

## Regulation M

### FINRA Provides Guidance on Amendments to FINRA Rules Relating to SEC Regulation M

Effective Date: December 15, 2008

#### Executive Summary

FINRA is issuing this *Notice* to provide additional information and guidance on the new FINRA Rules governing notification requirements and marketplace-specific rules relating to Regulation M under the Securities Exchange Act of 1934.<sup>1</sup> As announced in *Regulatory Notice 08-57*, the FINRA Rules become effective December 15, 2008.

The text of the amendments is set forth in Attachment A of this *Notice*. The forms firms must use to notify FINRA under the amendments are provided in Attachment B of this *Notice* and are available (along with any updates) online at [www.finra.org/RegM](http://www.finra.org/RegM).

Questions regarding this *Notice* may be directed to:

- Scott Trilling, Market Regulation Department, at (240) 386-5113;
- Melissa Springer, Market Regulation Department, at (240) 386-5088;
- FINRA's Regulation M Filings General Inquiry Line, at (240) 386-5560; or
- Office of General Counsel, at (202) 728-8071.

#### Background and Discussion

On September 11, 2008, the SEC approved a proposed rule change that, among other things: (1) adopts new FINRA Rule 5190, which includes the Regulation M-related notification requirements applicable to firms participating in securities offerings; (2) adopts new FINRA Rule 6470, which includes certain Regulation M-related requirements that are currently in the OTC Bulletin Board (OTCBB) rules and applies to all OTC Equity Securities;<sup>2</sup> and (3) makes conforming amendments to the Regulation M-related rules applicable to the Alternative Display Facility (ADF).<sup>3</sup>

#### December 2008

##### Notice Type

- Rule Amendment

##### Suggested Routing

- Compliance
- Corporate Financing
- Executive Representatives
- Legal
- Senior Management
- Trading
- Training

##### Key Topic(s)

- Alternative Display Facility
- Distributions
- NMS Stocks
- OTC Equity Securities
- PIPEs
- SEC Regulation M
- Securities Offerings
- Shelf Offerings

##### Referenced Rules & Notices

- FINRA Rule 5110
- FINRA Rule 5190
- FINRA Rule 6275
- FINRA Rule 6420
- FINRA Rule 6470
- FINRA Rule 6540
- NYSE Rule 392
- NASD Rule 2710
- NASD Rule 4619A
- NASD Rule 6610
- Regulatory Notice 08-57
- SEC Regulation M

Regulation M is designed to prevent manipulation by persons with an interest in the outcome of an offering and prohibits activities and conduct that could artificially influence the market for an offered security.<sup>4</sup> In this regard, Regulation M generally prohibits underwriters, broker-dealers, issuers and other persons participating in a distribution from directly or indirectly bidding for or purchasing the offered security (or inducing another person to do so) during the applicable “restricted period.” The restricted period commences on the later of either one or five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ends upon such person’s completion of participation in the distribution.<sup>5</sup> For purposes of determining when the applicable restricted period under Regulation M commences, or whether no restricted period applies because the “actively traded” exception can be relied upon, the SEC has adopted a dual standard of the value of the worldwide average daily trading volume (ADTV) of the offered security and public float value of the issuer.<sup>6</sup>

Regulation M also governs certain market activities (*i.e.*, stabilizing bids, syndicate covering transactions and penalty bids)<sup>7</sup> in connection with an offering and requires that notification of such activity be provided to the relevant self-regulatory organization or, in the case of stabilizing bids, the market where the stabilizing bid is to be posted. Finally, Regulation M prohibits any person from selling short a security that is the subject of a public offering and purchasing the security in the offering, if such short sale was effected during the restricted period (which, for purposes of the short sale restrictions, generally is the five-day period prior to pricing).<sup>8</sup>

Firms are reminded that certain rules under Regulation M apply to some, but not all, offerings, *e.g.*, SEC Rule 101 applies only to “distributions.” A distribution under Regulation M is distinguished from ordinary trading transactions by the “magnitude of the offering” and the presence of “special selling efforts and selling methods.”<sup>9</sup> The types of offerings that can satisfy the definition of “distribution” under Regulation M include public offerings, private placements, shelf offerings, mergers and other acquisitions, exchange offers and at-the-market offerings.<sup>10</sup> In addition, certain activities are excepted from the rules under Regulation M. For example, transactions in Rule 144A securities during a distribution of such securities are not prohibited under SEC Rule 101, subject to certain conditions set forth in the rule.<sup>11</sup>

As part of FINRA’s program to monitor for compliance with Regulation M, FINRA’s Market Regulation Department reviews over-the-counter (OTC) trading and quoting activity for prohibited purchases, bids or attempts to induce bids or purchases during the applicable restricted period and for prohibited short sales during the five-day period prior to the pricing of an offering. Pursuant to its rules, FINRA must receive pertinent distribution-related information in a timely fashion to facilitate this component of its Regulation M compliance program.<sup>12</sup>

The guidance in this *Notice* relates only to firms' Regulation M-related notification obligations under FINRA rules and does not address other obligations that may apply, *e.g.*, the FINRA transaction reporting rules or the Regulation M-related rules of a national securities exchange.

