 6380B(a)(5).

report modifiers for Seller's Option, Cash and Next Day trades,¹³ and proposed subparagraph (E) would require members to use a special trade report modifier for trades that occur at a price based on an average weighting or another special pricing formula.¹⁴ Although not required under current FINRA Rule 6622(a), members can use these modifiers when reporting to the ORF today. In addition, a separate modifier would be used for Stop Stock Transactions, as defined in FINRA Rule 6420, pursuant to proposed subparagraph (F).¹⁵ Such transactions would be disseminated to the public with the weighted average price modifier, which is consistent with the current dissemination policy with respect to Stop Stock Transactions that are submitted to the ADF and TRFs. Members currently are required to report Stop Stock Transactions with the .W trade report modifier, in accordance with FINRA Rule 6622(a)(8).

Proposed paragraph (a)(5)(I) would require members to append "[a]ny other modifier as specified by FINRA or the SEC."¹⁶ Under this provision, FINRA would have the authority to prescribe additional trade report modifiers by updating the technical specifications for the ORF without submitting a further proposed rule change for approval by the Commission. To enable members to make the necessary systems changes, FINRA would provide at least 30 days advance written notice relating to any new modifiers.

Current paragraphs (a)(3), (a)(4), (a)(5), (a)(7) and (a)(9) of FINRA Rule 6622 would be

¹³ See, e.g., FINRA Rules 6282(a)(4)(B) – (D), 6380A(a)(5)(B) – (D) and 6380B(a)(5)(B) – (D).

¹⁴ See, e.g., FINRA Rules 6282(a)(4)(E), 6380A(a)(5)(E) and 6380B(a)(5)(E).

¹⁵ See, e.g., FINRA Rules 6282(a)(4)(F), 6380A(a)(5)(F) and 6380B(a)(5)(F).

renumbered as paragraphs (a)(2), (a)(3), (a)(4), (a)(6) and (a)(7), respectively, without substantive change.

In addition to the proposed amendments to FINRA Rule 6622, FINRA is proposing to amend FINRA Rule 6420 to add “normal market hours” and “OTC Reporting Facility Participant” as defined terms.¹⁷

By conforming the trade reporting requirements to the extent practicable, the proposed rule change will promote more consistent trade reporting by members and a more complete and accurate audit trail. FINRA notes that most of the proposed conforming changes to FINRA Rule 6622(a) are technical in nature; however, some members may need to make systems changes to comply with some of the requirements that are not included expressly in the current rule.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. To allow members sufficient time to make the necessary systems changes, FINRA is proposing that the implementation date will be between six and nine months following the date of Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

¹⁶ See, e.g., FINRA Rules 6282(a)(4)(K), 6380A(a)(5)(K) and 6380B(a)(5)(K).

¹⁷ See, e.g., FINRA Rules 6320A and 6320B. The proposed definition of “normal market hours” is identical to the TRF rules, and the proposed definition of “OTC Reporting Facility Participant” is substantially similar to the definition of “Trade Reporting Facility Participant” in the TRF rules.

¹⁸ 15 U.S.C. 78o-3(b)(6).

principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will enhance market transparency and price discovery and promote more consistent trade reporting by members.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹⁹

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. The text of the proposed rule change.

¹⁹ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-061)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Require Members to Report OTC Equity Transactions Within 30 Seconds of Execution

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA trade reporting rules to (1) require that members report over-the-counter (“OTC”) equity transactions³ to FINRA within 30 seconds of execution; (2) require that members report secondary market transactions in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Specifically, OTC equity transactions are: (1) transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS, 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,” as defined in FINRA Rule 6420 (e.g., OTC Bulletin Board and Pink Sheets securities), which are reported through the OTC Reporting Facility (“ORF”). The ADF, TRFs and ORF are collectively referred to herein as the “FINRA Facilities.”

non-exchange-listed direct participation program (“DPP”) securities to FINRA within 30 seconds of execution; and (3) make certain conforming changes to the rules relating to the OTC Reporting Facility (“ORF”).

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

30-Second Reporting Requirement

Under FINRA trade reporting rules, members generally must report OTC equity transactions that are executed during the hours that the FINRA Facilities are open within 90 seconds of execution.⁴ Last sale information for such trades is publicly disseminated on a real-time basis. There are certain limited exceptions to this general requirement,

⁴ See, e.g., FINRA Rules 6282(a), 6380A(a), 6380B(a) and 6622(a).

including for trades in non-exchange-listed DPP securities, as discussed below.⁵ The 90-second reporting requirement has been in effect since 1982, when OTC trading was more manual in nature. As trading has become increasingly automated, however, the vast majority of trades are now reported in a much shorter period of time. For example, during the period of February 23 through February 27, 2009, overall member compliance with the current 90-second reporting requirement was 99.95% (for all trades submitted to a FINRA Facility for public dissemination), and 99.90% of trades were reported in 30 seconds or less.

