

Trade Reporting

SEC Approves Amendments to FINRA Trade Reporting Rules on OTC Equity Transactions Executed Outside Normal Market Hours

Effective Date: January 11, 2010

Executive Summary

Effective January 11, 2010, firms that execute OTC trades in equity securities during the hours that a FINRA trade reporting facility is closed must report the trade within 15 minutes of the opening of the facility—*i.e.*, by 8:15 a.m. Eastern Time.

Additionally, effective January 11, 2010, the FINRA/NASDAQ Trade Reporting Facility and the OTC Reporting Facility will allow firms to submit during normal market hours trade reports with a modifier designating the trade as executed outside normal market hours.

The text of the amendments can be found at www.finra.org/rulefilings/2009-031.

Questions regarding this *Notice* may be directed to:

- The Legal Section, Market Regulation, at (240) 386-5126; or
- The Office of General Counsel at (202) 728-8071.

Background and Discussion

FINRA rules prescribe special requirements for reporting over-the-counter (OTC) equity trades executed outside normal market hours (*i.e.*, trades executed outside the hours of 9:30 a.m. to 4 p.m. Eastern Time [ET]). The rules distinguish between “outside normal market hours” trades that are executed during the hours the FINRA Facilities are open and trades that are executed during the hours the facilities are closed.¹

August 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Senior Management
- Systems
- Trading
- Training

Key Topic(s)

- Alternative Display Facility
- NMS Stocks
- Outside Normal Market Hours Trades
- OTC Equity Securities
- OTC Reporting Facility
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 6282
- FINRA Rule 6380A
- FINRA Rule 6380B
- FINRA Rule 6622

Specifically, trades executed outside normal market hours and during the hours that the FINRA Facility to which the firm is reporting is open must be reported within 90 seconds of execution. For example, a trade executed at 9 a.m. or a trade executed at 5 p.m. must be reported within 90 seconds.² “Outside normal market hours” trades executed during the hours that the FINRA Facility to which the firm is reporting is closed are not subject to 90-second reporting, since the facility is not open to facilitate the reporting of the trade. Such trades are reported as follows: (1) trades executed between midnight and 8 a.m. must be reported on trade date; and (2) trades executed between the close of the facility (*i.e.*, either 6:30 p.m. for the ADF or 8 p.m. for the TRFs and ORF) and midnight must be reported on an “as/of” basis the following business day (T+1). All “outside normal market hours” trades are designated with a unique trade report modifier, as specified by FINRA.

On July 23, 2009, the SEC approved a proposed rule change to amend FINRA trade reporting rules to require that trades executed during the hours that the FINRA Facility is closed be reported within 15 minutes of the opening of the facility (*i.e.*, by 8:15 a.m. ET for all FINRA Facilities).³ Specifically, firms must report as follows:

- ▶ Trades executed between midnight and 8 a.m. must be reported by 8:15 a.m. ET on trade date and be designated with the unique trade report modifier to denote their execution outside normal market hours. Trades reported after 8:15 a.m. on trade date will be late and marked with the “outside normal market hours trade reported late” modifier.
- ▶ Trades executed between the close of the FINRA Facility (*i.e.*, either 6:30 p.m. for the ADF or 8 p.m. for the TRFs and ORF) and midnight must be reported on an “as/of” basis by 8:15 a.m. ET the following business day (T+1) and be designated with the unique trade report modifier to denote their execution outside normal market hours. Trades reported after 8:15 a.m. on T+1 will be late and marked with the “outside normal market hours trade reported late” modifier.⁴

Firms that report trades to the FINRA/NASDAQ TRF or the ORF also should be aware of an additional change specific to these facilities. Under current rules and system functionality, firms cannot submit a trade with a modifier designating the trade as executed outside normal market hours to these two facilities during normal market hours. For example, if a firm executes a trade at 9:29:00 a.m. and reports the trade at 9:30:15 a.m. (in compliance with the 90-second reporting requirement under FINRA rules), the FINRA/NASDAQ TRF and ORF will reject the trade report, as the trade cannot be reported until after 4 p.m. Pursuant to the amendments, firms now can submit a trade with a modifier designating the trade as executed outside normal market hours (and late reports of such trades, as applicable) to the FINRA/NASDAQ TRF and ORF throughout the day.⁵