## New FINRA Rule 5190

New FINRA Rule 5190 (Notification Requirements for Offering Participants) consolidates some of the Regulation M-related notification requirements that currently are found in NASD Rule 2710 and Incorporated NYSE Rule 392 (Notification Requirements for Offerings of Listed Securities). Unlike FINRA's current rules, the new rule applies uniformly to distributions of listed and unlisted securities.

### Requirements applicable to distributions subject to a restricted period (Rule 5190(c)(1))

Rule 5190(c)(1) sets forth the notification requirements applicable to distributions of listed and unlisted securities that are "covered securities"<sup>13</sup> subject to a restricted period under Rule 101 or 102 of Regulation M.

Specifically, firms must determine, in accordance with Regulation M, whether the applicable restricted period commences one day or five days prior to pricing (a "one-day" or "five-day" restricted period), and notify FINRA in writing of the firm's determination and the basis for such determination.<sup>14</sup> Additionally, firms are required to include in the written notification the contemplated date and time of commencement of the restricted period,<sup>15</sup> and identify the distribution participants and affiliated purchasers.<sup>16</sup> Under the new rule, firms are not required to submit a copy of the registration statement or other offering documents to FINRA's Market Regulation Department.

While the new rule places the responsibility of determining the applicable restricted period on the firm, as a practical matter, FINRA will accept a firm's notification that the five-day restricted period applies to a prospective distribution without providing the basis for that determination. If, on the other hand, a firm asserts that a one-day or no restricted period applies to a particular distribution, FINRA will require that the firm demonstrate the basis for that determination. (As discussed below, firms must notify FINRA that the "actively traded securities" exception applies, and hence there is no restricted period, under new Rule 5190(d).)<sup>17</sup>

Firms must provide notification no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances.<sup>18</sup> Where the principal market closes early (*e.g.*, for a holiday), the shortened session would constitute a complete trading session for purposes of the rule.

In addition, firms must notify FINRA upon pricing a distribution that is subject to a restricted period under Regulation M.<sup>19</sup> The notification must include the following pricing-related information:

- ▶ Security name and symbol;
- ▶ Type of security (*e.g.*, common stock, preferred security, etc.);
- ▶ Number of shares offered;
- ▶ Offering price;
- ▶ Last sale before the distribution (*i.e.*, the last sale before pricing);
- ▶ Pricing basis (*e.g.*, a discount to the last sale price, a negotiated price, best efforts at the market, etc.);
- ▶ SEC effective date and time (*i.e.*, the date and time the SEC declares the offering effective),<sup>20</sup>
- ▶ Trade date (*i.e.*, the first trade date that the shares from the distribution are available for trading in the aftermarket);<sup>21</sup> and
- ▶ Restricted period (*i.e.*, the first and last trade dates of the actual restricted period).

Firms also are required to identify the distribution participants and affiliated purchasers.

Firms must submit the notification no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.<sup>22</sup> This requirement ensures that FINRA gets timely pricing information in instances where a distribution does not terminate for weeks or even months after pricing, as might be the case, for example, in a shelf offering.

Finally, firms must notify FINRA in writing if they cancel or postpone any distribution for which prior notice of commencement of the restricted period has been provided to FINRA.<sup>23</sup> Firms must provide such notification immediately upon the cancellation or postponement of the distribution.

### **Requirements applicable to issuers or selling security holders subject to a restricted period (Rule 5190(c)(2))**

Rule 5190(c)(2) requires that any firm that is an issuer or selling security holder in a distribution of a security, including an “actively traded” security, subject to a restricted period under Rule 102 of Regulation M comply with the notification requirements of Rule 5190(c)(1), discussed above. This requirement ensures that FINRA is notified of any distribution in which a firm is participating as an issuer or selling security holder, to the extent that notice of such distribution has not already been provided under Rule 5190.

