

Trade Reporting Notice

OTC Equity Trading and Reporting in the Event of Systems Issues

Executive Summary

Firms must establish, maintain and enforce written policies and procedures that include a pre-determined response addressing over-the-counter (OTC) trading and reporting in the event of a systems issue during the trading day (*i.e.*, regular market hours) that prevents the firm from reporting OTC trades within the time frame prescribed by FINRA rules. As discussed below, a firm's procedures should address the firm's response to a FINRA facility systems issue, as well as an issue with its own or its vendor's systems.

Questions regarding this *Notice* may be directed to:

- ▶ Dave Chapman, Director, Market Regulation, at (240) 386-4995 or dave.chapman@finra.org;
- ▶ Brendan Loonam, Director, Business Services, at (212) 858-4203 or brendan.loonam@finra.org; or
- ▶ Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190 or lisa.horrigan@finra.org.

Background & Discussion

FINRA rules require that firms report OTC transactions in equity securities to FINRA.¹ Reporting firms can choose among three FINRA facilities for purposes of reporting OTC transactions in NMS stocks—the Alternative Display Facility (ADF) and two Trade Reporting Facilities (TRFs). A fourth FINRA facility—the OTC Reporting Facility (ORF)—supports the reporting of transactions in OTC equity securities (*i.e.*, non-NMS stocks such as those quoted on the OTC Bulletin Board and OTC Markets). Firms must execute the applicable FINRA facility participant agreement and comply with all applicable rules when reporting to a FINRA facility. Pursuant to FINRA rules, firms must report OTC transactions in equity securities as soon as practicable, but no later than 10 seconds, following execution.²

January 20, 2016

Key Topics

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

Referenced Rules & Notices

- ▶ FINRA Rule 6110
- ▶ FINRA Rule 6282
- ▶ FINRA Rule 6380A
- ▶ FINRA Rule 6380B
- ▶ FINRA Rule 6610
- ▶ FINRA Rule 6622

Widespread FINRA Facility Systems Issues

Firms must establish, maintain and enforce written policies and procedures that include a pre-determined response addressing OTC trading and reporting in the event that a FINRA facility experiences a widespread systems issue during the trading day. A firm's procedures also should address how customers and brokers from which they receive orders will be notified of the firm's response to FINRA facility systems issues.

If a firm routinely reports its OTC trades in NMS stocks to only one FINRA facility ("primary facility") and intends to continue to support OTC trading as an executing broker while its primary facility is down, the firm must establish and maintain connectivity and report to a second FINRA facility. If the firm chooses not to have connectivity to a second FINRA facility, it should cease OTC trading altogether in the event of a widespread FINRA facility systems issue that prevents firms from reporting their trades. Alternatively, the firm may choose to route orders to an exchange or another FINRA firm (*i.e.*, a firm with connectivity and the ability to report to a FINRA facility not experiencing a systems issue) for execution. Otherwise, the firm should stop receiving orders until it can properly support the timely handling, execution and reporting of these orders. FINRA notes that in the event that the ORF experiences a widespread systems issue, FINRA likely would halt trading in OTC equity securities, since there is no alternative means to report such transactions.

Based on the information available to it at the time of the FINRA facility systems issue, FINRA will announce (*e.g.*, on its website, via email³ and other means) as quickly as possible if it believes that firms should invoke the procedures outlined above. For example, FINRA anticipates making such an announcement where widespread systems issues are likely to be protracted or the source and resolution of the systems issues are uncertain. For purposes of this guidance, FINRA would consider a systems issue to be "protracted" where the issue occurs during the first 15 minutes or the last 15 minutes of the trading day and appears unlikely to be resolved within five minutes. For systems issues occurring at other times during the trading day, the issue would be considered "protracted" if it is unlikely to be resolved within 30 minutes.

In the event of a FINRA facility systems issue for which FINRA has not announced that firms should invoke the procedures outlined above, FINRA believes that it would be reasonable for firms to continue trading OTC and, where necessary, report their trades late once the issue is resolved.

Limited FINRA Facility Systems Issues

Where a FINRA facility systems issue is not widespread, but affects only a limited number of firms (*e.g.*, the facility is operating normally but rejecting trades from one firm due to a participant configuration issue), FINRA will contact the affected firm(s). Firms have a duty to mitigate any impact to the tape resulting from the systems issue, *e.g.*, by invoking the procedures outlined above or, if possible, making intraday changes to their trade reporting processes to ensure that their submissions will be accepted by the FINRA facility. A firm's policies and procedures should be consistent with, and reflect, this duty.

In such scenarios, however, given that market impact is limited rather than widespread, it also may be reasonable for the firm to continue executing and reporting (or attempting to report) OTC trades to the FINRA facility while the systems issue is ongoing, if the firm reasonably believes that such action is warranted by its best execution obligation or other duties to its customers. In this limited instance, the firm should work with FINRA facility operations staff to manually enter or re-submit the rejected (or otherwise unsuccessfully reported) trades.⁴ Thus, for example, where a FINRA facility systems issue affects only one firm (or a limited number of firms), the firm may be able to resubmit its trades via bulk upload to the applicable FINRA facility (if supported by the facility), if the firm has determined to continue executing OTC trades for the duration of the systems issue. Trades reported in this manner are designated late if they are reported more than 10 seconds after execution.

FINRA reiterates that, as set forth above, in the event of a widespread FINRA facility systems issue, firms may only continue to directly execute OTC trades in NMS stocks if they have connectivity and the ability to report to another FINRA facility.

Firm or Vendor Systems Issues

Firms also must establish, maintain and enforce written policies and procedures that include a pre-determined response addressing OTC trading and reporting in the event that they experience a systems issue in their own systems or in a vendor's systems. Firms are reminded that they are expected to have sufficiently robust systems with adequate capability and capacity to enable them to report in accordance with FINRA rules, including reasonable back-up capabilities in the event of a systems issue in the firm's or a vendor's systems. Under FINRA rules, a pattern or practice of late reporting without reasonable justification or 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 The failure of a firm's or a vendor's systems, in the absence of contingency plans consistent with this Notice, would not be considered reasonable justification or exceptional circumstances under FINRA rules for late reporting.

Endnotes

1. See Rules 6110 and 6610.
2. See Rules 6282(a)(1), 6380A(a)(1), 6380B(a)(1) and 6622(a)(1).
3. Firms can sign up to receive regulatory announcements from FINRA under the Market Transparency tab of the FINRA [Email Subscription Service](#). See also [Trade Reporting FAQ 100.12](#).
4. FINRA rules provide that firms may transmit trades by telephone to facility operations, if the FINRA facility is unavailable due to system or transmission failure. See Rules 6282(a)(1), 6380A(a)(1), 6380B(a)(1) and 6622(a)(1).
5. See Rules 6282(a)(4), 6380A(a)(4), 6380B(a)(4) and 6622(a)(4).