The chart below summarizes the reporting requirements discussed above (as well as the requirements applicable to trades executed during normal market hours), including the appropriate Extended Hours/Sold – Field 3 (or “byte 3”) trade report modifiers. Firms must consult the applicable technical specifications for the FINRA Facility to which they are reporting for information on specific data entries for that facility.⁶

The amendments become effective January 11, 2010; however, firms can begin complying with the 8:15 a.m. ET reporting deadline at any time. Additionally, firms reporting to the FINRA/NASDAQ TRF and ORF will be able to submit trade reports with the “outside normal market hours” modifier during normal market hours prior to the January 11, 2010, effective date; technical availability will be announced shortly.

| Trade Execution Time | Reporting Requirement | Extended Hours/Sold – Field 3 Modifier | |
|---|---|--|--|
| | | Actual Report Time | Field 3 Modifier |
| Midnight – 7:59:59 am | By 8:15 am (within 15 minutes of system open) on trade date | 8:00 – 8:15 am on trade date | Outside normal market hours trade (.T) |
| | | After 8:15 am on trade date | Outside normal market hours trade reported late (.U) |
| 8:00 – 9:29:59 am | Within 90 seconds of execution on trade date | Within 90 seconds of execution | Outside normal market hours trade (.T) |
| | | More than 90 seconds after execution | Outside normal market hours trade reported late (.U) |
| 9:30 am – 4:00 pm (normal market hours) | Within 90 seconds of execution on trade date | Within 90 seconds of execution | N/A |
| | | More than 90 seconds after execution | Normal market hours trade reported late (.Z) |
| 4:00:01 – 8:00 pm (4:00:01 - 6:30 pm for ADF) | Within 90 seconds of execution on trade date | Within 90 seconds of execution | Outside normal market hours trade (.T) |
| | | More than 90 seconds after execution | Outside normal market hours trade reported late (.U) |
| 8:00:01 – 11:59:59 pm (6:30:01 – 11:59:59 pm for ADF) | By 8:15 am (within 15 minutes of system open) on T+1, “as/of” | 8:00 – 8:15 am on T+1 | Outside normal market hours trade (.T) |
| | | After 8:15 am on T+1 | Outside normal market hours trade reported late (.U) |

Endnotes

- 1 As used herein, the term “FINRA Facilities” refers to the Alternative Display Facility (ADF), a Trade Reporting Facility (TRF) or the OTC Reporting Facility (ORF). The TRFs and ORF are open between 8 a.m. and 8 p.m. ET, and the ADF is open between 8 a.m. and 6:30 p.m. ET.
- 2 The 90-second reporting requirement applicable to this subset of trades is not affected by the amendments described in this *Notice*.
- 3 See Securities Exchange Act Release No. 60377 (July 23, 2009), 74 FR 38250 (July 31, 2009) (order approving SR-FINRA-2009-031).
- 4 See FINRA Rules 6282(a)(2), 6380A(a)(2), 6380B(a)(2) and 6622(a)(3).
- 5 FINRA notes that the ADF and FINRA/NYSE TRF currently permit the submission of reports with the “outside normal market hours” modifier throughout the day.
- 6 The applicable technical specifications can be found on the FINRA Web site at www.finra.org/Industry/Compliance/MarketTransparency/index.htm.

FINRA notes that certain FINRA Facilities will automatically append a modifier to denote that a trade was executed outside normal market hours based on the trade execution time reported by the firm. See *Trade Reporting Frequently Asked Questions*, FAQ 400.4, at www.finra.org/tradereportingfaq.