### **Requirements applicable to distributions of “actively traded” securities (Rule 5190(d))**

Rule 5190(d) sets forth the notification requirements applicable to distributions of listed and unlisted securities that are considered “actively traded” securities and thus are not subject to a restricted period under Rule 101 of Regulation M.<sup>24</sup>

In connection with such distributions, firms must notify FINRA in writing of the firm’s determination that no restricted period applies and the basis for such determination.<sup>25</sup> Firms must notify FINRA at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances.<sup>26</sup>

Upon pricing a distribution of a security that is considered “actively traded,” firms must provide written notification to FINRA, including the pricing-related information required under Rule 5190(c)(1)(B), discussed above, and identify the distribution participants and affiliated purchasers.<sup>27</sup> Firms must notify FINRA no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.<sup>28</sup>

### **Penalty bids and syndicate covering transactions in OTC Equity Securities (Rule 5190(e))**

Rule 5190(e) requires firms to notify FINRA of penalty bids or syndicate covering transactions in connection with an offering of an OTC Equity Security. Firms must notify FINRA of their intention to conduct such activity prior to imposing the penalty bid or engaging in the first syndicate covering transaction, and identify the security and its symbol and the date such activity will occur. In addition, firms are required to subsequently confirm such activity within one business day of completion, and identify the security and its symbol, the total number of shares and the date(s) of such activity.

These requirements are substantially similar to the current OTCBB rules; however, the amendments clarify that they apply to distributions of all OTC Equity Securities and are not limited to distributions of OTCBB-eligible securities.

### Submission of notice to FINRA under Rule 5190

Pursuant to paragraphs (c)(1) and (d) of Rule 5190, the member firm acting as manager (or in a similar capacity) is responsible for notifying FINRA of the distribution. However, if no member firm is acting as manager (or in a similar capacity), then each firm that is a distribution participant or affiliated purchaser is required to notify FINRA, unless another member firm has assumed responsibility in writing for compliance with the notification requirement. Pursuant to Rule 5190(c)(2), a firm that is an issuer or selling security holder must comply with the notification requirements of paragraph (c)(1), unless another member firm has assumed responsibility in writing for compliance with those requirements. Similarly, pursuant to Rule 5190(e), a firm that intends to impose a penalty bid or effect a syndicate covering transaction is responsible for notifying FINRA, unless another member firm has assumed responsibility in writing for compliance with the rule.

Firms must use the following forms to provide notification under Rule 5190:

Notification Requirement	Rule	Form
Determination of applicable restricted period, including contemplated commencement of restricted period	5190(c)(1)(A)	Regulation M Restricted Period Notification
Determination that no restricted period applies under the “actively traded” securities exception	5190(d)(1)	Regulation M Restricted Period Notification
Pricing of distribution (applicable to distributions subject to a restricted period and distributions of “actively traded” securities)	5190(c)(1)(B) 5190(d)(2)	Regulation M Trading Notification
Cancellation or postponement of distribution (applicable where prior notice of commencement of restricted period has been provided)	5190(c)(1)(C)	Regulation M Restricted Period Notification

Notification Requirement	Rule	Form
Intent to effect syndicate covering transaction	5190(e)(1)	Regulation M Notice of Intent to Impose a Penalty Bid and/or Effect a Syndicate Covering Transaction
Confirmation of syndicate covering transaction	5190(e)(2)	Regulation M Trading Notification
Intent to impose penalty bid	5190(e)(1)	Regulation M Notice of Intent to Impose a Penalty Bid and/or Effect a Syndicate Covering Transaction
Confirmation of penalty bid	5190(e)(2)	Regulation M Trading Notification

All notices under Rule 5190 must be submitted to FINRA's Market Regulation Department via email to [secondaryofferings@finra.org](mailto:secondaryofferings@finra.org); fax to (301) 339-7403; or a third-party vendor (e.g., Dealogic, Ipreo), within the time periods prescribed by the rule. The notification required under Rule 5190 must *not* be sent to FINRA's Corporate Financing Department. Submission to the Corporate Financing Department does *not* constitute compliance with Rule 5190.

Firms are reminded that they must update any notification submitted to the Market Regulation Department, as necessary (e.g., a manager would update the notification if distribution participants were added after the restricted period commenced or if a deal was oversubscribed and the over-allotment option was exercised).

Nasdaq Stock Exchange rules impose certain notification requirements that are similar to those of Rule 5190. Firms that have an obligation under both FINRA and Nasdaq Stock Exchange rules are not required to submit two separate filings to FINRA's Market Regulation Department to satisfy those rules; rather, the forms that have been designed to satisfy FINRA rules also include fields for purposes of compliance with the comparable Nasdaq Stock Exchange rules.<sup>29</sup> Firms that are not subject to Nasdaq Stock Exchange rules would not be required to complete those additional fields.

## Amendments to Marketplace Rules

FINRA's OTCBB and ADF marketplace rules include certain Regulation M-related requirements. Consistent with the amendments discussed above, and as part of the rule change approved by the SEC, FINRA has clarified the scope and application of these marketplace-specific requirements.