FINRA is proposing to amend the trade reporting rules to require that members report OTC equity transactions to FINRA within 30 seconds of execution. Specifically, the trade reporting rules would be amended to replace the references to 90 seconds with 30 seconds.⁶ Trades not reported within 30 seconds, unless expressly subject to a different reporting requirement or excluded from the trade reporting rules altogether, would be late. Although members would have 30 seconds to report, FINRA reiterates that – as is the case today – members 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.

⁵ Additionally, FINRA notes that transactions in PORTAL securities, as defined in FINRA Rule 6631, are not subject to the 90-second reporting requirement, but must be reported to the ORF by the end of the day. See FINRA Rule 6633.

⁶ 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).

FINRA also is proposing to amend FINRA Rules 6181 and 6623 to replace the reference to 90 seconds with a more general reference to “the required time period” to clarify that these provisions also apply to trades that are subject to a different reporting requirement (e.g., trades executed outside normal market hours).

Because of the automated nature of trade reporting today, FINRA believes that in the vast majority of circumstances members should have no difficulty complying with the proposed 30-second reporting requirement. However, to better understand the potential limitations some members may face, FINRA is requesting that the SEC solicit comments specifically on whether there are any categories of trades (e.g., trades that are manual in nature) or any firm structures (e.g., smaller firms that may not have automated systems for trade reporting) that may justify a longer reporting time frame under FINRA rules.⁷

FINRA believes that the proposed rule change will promote consistent and timely reporting by all members and enhance market transparency and price discovery by ensuring that trades are disseminated closer in time to execution. Timely reporting has become even more critical with the implementation of Regulation NMS. A delay in the reporting and dissemination of a transaction could potentially appear to other market participants as a violation of the Regulation NMS Order Protection Rule; if a trade is not reported and disseminated until a full 90 seconds after execution, the best displayed market could have changed between the time of execution and ultimate dissemination of the trade. Additionally, the proposed rule change will ensure that members do not withhold important market information from investors and other market participants for

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FINRA notes that smaller firms that route their orders to another member firm for handling or execution do not have the trade reporting obligation under the “executing party” trade reporting structure that became effective on August 3, 2009. For transactions between members, the “executing party” (which is 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 to FINRA. See Regulatory Notice 09-08 (January 2009).

competitive or other improper reasons.⁸

Reporting Requirements Applicable to Trades in Non-Exchange-Listed DPP Securities

Pursuant to FINRA Rule 6643(a)(1), members are required to report trades in non-exchange-listed DPP securities to the ORF by 1:30 p.m. Eastern Time on the next business day (T+1) after the date of execution; members that have the operational capability to report transactions within 90 seconds of execution may do so at their option. Transaction information for such trades is not disseminated on a real-time trade-by-trade basis, but is included in end-of-day summary information disseminated twice daily. By contrast, under FINRA rules, OTC trades in exchange-listed DPP securities are reported to a TRF or the ADF and are subject to the 90-second reporting requirement (just like any other OTC trade in an NMS stock).⁹ The inconsistency in the reporting and dissemination of DPPs can create confusion for market participants, especially when an exchange-listed DPP is delisted and dissemination of trading in the security goes from real-time to only twice daily.

FINRA is proposing to amend the trade reporting rules to require that transactions in non-exchange-listed DPP securities be reported within 30 seconds of execution to conform to the reporting requirements applicable to other OTC transactions, including those in exchange-listed DPP securities. Specifically, the proposed rule change would delete the FINRA Rule 6640 Series (Reporting Transactions in Direct Participation

⁸ FINRA reiterates the importance of timely reporting and reminds members that 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.

⁹ See FINRA Rules 6282(a), 6380A(a) and 6380B(a).

Program Securities) in its entirety, and secondary market transactions in non-exchange-listed DPPs would be reported to FINRA as any other OTC Equity Security pursuant to the FINRA Rule 6620 and 7300 Series. In addition, the proposed rule change would amend (1) FINRA Rule 6610 to clarify that secondary market transactions in non-exchange-listed DPPs are included in the OTC Equity Security transactions that must be reported to the ORF; (2) FINRA Rule 6420 to add “direct participation program” as a defined term (the proposed definition is identical to the definition in current FINRA Rule 6642); (3) FINRA Rule 6622 to include as Supplementary Material the definitions of “date of execution” and “time of execution” for DPP transactions (the proposed definitions are identical to the definitions in current FINRA Rule 6642); and (4) FINRA Rules 6530, 6550, 7310, 7330 and 7410 to delete or replace references to DPPs and the FINRA Rule 6640 Series, as applicable.

FINRA notes that transactions in non-exchange-listed DPPs currently are not subject to regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws (“Section 3”) because they are not subject to prompt last sale reporting under FINRA rules.¹⁰ As a result of the proposed rule change, transactions in non-exchange-listed DPPs would become subject to Section 3 regulatory transaction fees.

