

OMB APPROVAL

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Page 1 of 38

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

File No. SR - 2009 - 061
Amendment No. 2

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

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

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

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)

(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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

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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

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Exhibit Sent As Paper Document

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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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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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 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

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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.

On September 16, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) proposed rule change SR-FINRA-2009-061, which proposes to amend FINRA trade reporting rules to (1) require that members report over-the-counter (“OTC”) equity transactions 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”).

On October 30, 2009, FINRA filed Amendment No. 1 to make certain changes to address the Commission staff’s comments on the original filing submitted on September 16, 2009 (the filing of September 16, 2009, as amended by Amendment No. 1, referred to herein as the “original filing”). On November 17, 2009, the SEC published the original filing for comment in the Federal Register.¹ The comment period closed on December 8, 2009. The SEC received two comment letters in response to the Federal Register publication.²

On January 14, 2010, the SEC approved proposed rule change SR-FINRA-2009-082, pursuant to which FINRA proposed to amend FINRA trade reporting rules relating to the reporting of trade cancellations to FINRA.³

FINRA is filing this Partial Amendment No. 2 to (1) address the comments the SEC received in response to the Federal Register publication; (2) clarify that the original filing also proposes amendments to require that members report trade cancellations that are subject to 90-second reporting under current FINRA rules within 30 seconds of the time the trade is canceled; and (3) propose technical changes to replace the reference to 90 seconds with 30 seconds in Rule 6282(j)(2)(A)⁴ and reflect the underlying text of

¹ See Securities Exchange Act Release No. 60960 (November 6, 2009), 74 FR 59272 (November 17, 2009) (Notice of Filing of SR-FINRA-2009-061).

² See Letter from James R. Downing, Chief Compliance Officer, Cheevers and Company, Inc., undated (“Cheevers Letter”); and Letter from Neal E. Nakagiri, President, CEO and CCO, NPB Financial Group, LLC, dated November 24, 2009 (“NPB Letter”).

³ See Securities Exchange Act Release No. 61359 (January 14, 2010), 75 FR 3772 (January 22, 2010) (Order Approving SR-FINRA-2009-082). SR-FINRA-2009-082 will be implemented on April 12, 2010. See Regulatory Notice 10-07 (January 2010).

⁴ In SR-FINRA-2009-082, FINRA proposed to amend Rule 6282(j)(2)(A) to require members to report the cancellation of a trade executed during normal market hours and cancelled prior to 4:00 p.m. on the date of execution within 90 seconds. Prior to proposed rule change SR-FINRA-2009-082, there was no 90-second reporting requirement in Rule 6282(j)(2)(A), and FINRA did not propose to amend this rule in the original filing.

Rules 6380A(g)(2)(A), 6380B(f)(2)(A) and 6622(f)(2)(A), as amended pursuant SR-FINRA-2009-082. With this Partial Amendment No. 2, FINRA is including (1) Exhibit 4 (see below), which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 2, marked to show additions to and deletions from the text as proposed in the original filing; and (2) Exhibit 5 (see below), which reflects the changes to the current rule text that are proposed in this proposed rule change, as amended by this Partial Amendment No. 2.

Summary of Comments and Responses Thereto

The commenters raise several issues relating to the proposed rule change that are summarized and responded to below.

30-Second Reporting Requirement

Only one commenter addresses the proposed 30-second reporting requirement and raises the following issues relating to the proposal.⁵

First, the commenter asserts that firms using WeblinkACT could have difficulty reporting trades within 30 seconds of execution because this process requires the manual typing/entry of trade information. FINRA recognizes that firms that use a manual process such as WeblinkACT (also commonly referred to as the Nasdaq or ACT workstation) to report trades may have difficulty entering all of the required information within 30 seconds. However, the number of trades reported in this manner is a tiny fraction of the overall number of trades reported to FINRA on a daily basis, and FINRA believes that the number of firms that use this manual reporting process is small. (Indeed, only one commenter raised this concern regarding the proposal.) Moreover, there are steps that firms using WeblinkACT could take to expedite trade reporting, including, for example, setting defaults to automatically populate certain fields in the trade report or separating the process of reporting for tape purposes from any associated clearing entry (i.e., the submission of additional clearing information may be the reason a firm cannot complete the reporting within 30 seconds).