### New FINRA Rule 6470 Relating to OTC Equity Securities

New FINRA Rule 6470 (Withdrawal of Quotations in an OTC Equity Security in Compliance with SEC Regulation M) requires that, in connection with a distribution of an OTC Equity Security, a firm must withdraw its quotations in the offered security to comply with the applicable restricted period under Regulation M. In addition, Rule 6470 prohibits the entry of stabilizing bids for OTC Equity Securities pursuant to Rule 104 of Regulation M. Because firms can withdraw their quotes in OTC Equity Securities without first requesting excused withdrawal status (as required under ADF rules), there is no notification requirement under Rule 6470.

Rule 6470 is substantially similar to current OTCBB rules; however, the amendments clarify that the requirements apply not only to OTCBB-eligible securities, but to all OTC Equity Securities quoted in any inter-dealer quotation system (*e.g.*, OTCBB and Pink Sheets).

### Amendments to FINRA Rule 6275 relating to ADF Market Makers

FINRA Rule 6275(f) (previously NASD Rule 4619A(f)) has been amended to conform to the language and structure of new Rule 6470. As amended, Rule 6275 requires that, in connection with a distribution of an NMS stock, an ADF Market Maker must submit a written request to ADF Operations and FINRA's Market Regulation Department to withdraw its quotations in the offered security in the ADF to comply with the applicable restricted period under Regulation M.<sup>30</sup> The request must be submitted no later than the business day prior to the first complete trading session of the restricted period under Regulation M, unless later notification is necessary under the specific circumstances.<sup>31</sup>

An ADF Market Maker also must submit a written request to ADF Operations and FINRA's Market Regulation Department to rescind the firm's excused withdrawal status. As part of that request, the firm must notify FINRA of the date and time of the pricing of the offering, the offering price and the time the offering terminated.<sup>32</sup> The request must be submitted no later than the close of business the next business day following the pricing of the distribution.



The obligation to request excused withdrawal status and to subsequently rescind excused withdrawal status is on the ADF Market Maker that is posting quotations in the ADF; however, another member firm can assume responsibility – which must be in writing – for compliance on the ADF Market Maker’s behalf. As amended, the rule no longer requires the manager of the distribution to submit the request on behalf of each firm participating in the distribution (of course, under the rule, a member firm acting as manager can agree, in writing, to do so on behalf of the firms).

Firms must use the following forms to satisfy their notification obligations under Rule 6275:

Notification Requirement	Rule	Form
Request for excused withdrawal status	6275(f)(1)	Regulation M Restricted Period Notification
Request to rescind excused withdrawal status	6275(f)(2)	Regulation M Trading Notification

Firms must submit notification forms under Rule 6275 to FINRA’s Market Regulation Department via email to [secondaryofferings@finra.org](mailto:secondaryofferings@finra.org); fax to (301) 339-7403; or a third party vendor (e.g., Dealogic, Ipreo), and to ADF Operations via email to [FINRAOperations@finra.org](mailto:FINRAOperations@finra.org) or fax to (240) 386-6225, within the time periods prescribed by the rule.

To further assist firms, FINRA will publish a set of Frequently Asked Questions (FAQ) to facilitate firms’ compliance with the amendments and the FAQ will be available on FINRA’s Web site.

The rule amendments become effective on December 15, 2008.