FINRA believes the proposed rule change would enhance market transparency and promote consistency in trade reporting and dissemination.

¹⁰ Pursuant to Section 31 of the 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.

Proposed Conforming Amendments

The proposal to reduce the reporting time to 30 seconds requires amendments to a number of subparagraphs within paragraph (a) of FINRA Rule 6622 relating to the ORF. In this filing, FINRA is proposing certain additional changes to these subparagraphs to conform, to the extent practicable, to the rules relating to the ADF and TRFs.

Specifically, FINRA is proposing to reorganize FINRA Rule 6622(a) (When and How Transactions are Reported) to conform to the current format and structure of the rules relating to the ADF and TRFs.¹¹ The requirements in paragraphs (a)(1) and (a)(2), which apply separately to OTC Market Makers and Non-Market Makers, respectively, would be combined in paragraph (a)(1) and apply to all “OTC Reporting Facility Participants,” as defined in proposed paragraph (n) of FINRA Rule 6420. Additionally, consistent with the ADF and TRF rules, FINRA is proposing to amend FINRA Rule 6622(a) to delete the labels (e.g., “.W”) for the trade report modifiers that members are required to use when reporting trades to the ORF. FINRA Rule 6622(a) would identify the types of transactions that must have a unique modifier associated with them and such modifiers would be labeled in the ORF technical specifications rather than in the rules.

Proposed paragraph (a)(5) of FINRA Rule 6622 would enumerate the transactions for which members must use a special trade report modifier and would clarify that members must include such modifiers on all trade reports, including reports of “as/of” trades.¹² In addition, proposed paragraph (a)(5) would expressly provide that in the event that the rules require multiple modifiers on any given trade report, members are to report

¹¹ See FINRA Rules 6282(a), 6380A(a) and 6380B(a).

¹² See, e.g., FINRA Rules 6282(a)(4), 6380A(a)(5) and 6380B(a)(5).

in accordance with guidance published by FINRA regarding priorities among modifiers.¹³ Members that report in accordance with such guidance will not be in violation of the trade reporting rules for failing to use a particular modifier.

FINRA notes that most of the trade report modifiers referred to in proposed paragraph (a)(5) already are required under current FINRA Rule 6622(a). However, proposed subparagraphs (B) through (D) would require members to use special trade report modifiers for Seller's Option, Cash and Next Day trades,¹⁴ and proposed subparagraph (E) would require members to use a special trade report modifier for trades that occur at a price based on an average weighting or another special pricing formula.¹⁵ Although not required under current FINRA Rule 6622(a), members can use these modifiers when reporting to the ORF today. In addition, a separate modifier would be used for Stop Stock Transactions, as defined in FINRA Rule 6420, pursuant to proposed subparagraph (F).¹⁶ Such transactions would be disseminated to the public with the weighted average price modifier, which is consistent with the current dissemination policy with respect to Stop Stock Transactions that are submitted to the ADF and TRFs. Members currently are required to report Stop Stock Transactions with the .W trade report modifier, in accordance with FINRA Rule 6622(a)(8).

Proposed paragraph (a)(5)(I) would require members to append "[a]ny other

¹³ See, e.g., FINRA Rules 6380A(a)(5) and 6380B(a)(5).

¹⁴ See, e.g., FINRA Rules 6282(a)(4)(B) – (D), 6380A(a)(5)(B) – (D) and 6380B(a)(5)(B) – (D).

¹⁵ See, e.g., FINRA Rules 6282(a)(4)(E), 6380A(a)(5)(E) and 6380B(a)(5)(E).

¹⁶ See, e.g., FINRA Rules 6282(a)(4)(F), 6380A(a)(5)(F) and 6380B(a)(5)(F).

modifier as specified by FINRA or the SEC.”¹⁷ Under this provision, FINRA would have the authority to prescribe additional trade report modifiers by updating the technical specifications for the ORF without submitting a further proposed rule change for approval by the Commission. To enable members to make the necessary systems changes, FINRA would provide at least 30 days advance written notice relating to any new modifiers.

Current paragraphs (a)(3), (a)(4), (a)(5), (a)(7) and (a)(9) of FINRA Rule 6622 would be renumbered as paragraphs (a)(2), (a)(3), (a)(4), (a)(6) and (a)(7), respectively, without substantive change.

In addition to the proposed amendments to FINRA Rule 6622, FINRA is proposing to amend FINRA Rule 6420 to add “normal market hours” and “OTC Reporting Facility Participant” as defined terms.¹⁸

By conforming the trade reporting requirements to the extent practicable, the proposed rule change will promote more consistent trade reporting by members and a more complete and accurate audit trail. FINRA notes that most of the proposed conforming changes to FINRA Rule 6622(a) are technical in nature; however, some members may need to make systems changes to comply with some of the requirements that are not included expressly in the current rule.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. To allow members sufficient time to make the necessary systems

¹⁷ See, e.g., FINRA Rules 6282(a)(4)(K), 6380A(a)(5)(K) and 6380B(a)(5)(K).