Nonetheless, in response to the commenter's concerns, FINRA is proposing to provide six months additional time for member firms that utilize manual trade reporting systems to make the systems changes necessary to comply with the 30-second trade reporting requirement. In the original filing, FINRA proposed to implement the proposed rule change between six and nine months following the date of Commission approval. In this Partial Amendment No. 2, FINRA is proposing the following phased-in implementation schedule for the 30-second reporting requirement. The implementation date for "Manual Reporting Firms," as described below, will be between twelve and fifteen months following the date of Commission approval ("Phase II"). For all other firms, the implementation date will be between six and nine months following the date of Commission approval, as proposed in the original filing ("Phase I"). FINRA will

⁵

Cheevers Letter.

announce the implementation dates in a Regulatory Notice.⁶

For purposes of Phase II implementation, a “Manual Reporting Firm” is a firm that uses a manual process such as WeblinkACT (or the Nasdaq or ACT workstation) for all, or substantially all, of its trade reporting of OTC trades. Firms with automated processes that on occasion manually report trades would not fall within the scope of this definition and must comply with the Phase I implementation date for all of their trade reporting.⁷

Firms must submit advance written notice to FINRA that they are a “Manual Reporting Firm” and qualify for Phase II implementation, including a description of their current manual process. Such notice should be submitted to FINRA’s Market Regulation Department at least 30 business days prior to the Phase I implementation date. Firms with manual trade reporting systems that do not provide advance notice must comply with the 30-second reporting requirement on the Phase I implementation date.

Prior to the Phase II implementation date, Manual Reporting Firms will continue to be subject to the current trade reporting requirements, i.e., firms must report as promptly as practicable – and in no event more than 90 seconds – following trade execution.⁸ However, the proposed phased-in implementation schedule will not establish a separate standard for purposes of modifying trade reports as timely versus late. Upon Phase I implementation, all trades reported more than 30 seconds after execution will be modified as late for reporting and dissemination purposes. In this way, market participants will have certainty as of the Phase I implementation date that any trade disseminated as timely reported was executed within the prior 30 seconds.

Second, this commenter asserts that the proposed rule change will not materially enhance market transparency and questions the need for reducing the reporting time given that 99.90% of all trades are already being reported within 30 seconds. The original filing cites a number of compelling reasons for the proposed rule change. Additionally, FINRA notes that today, under the 90-second reporting requirement, market participants have no way of distinguishing among trades reported 30 or 60 or 90 seconds after execution; they all appear on the tape as timely reported trades. The

⁶ The proposed phased-in implementation schedule would apply to the 30-second reporting requirement only. The conforming changes to the rules relating to the ORF that were proposed in the original filing will be implemented for all firms on the Phase I implementation date.

⁷ In other words, firms with automated trade reporting processes cannot qualify for Phase I implementation for some trades and Phase II implementation for other trades.

⁸ These firms also will continue to be subject to all other reporting time frames under FINRA rules (e.g., the obligation to report trades executed between midnight and 8:00 a.m. by 8:15 a.m. Eastern Time on trade date).

proposed rule change will provide market participants the certainty that any trade disseminated as timely reported was executed within the prior 30 seconds.

Third, this commenter asserts that Qualified Contingent (QCT) trades⁹ should be exempt from the 30-second reporting requirement. Such trades currently are subject to real-time trade reporting and dissemination, and FINRA does not believe that a blanket exemption is warranted in this instance. FINRA notes, however, that if a firm reports QCT trades via a manual process such as WeblinkACT, it may qualify for the later Phase II implementation date, as discussed above, and have additional time to make necessary systems changes.