## Endnotes

- 1 17 CFR §242.100 to 105.
- 2 “OTC Equity Security,” as defined in FINRA Rule 6420 (formerly NASD Rule 6610), includes all non-exchange-listed securities, such as OTCBB and Pink Sheets securities.
- 3 See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (order approving SR-FINRA-2008-039). See also *Regulatory Notice 08-57* (October 2008).
- 4 See Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997) (File No. S7-11-96) (Anti-Manipulation Rules Concerning Securities Offerings; Final Rules). See also generally SEC Staff Legal Bulletin No. 9, Frequently Asked Questions About Regulation M (April 12, 2002 update) at <http://www.sec.gov/interps/legal/mrslb9.htm>.
- 5 See 17 CFR §242.100 (definition of “restricted period”).
- 6 The exception for “actively traded” securities removes from Rule 101 of Regulation M securities with an ADTV value of at least \$1 million where the issuer’s common equity securities have a public float value of at least \$150 million. For all other securities, the following standards apply in determining when the applicable restricted period commences: (1) for a distribution of a security with an ADTV value of at least \$100,000, whose issuer has outstanding common equity securities having a public float value of at least \$25 million, the restricted period begins one business day prior to pricing (or the date on which the person becomes a distribution participant), and (2) for a distribution of any other security, the restricted period begins five business days prior to pricing (or the date on which the person becomes a distribution participant). See 17 CFR §242.100 (definition of “restricted period”) and 17 CFR §242.101(c)(1) (“actively traded” securities exception).
- 7 See 17 CFR §242.100 (definitions of “stabilizing,” “syndicate covering transaction,” and “penalty bid”). In general terms, a “stabilizing bid” is a bid that is intended to maintain the price of the offered security and is necessary to prevent or retard a decline in the security’s price. A “penalty bid” allows a lead underwriter to reclaim a selling concession paid to a syndicate member if that member’s customers sell their allocated shares in the immediate aftermarket. A “syndicate covering transaction” is generally defined as placing a bid or effecting a purchase to reduce a syndicate short position.
- 8 See Securities Exchange Act Release No. 56206 (August 6, 2007), 72 FR 45094 (August 10, 2007) (File No. S7-20-06) (Short Selling in Connection With a Public Offering; Final Rule).
- 9 See 17 CFR §242.100 (definition of “distribution”).
- 10 See Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997) (File No. S7-11-96) (Anti-Manipulation Rules Concerning Securities Offerings; Final Rules).
- 11 See 17 CFR §242.101(b)(10).
- 12 FINRA’s Member Regulation Department also monitors for compliance with Regulation M in the context of member firm exams.
- 13 See 17 CFR §242.100 (definition of “covered securities”).

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- 14 Rule 5190(c)(1)(A).
- 15 The contemplated date and time of commencement of the restricted period is to be based upon the firm's projected pricing date as of the date of submission of notice under this rule. FINRA recognizes that conditions may arise that may affect when or whether the offering actually prices.
- 16 See 17 CFR §242.100 (definitions of "distribution participant" and "affiliated purchaser").
- 17 With respect to distributions of Nasdaq-listed securities, firms can rely on an Underwriting Activity Report (UAR) generated by FINRA's Market Regulation Department as the basis for determining the applicable restricted period.
- 18 In most instances, FINRA would expect to receive notification within the prescribed time frame, but may permit later notification in limited circumstances. Such determination would be made by FINRA's Market Regulation Department on a case-by-case basis. For example, there may be instances where the nature of the transaction has made it impossible to provide timely notice (e.g., a private investment in public equity (PIPE) offering is commenced and priced on the same day, and thus the firm could not have provided notice on the business day prior to the first complete trading session of the applicable restricted period).
- 19 Rule 5190(c)(1)(B).
- 20 In certain instances, e.g., PIPEs, this requirement may not be applicable.
- 21 In certain instances, e.g., PIPEs, this requirement may not be applicable.
- 22 See *supra* note 18.
- 23 Rule 5190(c)(1)(C).
- 24 See *supra* note 6.
- 25 Rule 5190(d)(1).
- 26 See *supra* note 18.
- 27 Rule 5190(d)(2).
- 28 See *supra* note 18.
- 29 Firms must nonetheless comply with requirements under the Nasdaq Stock Exchange rules to provide notice to Nasdaq or Nasdaq MarketWatch, as applicable.
- 30 Rule 6275(f)(1).
- 31 See *supra* note 18.
- 32 Rule 6275(f)(2).

## ATTACHMENT A

Below is the text of the rule change. New language is underlined; deletions are in brackets.<sup>1</sup>

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### 5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

### 5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

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#### 5190. Notification Requirements for Offering Participants

##### (a) General

This Rule 5190 sets forth the notice requirements applicable to all members participating in offerings of securities for purposes of monitoring compliance with the provisions of SEC Regulation M. In addition to the requirements under this Rule 5190, members also must comply with all applicable rules governing the withdrawal of quotations in accordance with SEC Regulation M.

##### (b) Definitions

For purposes of this Rule, the following terms shall have the meanings as set forth in Rules 100 and 101 of SEC Regulation M: “actively traded,” “affiliated purchaser,” “covered security,” “distribution,” “distribution participant,” “offering price,” “penalty bid,” “restricted period,” “selling security holder,” and “syndicate covering transaction.”

##### (c) Notice Relating to Distributions of Securities Subject to a Restricted Period Under SEC Regulation M

(1) A member acting as a manager (or in a similar capacity) of a distribution of any security that is a covered security subject to a restricted period under Rule 101 of SEC Regulation M shall provide written notice to FINRA, in such form as specified by FINRA, of the following:

(A) the member’s determination as to whether a one-day or five-day restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination, including the contemplated date and time of the commencement of the restricted period, the security name and symbol, and identification of the distribution participants and affiliated purchasers, no

1. This Attachment A reflects the amendments adopted pursuant to SR-FINRA-2008-039, as well as certain non-substantive technical changes to the underlying rule text adopted pursuant to SR-FINRA-2008-057 (filed for immediate effectiveness on December 3, 2008). Those rule filings are available at <http://www.finra.org/Industry/Regulation/RuleFilings/2008/P038926> and <http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117483>, respectively.

later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances;

(B) the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, the restricted period, and identification of the distribution participants and affiliated purchasers, no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances; and

(C) the cancellation or postponement of any distribution for which prior notification of commencement of the restricted period has been submitted under paragraph (c)(1)(A) above, immediately upon the cancellation or postponement of such distribution.