¹⁸ See, e.g., FINRA Rules 6320A and 6320B. The proposed definition of “normal market hours” is identical to the TRF rules, and the proposed definition of “OTC Reporting Facility Participant” is substantially similar to the definition of “Trade Reporting Facility Participant” in the TRF rules.

changes, FINRA is proposing that the implementation date will be between six and nine months following the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will enhance market transparency and price discovery and promote more consistent trade reporting by members.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

¹⁹ 15 U.S.C. 78o-3(b)(6).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-061 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-061. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-061 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon

Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.¹

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

6100. QUOTING AND TRADING IN NMS STOCKS

* * * * *

6180. Transaction Reporting

6181. Timely Transaction Reporting

FINRA emphasizes the obligations of members to report securities transactions within [90 seconds after execution] the required time period. All reportable transactions not reported within [90 seconds after execution] the required time period shall be [reported as] marked late, and FINRA routinely monitors members' compliance with the [90 second] reporting requirements. If FINRA finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions [after 90 seconds] submitted after the required time period without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2010. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary

¹ This Exhibit 5 reflects the underlying rule text as amended pursuant to SR-FINRA-2009-031. See Securities Exchange Act Release No. 60377 (July 23, 2009), 74 FR 38250 (July 31, 2009) (Order Approving File No. SR-FINRA-2009-031). SR-FINRA-2009-031 will be implemented on January 11, 2010. See Regulatory Notice 09-52 (August 2009).

and appropriate for the fair and orderly operation of the marketplace, and FINRA will view noncompliance as a rule violation.

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6200. ALTERNATIVE DISPLAY FACILITY

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6280. Transaction Reporting

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6282. Transactions Reported by Members to TRACS

(a) When and How Transactions are Reported to TRACS

(1) Transaction Reporting to TRACS During Normal Market Hours

Members shall, within [9]30 seconds after execution, transmit to TRACS, or if TRACS is unavailable due to system or transmission failure, by telephone, facsimile or e-mail to ADF Operations, last sale reports of transactions in ADF-eligible securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on an exchange. Transactions not reported within [9]30 seconds after execution shall be designated as late.

(2) Transaction Reporting to TRACS Outside Normal Market Hours

(A) Last sale reports of transactions in ADF-eligible securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within [9]30 seconds after execution and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.

(B) Last sale reports of transactions in ADF-eligible securities

executed between 4:00 p.m. and 6:30 p.m. Eastern Time shall be reported within [9]30 seconds after execution and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.

(C) through (D) No Change.

(3) No Change.

(4) Other Modifiers Required to be Reported to TRACS

Reporting Members also shall append the applicable trade report modifiers as specified by FINRA to all last sale reports, including reports of “as/of” trades:

(A) if the trade is executed during normal market hours and it is reported later than [9]30 seconds after execution;

(B) through (E) No Change.

(F) if the trade is a Stop Stock Transaction (as defined in Rule 6220) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within [9]30 seconds of the time the member and the other party agree to the Stop Stock Price);

(G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated

modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within [9]30 seconds from the prior reference point in time);

(H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern Time or between 4:00 p.m. and 6:30 p.m. Eastern Time) reported more than [9]30 seconds after execution;

(I) through (K) No Change.

(5) No Change.

(6) Transactions not reported within [9]30 seconds after execution, or such other time period prescribed by rule, shall be designated as late. Any transaction that is required to be reported on trade date, but is not reported on trade date, must be reported on an “as/of” basis on a subsequent date (T+N) and shall be designated as late. Any transaction that is required to be reported on an “as/of” basis the following business day (T+1), but is not reported T+1, must be reported on a subsequent date (T+N) and shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2010.

(b) through (j) No Change.

6300. TRADE REPORTING FACILITIES

6300A. FINRA/NASDAQ TRADE REPORTING FACILITY

* * * * *

6380A. Transaction Reporting

(a) When and How Transactions are Reported

(1) Trade Reporting Facility Participants shall, within [9]30 seconds after execution, transmit to the FINRA/Nasdaq Trade Reporting Facility or if the FINRA/Nasdaq Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the FINRA/Nasdaq Trade Reporting Facility Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within [9]30 seconds after execution shall be designated as late.

(2) Transaction Reporting to the FINRA/Nasdaq Trade Reporting Facility Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within [9]30 seconds after execution and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.

(B) Last sale reports of transactions in designated securities executed between 4:00 p.m. and 8:00 p.m. Eastern Time shall be reported within [9]30 seconds after execution and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.

(C) through (D) No Change.

(3) No Change.

(4) Transactions not reported within [9]30 seconds after execution, or

such other time period prescribed by rule, shall be designated as late. Any transaction that is required to be reported on trade date, but is not reported on trade date, must be reported on an “as/of” basis on a subsequent date (T+N) and shall be designated as late. Any transaction that is required to be reported on an “as/of” basis the following business day (T+1), but is not reported T+1, must be reported on a subsequent date (T+N) and shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2010.

