

# Trade Reporting Notice

## Reporting of Information Relating to OTC Trades in NMS Stocks

### Executive Summary

FINRA interprets the “as soon as practicable” requirement under FINRA trade reporting rules to require that firms release information relating to over-the-counter (OTC) transactions in NMS stocks to other market participants no sooner than they release such information to a FINRA trade reporting facility for dissemination (or “tape”) purposes.

Questions regarding this *Notice* may be directed to:

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### Discussion

Rule 603(a) of SEC Regulation NMS<sup>1</sup> provides that any national securities exchange, national securities association, broker or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer or other persons shall do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Securities and Exchange Commission (SEC or Commission) stated that “adopted Rule 603(a) prohibits [a self-regulatory organization] or broker-dealer from transmitting data to a vendor or user any sooner than it transmits the data to a Network processor.”<sup>2</sup>

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### Key Topics

- ▶ Alternative Display Facility (ADF)
- ▶ Alternative Trading Systems (ATS)
- ▶ NMS Stocks
- ▶ OTC Trade Information
- ▶ Regulation NMS
- ▶ Trade Reporting
- ▶ Trade Reporting Facilities (TRF)

### Referenced Rules & Notices

- ▶ FINRA Rule 6282
- ▶ FINRA Rule 6380A
- ▶ FINRA Rule 6380B
- ▶ Regulatory Notice 14-46
- ▶ SEC Regulation NMS
- ▶ SEC Rule 603

In a subsequent order finding violations of Rule 603(a) by a national securities exchange, the SEC stated that:

The Commission has recognized that, due to the consolidation process (i.e., the time from the receipt by the Network Processor of the information from exchanges to the time it distributes consolidated information to the public), information from a Network Processor generally reaches market participants later than information from exchanges' proprietary feeds. See Concept Release, 75 Fed. Reg. at 3601 (citing an average consolidation time of approximately 5-10 milliseconds). Nevertheless, exchanges have an obligation under Rule 603(a) to take reasonable steps to ensure—through system architecture, monitoring, or otherwise—that they release data relating to current best-priced quotations and trades through proprietary feeds no sooner than they release data to the Network Processor, including during periods of heavy trading.<sup>3</sup>

Under FINRA rules, OTC trades in NMS stocks that are executed during the hours that a FINRA trade reporting facility<sup>4</sup> is open must be reported for dissemination purposes as soon as practicable, but no later than 10 seconds, following trade execution. Firms must have policies and procedures reasonably designed to comply with the “as soon as practicable” requirement and must implement systems that commence the trade reporting process without delay upon execution.<sup>5</sup>

Consistent with the SEC staff's interpretation of Rule 603(a), FINRA interprets the “as soon as practicable” requirement under FINRA rules to also require that firms release information relating to OTC transactions in NMS stocks to other market participants no sooner than they release such information to a FINRA trade reporting facility for dissemination (or “tape”) purposes. Thus, for example, an ATS cannot release trade information to its subscribers (other than the subscriber on whose behalf the trade was executed) before it releases the information to a FINRA trade reporting facility.

FINRA notes that in *Regulatory Notice 14-46* (November 2014), FINRA solicited comment on proposed guidance that FINRA interprets the “as soon as practicable” requirement to require that firms not disseminate executed trade information sooner than the trade is reported to FINRA. In response to comments, FINRA modified the language of the guidance to clarify its expectations in this regard. Specifically, the guidance (1) more closely tracks the SEC's language in the SEC Order, referred to above, by focusing on the release (rather than the dissemination) of trade information, and (2) clarifies for firms that reporting to a FINRA trade reporting facility is the equivalent of reporting to FINRA. Further, FINRA is confirming that firms generally would be considered in compliance with the “as soon as practicable” requirement if they release trade information to a FINRA trade reporting facility and the firm's subscribers or other market participants contemporaneously, even if the information is received at different times.

## Endnotes

1. 17 CFR 242.603(a).
2. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37,567 (June 29, 2005) (File No. S7-10-04; Regulation NMS Adopting Release); see also Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (File No. S7-02-10; Concept Release on Equity Market Structure).
3. See Securities Exchange Act Release No. 67857 (September 14, 2012) (Order Instituting Administrative Proceedings and Cease-and-Desist Proceedings; File No. 3-15023) ("SEC Order").
4. The FINRA facilities used for reporting OTC trades in NMS stocks are the Alternative Display Facility (ADF) and two Trade Reporting Facilities (TRFs)—the FINRA/Nasdaq TRF and the FINRA/NYSE TRF.
5. See paragraph (a) and Supplementary Material .02 of Rules 6282, 6380A and 6380B.