If no member is acting as a manager (or in a similar capacity) of such distribution, then each member that is a distribution participant or affiliated purchaser shall provide the notice required under this paragraph (c)(1), unless another member has assumed responsibility in writing for compliance therewith.

(2) Any member that is an issuer or selling security holder in a distribution of any security that is a covered security subject to a restricted period under Rule 102 of SEC Regulation M shall comply with the notice requirements of paragraph (c)(1), unless another member has assumed responsibility in writing for compliance therewith.

**(d) Notice Relating to Distributions of “Actively Traded” Securities Under SEC Regulation M**

A member acting as a manager (or in a similar capacity) of a distribution of any security that is considered an “actively traded” security under Rule 101 of SEC Regulation M shall provide written notice to FINRA, in such form as specified by FINRA, of the following:

(1) the member’s determination that no restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination, including the security name and symbol, at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances; and

(2) the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, and identification of the distribution participants and affiliated purchasers, no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

If no member is acting as a manager (or in a similar capacity) of such distribution, then each member that is a distribution participant or an affiliated purchaser shall provide the notice required under this paragraph (d), unless another member has assumed responsibility in writing for compliance therewith.

**(e) Notice of Penalty Bids and Syndicate Covering Transactions in OTC Equity Securities**

A member imposing a penalty bid or engaging in a syndicate covering transaction in connection with an offering of an OTC Equity Security, as defined in Rule 6420, pursuant to Rule 104 of SEC Regulation M shall, unless another member has assumed responsibility in writing for compliance with this paragraph (e), provide written notice to FINRA, in such form as specified by FINRA, of the following:

(1) the member's intention to conduct such activity, prior to imposing the penalty bid or engaging in the first syndicate covering transaction, including identification of the security and its symbol and the date such activity will occur; and

(2) confirmation that the member has imposed a penalty bid or engaged in a syndicate covering transaction, within one business day of completion of such activity, including identification of the security and its symbol, the total number of shares and the date(s) of such activity.

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**6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

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**6200. ALTERNATIVE DISPLAY FACILITY**

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## 6220. Definitions

(a) No Change.

(1) through (15) No Change.

[(16) “Rule 100,” “Rule 101,” “Rule 103,” and “Rule 104” mean the rules adopted by the SEC under Regulation M.]

[(17) “Stabilizing bid” means the terms “stabilizing” or to “stabilize” as defined in Rule 100 of SEC Regulation M.]

(18) through (19) redesignated as (16) through (17)

[(20) “Underwriting Activity Report” is a report provided by the Market Regulation Department of NASD in connection with a distribution of securities subject to Rule 101 of SEC Regulation M pursuant to NASD Rule 2710(b)(11).]

(b) For purposes of Rule[s] 6275 [and 6279], the following terms shall have the meanings as defined in Rule 100 of SEC Regulation M: “affiliated purchaser,” “covered security,” “distribution,” “distribution participant,” [“independent bid,” “net purchases,” “passive market maker,” “penalty bid,” “reference security,”] “restricted period,” and “selling security holder.” [“subject security,” and “syndicate covering transaction.”]

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## 6275. Withdrawal of Quotations

(a) through (e) No change.

(f) Excused withdrawal status may be granted by ADF Operations to a Registered Reporting ADF Market Maker that is a distribution participant, [or an] affiliated purchaser, selling security holder or issuer [in order to comply with] of a distribution of a security that is a covered security subject to a restricted period under Rule 101 or 102 of SEC Regulation M on the following conditions:

(1) [A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under Rule 101 of SEC Regulation M and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager] Such Registered Reporting ADF Market Maker shall, unless another member has assumed responsibility in writing for compliance with this Rule, provide a written [notice] request to FINRA, in such form as specified by FINRA, to withdraw the Registered Reporting ADF Market Maker’s quotations. [to ADF Operations and the Market

Regulation Department of FINRA] no later than the business day prior to the first [entire] complete trading session of the one-day or five-day restricted period under Rule 101 or 102 of SEC Regulation M, unless later notification is necessary under the specific circumstances.

[(A) The notice required by paragraph (f)(1) of this Rule shall be provided by submitting to ADF Operations a written request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations.]