(5) Members also shall append the applicable trade report modifiers as specified by FINRA to all last sale reports, including reports of “as/of” trades:

(A) if the trade is executed during normal market hours and it is reported later than [9]30 seconds after execution;

(B) through (E) No Change.

(F) if the trade is a Stop Stock Transaction (as defined in Rule 6320A) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within [9]30 seconds of the time the member and the other party agree to the Stop Stock Price);

(G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point

in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within [9]30 seconds from the prior reference point in time);

(H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern time or between 4:00 p.m. and 8:00 p.m. Eastern time) reported more than [9]30 seconds after execution;

(I) through (K) No Change.

To the extent that any of the modifiers required by this Rule conflict, FINRA shall provide guidance regarding the priorities among modifiers and members shall report in accordance with such guidance, as applicable.

(6) No Change.

(7) To identify pre-opening and after-hours trades reported late, the FINRA/Nasdaq Trade Reporting Facility will convert to the late modifier, as applicable, on any pre-opening or after-hours report submitted to the FINRA/Nasdaq Trade Reporting Facility more than [9]30 seconds after execution.

(8) No Change.

(b) through (f) No Change.

(g) Reporting Cancelled Trades

(1) No Change.

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within [9]30 seconds of the time the trade is cancelled.

(B) through (G) No Change.

(h) No Change.

6300B. FINRA/NYSE TRADE REPORTING FACILITY

* * * * *

6380B. Transaction Reporting

(a) When and How Transactions are Reported

(1) Trade Reporting Facility Participants shall, within [9]30 seconds after execution, transmit to the FINRA/NYSE Trade Reporting Facility or, if the FINRA/NYSE Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the FINRA/NYSE TRF Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within [9]30 seconds after execution shall be designated as late.

(2) Transaction Reporting to the FINRA/NYSE Trade Reporting Facility
Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within [9]30 seconds after execution and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution

outside normal market hours.

(B) Last sale reports of transactions in designated securities executed between 4:00 p.m. and 8:00 p.m. Eastern Time shall be reported within [9]30 seconds after execution and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.

(C) through (D) No Change.

(3) No Change.

(4) Transactions not reported within [9]30 seconds after execution, or such other time period prescribed by rule, shall be designated as late. Any transaction that is required to be reported on trade date, but is not reported on trade date, must be reported on an “as/of” basis on a subsequent date (T+N) and shall be designated as late. Any transaction that is required to be reported on an “as/of” basis the following business day (T+1), but is not reported T+1, must be reported on a subsequent date (T+N) and shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2010.

(5) Members also shall append the applicable trade report modifiers as specified by FINRA to all last sale reports, including reports of “as/of” trades:

(A) if the trade is executed during normal market hours and it is reported later than [9]30 seconds after execution;

(B) through (E) No Change.

(F) if the trade is a Stop Stock Transaction (as defined in Rule 6320B) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within [9]30 seconds of the time the member and the other party agree to the Stop Stock Price);

(G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within [9]30 seconds from the prior reference point in time);

(H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern time or between 4:00 p.m. and 8:00 p.m. Eastern time) reported more than [9]30 seconds after execution;

(I) through (K) No Change.

To the extent that any of the modifiers required by this Rule conflict, FINRA shall provide guidance regarding the priorities among modifiers and members shall report in accordance with such guidance, as applicable.

(6) No Change.

(7) To identify pre-opening and after-hours trades reported late, the FINRA/NYSE Trade Reporting Facility will convert to the late modifier, as applicable, on any pre-opening or after-hours report submitted to the FINRA/NYSE Trade Reporting Facility more than [9]30 seconds after execution.

(8) No Change.

(b) through (e) No Change.

(f) Reporting Cancelled Trades

(1) No Change.

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 4:00 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within [9]30 seconds of the time the trade is cancelled.

(B) through (G) No Change.

(g) through (h) No Change.

6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

* * * * *

6420. Definitions

(a) No Change.

(b) “Direct participation program” or DPP, means a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate

offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used herein, the term shall mean each of the separate entities or programs making up the overall program and/or the overall program itself. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and any company, including separate accounts, registered pursuant to the Investment Company Act.

(b) through (c) redesignated as (c) through (d)

(e) “Normal market hours” means 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time.

(d) through (k) redesignated as (f) through (m)

(n) “OTC Reporting Facility Participant” means any member of FINRA in good standing that uses the OTC Reporting Facility.

* * * * *

6500. OTC BULLETIN BOARD[®] SERVICE

* * * * *

6530. OTCBB-Eligible Securities

A member shall be permitted to quote the following categories of securities in the Service:

(a) through (c) No Change.

(d) any Direct Participation Program as defined in Rule [6642] 6420 that is not listed on a national securities exchange in the U.S. and that satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(e) through (f) No Change.

* * * * *

6550. Transaction Reporting

Member firms that effect transactions in OTCBB-eligible securities shall report them pursuant to the requirements of the Rule 6620 Series[, except for transactions in Direct Participation Program securities, which shall be reported pursuant to the requirements of the Rule 6640 Series].

6600. OTC REPORTING FACILITY

6610. General

Members that report transactions in OTC Equity Securities, [and] including secondary market transactions in non-exchange-listed Direct Participation Program securities, to the OTC Reporting Facility must comply with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

6620. Reporting Transactions in OTC Equity Securities

* * * * *

6622. Transaction Reporting

(a) When and How Transactions are Reported

(1) [OTC Market Makers] OTC Reporting Facility Participants shall, within [9]30 seconds after execution, transmit to the OTC Reporting Facility, or if the OTC Reporting Facility is unavailable due to system or transmission failure,

by telephone to the Operations Department, last sale reports of transactions in OTC Equity Securities executed [between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time] during normal market hours. Transactions not reported within [9]30 seconds after execution shall be designated as late.

[(2) Non-Market Makers shall, within 90 seconds after execution, transmit to the OTC Reporting Facility, or by telephone to the Operations Department if the OTC Reporting Facility is unavailable due to system or transmission failure, last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4:00 p.m. Transactions not reported within 90 seconds after execution shall be designated as late.]

(13)2 Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in OTC Equity Securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within [9]30 seconds after execution and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.

(B) Last sale reports of transactions in OTC Equity Securities executed between 4:00 p.m. and 8:00 p.m. Eastern Time shall be reported within [9]30 seconds after execution and be designated with the unique trade report modifier, as specified by FINRA, to denote their execution outside normal market hours.

(C) through (D) No Change.

(4) renumbered as (3)

([5]4) Transactions not reported within [9]30 seconds after execution, or such other time period prescribed by rule, shall be designated as late. Any transaction that is required to be reported on trade date, but is not reported on trade date, must be reported on an “as/of” basis on a subsequent date (T+N) and shall be designated as late. Any transaction that is required to be reported on an “as/of” basis the following business day (T+1), but is not reported T+1, must be reported on a subsequent date (T+N) and shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2010.

[(6) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.]

(5) Members also shall append the applicable trade report modifiers as specified by FINRA to all last sale reports, including reports of “as/of” trades:

(A) if the trade is executed during normal market hours and it is reported later than 30 seconds after execution;

(B) if the trade is a Seller’s Option Trade, denoting the number of days for delivery;

(C) if the trade is a Cash Trade;

(D) if the trade is a Next Day Trade;

(E) if the trade occurs at a price based on an average weighting or another special pricing formula;

(F) if the trade is a Stop Stock Transaction (as defined in Rule 6420) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 30 seconds of the time the member and the other party agree to the Stop Stock Price);

(G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 30 seconds from the prior reference point in time);

(H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern time or between 4:00 p.m. and 8:00 p.m. Eastern time) reported more than 30 seconds after execution;
and

(I) any other modifier as specified by FINRA or the Securities and

Exchange Commission.

To the extent that any of the modifiers required by this Rule conflict, FINRA shall provide guidance regarding the priorities among modifiers and members shall report in accordance with such guidance, as applicable.

[(7)6] [FINRA] The OTC Reporting Facility will append the [.T modifier or the .SLD] appropriate modifier[, as appropriate,] to [those] indicate that a trade was executed outside normal market hours or that a report was submitted late to the OTC Reporting Facility, where such report[s submitted to the OTC Reporting Facility that] contains the time of execution, but [that] does not contain the appropriate modifier.

[(8) All members shall append the .W trade report modifier to reports of Stop Stock Transactions, as such term is defined in Rule 6420, and include the time at which the member and the other party agreed to the Stop Stock Price, as such term is defined in Rule 6420, in lieu of including the time of execution on the trade report. The .W modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Price.]

[(9)7] To identify [late] pre-opening and after-hours trades reported late, [FINRA] the OTC Reporting Facility will convert [the .T modifier to .ST for] to the late modifier, as applicable, on any pre-opening or after-hours report submitted to the OTC Reporting Facility more than [9]30 seconds after execution.

(b) through (e) No Change.

(f) Reporting Cancelled Trades

(1) No Change.

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within [9]30 seconds of the time the trade is cancelled.

(B) through (G) No Change.

(g) No Change.

• • • Supplementary Material: -----

.01 For purposes of reporting secondary market transactions in non-exchange-listed DPP securities pursuant to this Rule 6622, the following definitions shall apply. “Date of execution” means the date 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 the units to be traded. “Time of execution” means the time 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 the units to be traded.