Finally, the commenter recommends that FINRA adopt a rule that requires firms to report “as soon as practicable,” rather than impose a 30-second reporting requirement, to afford firms with manual processes the ability to remain compliant and require that automated processes are programmed to report promptly. FINRA believes that a bright-line, uniform standard is crucial for surveillance and enforcement purposes, and provides meaningful information to the market (e.g., without a specific time frame, which trades would be marked as reported late?).

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

The other commenter addresses the proposal relating to the trade reporting of transactions in non-exchange-listed DPPs.¹⁰ The commenter asserts that a 30-second reporting requirement for DPPs would be problematic because the time of execution for such trades is not a precise time, e.g., there is usually a lot of paperwork to complete before a “trade” takes place, and the transfer itself must be accepted and completed by the issuer or an agent of the issuer.

As discussed in the original filing, pursuant to current 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. The original filing proposes to amend Rule 6622 to include as Supplementary Material the definitions of “date of execution” and “time of execution” for non-exchange-listed DPP transactions. The proposed definitions are identical to the definitions in current Rule 6642, and specifically, “time of execution” is defined as the

⁹ See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934); and Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (Order Modifying the Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934).

¹⁰ NPB Letter.

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. Thus, under current rules and the proposed rule change, there is no uncertainty as to the time of execution of the trade or the point at which a firm's reporting obligation is triggered.

This commenter further asserts that “[i]f a trade report is required at all, it should be within 24 hours of the ‘last act’ that is required between the buyer, seller and issuer to ultimately complete the trade.” FINRA does not agree. Under FINRA trade reporting rules, the reporting obligation is triggered upon execution, not settlement, of the trade. The fact that the ultimate transfer of the securities may be contingent on subsequent events or actions of other parties is irrelevant. Moreover, delaying the trade report until a later date when the transfer actually occurs could be confusing to market participants, because intervening events, such as the payment of a distribution or sale of partnership assets, could affect the price or value of the DPP.

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 2, with the proposed changes in the published filing shown as if adopted. Proposed new language in this Partial Amendment No. 2 is underlined; proposed deletions in this Partial Amendment No. 2 are in brackets.¹

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6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

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6200. ALTERNATIVE DISPLAY FACILITY

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6280. Transaction Reporting

* * * * *

6282. Transactions Reported by Members to TRACS

(a) through (i) No Change.

(j) 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 at or before 4:00 p.m. on the date of execution, the member responsible under paragraph (j)(1) shall report the cancellation within [9]30 seconds of the time the trade is cancelled.

¹ This Exhibit 4 reflects the underlying rule text as amended pursuant to SR-FINRA-2009-082. See Securities Exchange Act Release No. 61359 (January 14, 2010), 75 FR 3772 (January 22, 2010) (Order Approving SR-FINRA-2009-082). SR-FINRA-2009-082 will be implemented on April 12, 2010. See Regulatory Notice 10-07 (January 2010).

(B) through (G) No Change.

* * * * *

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change, as amended by this Partial Amendment No. 2. 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

¹ This Exhibit 5 reflects the underlying rule text as amended pursuant to SR-FINRA-2009-082. See Securities Exchange Act Release No. 61359 (January 14, 2010), 75 FR 3772 (January 22, 2010) (Order Approving SR-FINRA-2009-082). SR-FINRA-2009-082 will be implemented on April 12, 2010. See Regulatory Notice 10-07 (January 2010).

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.

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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 (i) No Change.

(j) 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 at or before 4:00 p.m. on the date of execution, the member responsible under paragraph (j)(1) shall report the cancellation within [9]30 seconds of the time the trade is cancelled.

(B) through (G) 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 at or before 4:00 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

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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 at or 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.]

([3]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); and

(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.

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)Z] 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 at or 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) 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.]

* * * * *

**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.

* * * * *

7200. TRADE REPORTING FACILITIES

7200A. FINRA/NASDAQ TRADE REPORTING FACILITY

* * * * *

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

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *