

FINRA'S TRADE REPORTING RULE AMENDMENTS BECOME EFFECTIVE

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On August 3, 2009, amendments to the Financial Industry Regulatory Authority's ("FINRA") trade reporting obligations for over-the-counter ("OTC") equity transactions became effective. The amendments, which the U.S. Securities and Exchange Commission (the "SEC") approved in November 2008¹, (i) replace the current market maker-based trade reporting structure with an "executing party" structure and (ii) require firms with the trade reporting obligations that are acting in a riskless principal or agency capacity on behalf of another member firm to submit non-tape reports to FINRA to identify such other firm as a party to the trade.

TRADE REPORTING STRUCTURE

The new "executing party" trade reporting structure applies to reporting trades to FINRA in National Market System securities, OTC equity securities, Direct Participation Program securities and PORTAL equity securities. Pursuant to the new structure, the trade reporting obligation falls (i) on the "executing party" when the trade is between member firms and (ii) on the member firm when the trade is between a member firm and a non-member firm or customer. The amendments define "executing party" as the member firm that (a) receives an order for handling or execution or is presented an order against its quote, (b) does not subsequently re-route the order, and (c) executes the transaction. Based on this definition, an alternative trading system ("ATS") is the executing party if the transaction is executed on the ATS. However, if the ATS routes an order to another

member firm for handling or execution, the ATS would not be considered the executing party.

In situations when it is not clear which firm has the reporting obligation because two member firms fall within the definition of "executing party", the firm representing the sell-side is obligated to report the transaction to FINRA, unless (i) the parties agree otherwise and the firm representing the sell-side documents such agreement or (ii) the parties have executed an agreement prior to the trade that expressly shifts the trade reporting obligation to the firm representing the buy-side any time both parties fall within the definition of an "executing party."

The goal of the new trade reporting system is to create a simpler, more uniform structure for purposes of reporting OTC equity transactions to FINRA.

SUBMISSION OF NON-TAPE REPORTS

Pursuant to the amendments, any firm that is (i) obligated to report a trade to FINRA (*i.e.*, is an "executing party") and (ii) is acting in a riskless principal or agency capacity on behalf of one or more other member firms, must submit to FINRA one or more non-tape report(s) to identify such other member firms as parties to the transaction². This additional reporting requirement does not apply in the following circumstances:

- when a firm is acting on behalf of another member firm and the other member firm is identified on the initial tape trade report;

1. SEC Release No. 58903 (November 5, 2008).

2. This amendment does not change the requirement under the current rules that a member firm submit a non-tape report to FINRA reflecting the offsetting, "riskless" leg of a riskless principal transaction where the tape report was not properly marked as riskless principal.

- when a firm is acting as agent or riskless principal on behalf of a non-member firm; and
- when the transaction is executed on and reported through an exchange³.

The submission of non-tape reports is not subject to the 90-second reporting requirement. Unless otherwise provided in the FINRA trade reporting rules, firms generally have until the end of the day to submit non-tape reports.

Additional guidance and examples illustrating the scope and application of the non-tape reporting requirement can be found in FINRA's Trade Reporting FAQs, which are located at www.finra.org/tradereportingfaq/.

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3. When a transaction is executed on and reported through an exchange, the firm has the option of submitting a non-tape report to FINRA for the offsetting leg of the transaction.

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