6623. Timely Transaction Reporting

FINRA emphasizes the obligations of members to report securities transactions within [90 seconds after execution] the required time period. All reportable transactions not reported within [90 seconds after execution] the required time period shall be [reported as] marked late, and FINRA routinely monitors members’ compliance with the [90 second] reporting requirements. If FINRA finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions [after 90 seconds] submitted after the

required time period without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2010. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the marketplace, and FINRA will view noncompliance as a rule violation.

* * * * *

[6640. Reporting Transactions in Direct Participation Program Securities]

[6641. General]

[All secondary market transactions by members in Direct Participation Program securities other than transactions executed on a national securities exchange shall be reported to FINRA in accordance with the procedures set forth below. All trade tickets shall be time-stamped at the time of execution.]

[6642. Definitions]

[The following terms shall have the following meanings for purposes of the Rule 6640 Series.]

[(a) “OTC Reporting Facility” means the service that, among other things, accommodates reporting of transactions in direct participation programs (DPPs). The OTC Reporting Facility comparison function will not be available for those DPPs that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation. However, the OTC Reporting Facility will support the entry and inclusion of transaction data on such securities for reporting purposes.]

[(b) “Date of execution” means the date 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 the units to be traded.]

[(c) “Direct participation program” or DPP, means a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used herein, the term shall mean each of the separate entities or programs making up the overall program and/or the overall program itself. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and any company, including separate accounts, registered pursuant to the Investment Company Act of 1940.]

[(d) “Riskless principal transaction” means a principal transaction where a member, after having received an order to buy, purchases the security as principal to satisfy the order to buy or, after having received an order to sell, sells the security as principal to satisfy the order to sell.]

[(e) “Time of execution” means the time 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 the units to be traded.]

[6643. Transaction Reporting]

[(a) When and How Transactions are Reported]

[(1) Reports of secondary market transactions in direct participation programs shall be transmitted to the OTC Reporting Facility on the next business day (“T+1”) after the date of execution between 8:00 a.m. and 1:30 p.m. Eastern Time, be designated “as/of” trades to denote their execution on a prior day, and be accompanied by the time of execution. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below. Member firms that have the operational capability to report transactions within 90 seconds of execution, between the hours of 8:00 a.m. and 8:00 p.m. Eastern Time, may do so at their option. If a firm chooses this option, it need not report the same transaction(s) on T+1 as prescribed above.]

[(2) All members shall report to the Market Regulation Department on Form T, reports of transactions in DPPs that were not transmitted to the OTC Reporting Facility, for whatever reason, either on the trade date or the next business day. Form T shall be used exclusively as a back-up mode whenever electronic entry of trade data is not feasible due to system malfunctions or other unusual conditions.]

[(3) A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule

2010.]

[(b) Which Party Reports Transactions]

[(1) In transactions between two members, the executing party shall report the trade.]

[(2) In transactions between a member and a non-member or customer, the member shall report the trade.]

[For purposes of this paragraph (b), “executing party” shall mean 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. In a transaction between two members where both members may satisfy the definition of executing party (e.g., manually negotiated transactions via the telephone), the member representing the sell-side shall report the transaction, unless the parties agree and contemporaneously document otherwise, unless the parties agree otherwise and the member representing the sell-side contemporaneously documents such agreement.]

[(c) Information To Be Reported]

[Each transaction report shall contain the following information:]

[(1) A symbol indicating whether the transaction is a buy, sell, or cross;]

[(2) Number of units;]

[(3) Symbol of the DPP;]

[(4) Price of the transaction as required by paragraph (d) below;]

[(5) A symbol indicating whether the transaction is as principal, riskless principal, or agent;]

[(6) Time of execution; and]

[(7) Contra broker.]

[(d) Procedures for Reporting Price, Volume, Capacity and Identification of Other Members]

[Members that are required to report pursuant to paragraph (b) above shall transmit transaction reports for all purchases and sales in DPPs in the following manner:]

[(1) Reporting Agency Transactions]

[For agency transactions, report the number of units and the price excluding any commission or service charge.]

[(2) Reporting Dual Agency Transactions]

[For dual agency transactions, report the number of units only once, and report the price excluding any commission or service charge.]

[(3) Reporting Principal Transactions]

[For principal transactions, except as provided under subparagraph (4) below, report each purchase and sale transaction separately and report the number of units and the price. For principal transactions that are executed at a price which includes a mark-up, markdown or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into such consideration all relevant circumstances including, but not limited to, market conditions with respect to the DPP, the number of units involved in the transaction, the published bids and offers with size displayed in any quotation system at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.]

[(4) Reporting Riskless Principal Transactions]

[For riskless principal transactions, report as one transaction in the same manner as an agency transaction, excluding the mark-up, mark-down, or service charge.]

[(5) Identification of Other Members for Agency and Riskless Principal Transactions]

[Any member that has a reporting obligation pursuant to paragraph (b) above and is acting in a riskless principal or agency capacity on behalf of one or more other members shall submit to FINRA one or more non-tape (either non-tape, clearing-only or non-tape, non-clearing) report(s) identifying such other member(s) as a party to the transaction, if such other member(s) is not identified on the initial trade report submitted to FINRA. Nothing in this Rule 6643(d)(5) shall negate or modify the riskless principal transaction reporting requirements set forth in Rule 6643(d)(4).]