[(B) The managing underwriter shall advise each Registered Reporting ADF Market Maker that it has been identified as a distribution participant or an affiliated purchaser to ADF Operations and that its quotations will be automatically withdrawn, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies ADF Operations as required by paragraph (f)(2), below.]

[(2) A Registered Reporting ADF Market Maker that has been identified to ADF Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify ADF Operations and the manager of its intention not to participate in the prospective distribution in order to avoid having its quotations withdrawn.]

[(3)2] [A member acting as a manager (or in a similar capacity) of a distribution subject to paragraph (f)(1) of this Rule] Such Registered Reporting ADF Market Maker shall submit a written request to [ADF Operations and the Market Regulation Department of] FINRA, in such form as specified by FINRA, to rescind the Registered Reporting ADF Market Maker's excused withdrawal status [of distribution participants and affiliated purchasers], which request shall include the date and time of the pricing of the offering[,] and the offering price, [and the time the offering terminated, and, if not in writing, shall be confirmed in writing] no later than the close of business the [day the offering terminates] next business day following the pricing of the distribution. [The request referenced in this subparagraph may be submitted on the Underwriting Activity Report or by other written means.]

(g) No change.

\* \* \* \* \*



## 6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

\* \* \* \* \*

### 6470. Withdrawal of Quotations in an OTC Equity Security in Compliance with SEC Regulation M

(a) A member that is a distribution participant, affiliated purchaser, selling security holder or issuer in a distribution of an OTC Equity Security that is a covered security subject to Rule 101 or 102 of SEC Regulation M and is entering quotations in such security shall, unless another member has assumed responsibility in writing for compliance with this Rule:

(1) withdraw all quotations in the OTC Equity Security to comply with the applicable restricted period under Rule 101 or 102 of SEC Regulation M; and

(2) not enter a stabilizing bid for the OTC Equity Security pursuant to Rule 104 of SEC Regulation M.

(b) For purposes of this Rule, the following terms shall have the meanings as defined in Rule 100 of SEC Regulation M: “affiliated purchaser,” “covered security,” “distribution,” “distribution participant,” “restricted period,” “selling security holder,” and “stabilizing.”

\* \* \* \* \*

## 6500. OTC BULLETIN BOARD® SERVICE

\* \* \* \* \*

**6540. Requirements Applicable to Market Makers**

(a) through (c) No Change.

(d) No Change.

**(1) Permissible Quotation Entries**

(A) through (C) No Change.

[(D) Any member that intends to be a distribution participant in a distribution of securities subject to Rule 101 of Regulation M, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject security or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:]

[(i) provide written notice to Operations Department prior to the pricing of the distribution that includes the intended date and time of the pricing of the offering;]

[(ii) withdraw all quotations in the OTCBB-eligible security to comply with the applicable restricted period under Rule 101 of SEC Regulation M and not enter a stabilizing bid pursuant to Rule 104 of Regulation M in the OTCBB;]

[(iii) provide written notice to the Corporate Financing Department of FINRA of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to Rule 104 of SEC Regulation M prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur; and]

[(iv) provide written notice to the Market Regulation Department by the close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated.]

[(E) The written notice required by paragraphs (d)(1)(D)(i), (iii) and (iv) of this Rule may be submitted on the Underwriting Activity Report provided by the Market Regulation Department.]

[(F) For purposes of paragraph (d)(1)(D), Rules 100, 101, 103 and 104 are rules of the SEC adopted under Regulation M and the following terms shall have the meanings as defined in Rule 100 of Regulation M: “affiliated purchaser,” “distribution,” “distribution participant,” “penalty bid,” “reference security,” “restricted period,” “stabilizing,” “subject security,” and “syndicate covering transaction.”]

(2) through (5) No Change.

(e) No Change.

\* \* \* \* \*

# ATTACHMENT B

## Underwriting Activity Report Request Form

**Attention: FINRA Market Regulation Department**

**Please provide the following information** (preferably at least two (2) business days prior to commencement of the restricted period or, if no restricted period applies, at least one (1) business day prior to pricing the distribution)

1. Issuer name and symbol: \_\_\_\_\_

Acting in our capacity as manager of a potential secondary distribution of securities that are listed on the Nasdaq Stock Market, we request an underwriting activity report for the above covered security (subject and reference securities, as defined under SEC Regulation M Rule 100).