[Example #1:]

[Member A, as agent or riskless principal on behalf of Member B, BUYS 100 shares from Member C at 40 (no mark-down included)]

[Member A has the reporting obligation under Rule 6643(b)]

[TAPE REPORT 100 shares at 40 By Member A between Member A and Member C]

[NON-TAPE REPORT 100 shares at 40 By Member A identifying Member B]

[Example #2A:]

[Member A MATCHES, as agent, the orders of Member B and Member C for 100 shares at 40]

[Member A has the reporting obligation under Rule 6643(b)]

[TAPE REPORT 100 shares at 40 By Member A between Member A and Member B (or Member C)]

[NON-TAPE REPORT 100 shares at 40 By Member A identifying Member C (or Member B)]

[Example #2B:]

[Member A MATCHES, as agent, the orders of Member B and Member C for 100 shares at 40]

[Member A has the reporting obligation under Rule 6643(b)]

[TAPE REPORT a CROSS of 100 shares at 40 By Member A]

[NON-TAPE REPORT 100 shares at 40 By Member A identifying Member B *and*]

[NON-TAPE REPORT 100 shares at 40 By Member A identifying Member C]

[Example #3:]

[Member A, as agent or riskless principal on behalf of Member B, BUYS 100 shares on an exchange at 40]

[DO NOT TAPE REPORT this leg (will be reported by exchange)]

[NO NON-TAPE REPORT required; however, Member A *may* submit a NON-TAPE REPORT as between Member A and Member B]

[(e) Transactions Not Required To Be Reported]

[The following are not required to be reported under the foregoing procedures:]

[(1) Transactions made in reliance on Section 4(2) of the Securities Act;]

[(2) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the DPP, e.g., to enable the seller to make a gift; and]

[(3) Transactions executed on a national securities exchange.]

[(4) Transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.]

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,
AND FACILITY CHARGES**

7100. ALTERNATIVE DISPLAY FACILITY/TRACS

* * * * *

7130. Trade Report Input

(a) No Change.

(b) When and How Trade Reports are Submitted to TRACS

(1) TRACS trade comparison Participants who are Reporting Members that choose to submit a trade for comparison shall transmit to TRACS the information required by the Rule 6280 Series, as applicable, within [9]30 seconds of execution, or such other time period prescribed by rule.

(2) through (6) No Change.

(c) through (d) No Change.

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7200. TRADE REPORTING FACILITIES

7200A. FINRA/NASDAQ TRADE REPORTING FACILITY

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7230A. Trade Report Input

(a) No Change.

(b) When and How Trade Reports are Submitted

Participants shall transmit trade reports to the System for transactions in Reportable Securities within [9]30 seconds after execution, or such other time period prescribed by rule, or shall use the Browse function to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

(c) through (i) No Change.

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7200B. FINRA/NYSE TRADE REPORTING FACILITY

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7230B. Trade Report Input

(a) No Change.

(b) When and How Trade Reports are Submitted

Participants shall transmit trade reports to the System for transactions in Reportable Securities within [9]30 seconds after execution, or such other time period

prescribed by rule.

(c) through (h) No Change.

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7300. OTC REPORTING FACILITY

7310. Definitions

(a) through (f) No Change.

(g) The term “Reportable Security” shall mean all OTC Equity Securities as defined in Rule 6420 [and all Direct Participation Programs as defined in Rule 6642].

(h) through (i) No Change.

(j) The term “System” shall mean the OTC Reporting Facility for purposes of trades in OTC Equity Securities as defined in Rule 6420 [and Direct Participation Programs as defined in Rule 6642].

(k) No Change.

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7330. Trade Report Input

(a) Reportable Transactions

Members shall comply with the Rule 7300 Series when reporting transactions to the System, including executions of less than one round lot if those executions are to be compared and locked-in. All trades that are reportable transactions will be processed pursuant to an effective transaction reporting plan. Trades that are not already locked-in trades will be compared and locked-in through the System. [All transactions in Direct Participation Program securities shall be reported to the System pursuant to the Rule 6640 Series as set forth therein.]

(b) When and How Trade Reports are Submitted

Participants shall transmit trade reports to the System for transactions in Reportable Securities within [9]30 seconds after execution, or such other time period prescribed by rule, or shall use the Browse function to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

(c) through (h) No Change.

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7400. ORDER AUDIT TRAIL SYSTEM

7410. Definitions

For purposes of the Rule 7400 Series:

(a) through (k) No Change.

(l) “OTC equity security” shall mean any equity security that:

(1) through (2) No Change.

For purposes of the Rule 7400 Series, the term OTC equity security shall not include direct participation programs, as defined in Rule [6642] 6420.

(m) through (o) No Change.

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