### Submitted by

Firm name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact (if different from above): \_\_\_\_\_

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Email address: \_\_\_\_\_

# Regulation M—Restricted Period Notification Form

Attention: FINRA Market Regulation Department; FINRA ADF Operations; Nasdaq Marketwatch Department

Please provide the following information

Original notification:  yes  no

Amended notification:  yes  no

1. Issuer name and symbol: \_\_\_\_\_
2. Symbol(s) of covered securities  
(subject and reference securities, as defined under SEC Regulation M Rule 100): \_\_\_\_\_
3. "Actively traded" securities exception under SEC Regulation M Rule 101:  applies  does not apply
4. Restricted period:  1 day  5 day  not applicable
5. Basis for determination of restricted period or applicability of "actively traded" securities exception:  
 UAR (for a security listed on the Nasdaq Stock Market). Date of UAR: \_\_\_\_\_  
 5 day default  
 The following:
  1. The ADTV as defined under SEC Regulation M Rule 100: \_\_\_\_\_  
The source of this information: \_\_\_\_\_
  2. The public float value as this term is defined under SEC Regulation M Rule 100: \_\_\_\_\_  
The source of this information: \_\_\_\_\_
- Other: \_\_\_\_\_
6. Type of transaction: \_\_\_\_\_  
(e.g., block offering, public offering, private placement, etc.)
7. Commencement of the restricted period: \_\_\_\_\_ (date) at \_\_\_\_\_ (time)
8. Anticipated pricing date: \_\_\_\_\_
9.  Cancellation or postponement of Regulation M restricted period

Pursuant to FINRA Rule 5190(c)(1)(A), FINRA Rule 6275(f)(1), and/or NASDAQ Rule 4619(e)(1), we advise you that the following dealers are distribution participants, or affiliated purchasers. Additionally, for the dealers that are market makers, we request an excused withdrawal or, for Nasdaq-listed securities only, to be designated as passive market maker, as indicated:<sup>1</sup>

Member Firm	MPID(s)	Passive or Excused
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____

## Submitted by

Firm name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact (if different from above): \_\_\_\_\_

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Email address: \_\_\_\_\_

1 Please indicate 'Excused' for dealers that are not market makers.

## Regulation M—Notice of Intent to Impose a Penalty Bid And/Or Engage In a Syndicate Covering Transaction

**Attention: FINRA Market Regulation Department; Nasdaq Marketwatch Department**

Please provide the following information

Original notification:  yes  no

Amended notification:  yes  no

1. Issuer name and symbol: \_\_\_\_\_

Pursuant to the provisions of FINRA Rule 5190(e)(1) for OTC equity securities or NASDAQ Rule 4624(a) for Nasdaq-listed securities, you are advised of our intention to engage in the listed activity on the date(s) shown:

Activity	Date(s)
<input type="checkbox"/> Syndicate covering transaction:	_____
<input type="checkbox"/> Imposition of penalty bid:	_____

2. Additional information about the activity: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Submitted by

Firm name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact (if different from above): \_\_\_\_\_

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Email address: \_\_\_\_\_

# Regulation M—Trading Notification Form

Attention: FINRA Market Regulation Department; FINRA ADF Operations; Nasdaq Marketwatch Department

Please provide the following information

Original notification:  yes  no

Amended notification:  yes  no

Issuer name and symbol: \_\_\_\_\_

Pursuant to the provisions of FINRA Rule 5190(c)(1)(B), FINRA Rule 5190(d)(2), FINRA Rule 6275(f)(2), and/or NASDAQ Rule 4619(e)(5), you are advised of the following information regarding the pricing of a distribution of securities. Additionally, for the distribution participants and/or affiliated purchasers identified below, to the extent that they are market makers, we request that you rescind the excused withdrawal status or passive market making status:

1. Type of security offered: \_\_\_\_\_
2. Number of shares offered: \_\_\_\_\_
3. Offering price: \_\_\_\_\_
4. Last sale before distribution: \_\_\_\_\_
5. Pricing basis: \_\_\_\_\_  
(e.g., last sale, discount to last sale, negotiated, at the market, etc.)
6. Pricing date: \_\_\_\_\_
7. SEC effective date and time: \_\_\_\_\_ (date) \_\_\_\_\_ (time)
8. Trade date: \_\_\_\_\_
9. Restricted period: \_\_\_\_\_ (commencement date) \_\_\_\_\_ (end date)
10. Distribution participants and/or affiliated purchasers: \_\_\_\_\_

Member Firm	MPID(s)
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____

Pursuant to the provisions of FINRA Rule 5190(e)(2), you are advised of the listed activity on the date shown:

Activity	Date(s) of Activity	Aggregate # of Shares
<input type="checkbox"/> Engaged in a syndicate covering transaction:	_____	_____
<input type="checkbox"/> Imposition of penalty bid:	_____	_____

### Submitted by

Firm name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact (if different from above): \_\_\_\_\_

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Email address: \_\_\_\_\_