



Trade Reporting Frequently Asked Questions

The guidance provided in this FAQ pertains to the reporting of over-the-counter (OTC) transactions in equity securities to a FINRA Facility (a Trade Reporting Facility (TRF), the Alternative Display Facility (ADF) or the OTC Reporting Facility (ORF)). This guidance relates only to the trade reporting rules, as defined in FAQ 100.2 below, and does not address other member obligations under applicable FINRA rules or the federal securities laws, including but not limited to, recordkeeping obligations under SEC Rule 17a-3.

All references in this FAQ are to FINRA rules. Effective December 15, 2008, the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) were transferred to the consolidated FINRA rulebook as the FINRA Rule 6000 through 7000 Series. See Regulatory Notice 08-57 (October 2008). To facilitate the transition to the consolidated rulebook, FINRA has created [conversion charts](#) that map NASD and incorporated NYSE rules to new FINRA rules and vice versa.

Any questions regarding trade reporting to a FINRA Facility should be directed to FINRA's Market Regulation Department, at (240) 386-5126; FINRA's Office of General Counsel, at (202) 728-8071; or FINRA Operations, at (866) 776-0800.

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General

Section 100: Applicable Rules and Definitions

Q100.1: What are the FINRA Facilities that support reporting of OTC transactions in equity securities?

A100.1: The TRFs are facilities through which members report transactions in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS, effected otherwise than on an exchange. FINRA has established the following TRFs (each in conjunction with the pertinent Exchange): the FINRA/NASDAQ TRF and the FINRA/NYSE TRF. The ADF is both a trade reporting and quotation display and collection facility for purposes of transactions in NMS stocks effected otherwise than on an exchange. The ORF is the facility through which members report OTC transactions in OTC Equity Securities and Restricted Equity Securities, as those terms are defined in Rule 6420.

Q100.2: What rules govern the reporting of OTC transactions in equity securities to FINRA Facilities?

A100.2: The following Rule Series (collectively referred to herein as "the trade reporting rules") govern trade reporting to FINRA Facilities:

Rule Series	FINRA Facility	Type of Trades
6200 and 7100 Series	ADF	OTC transactions in NMS stocks
6300A and 7200A Series	FINRA/NASDAQ TRF	OTC transactions in NMS stocks
6300B and 7200B Series	FINRA/NYSE TRF	OTC transactions in NMS stocks
6620 and 7300 Series	ORF	Transactions in OTC Equity Securities (i.e., non-NMS stocks such as OTCBB securities, Pink Sheets securities, ADRs, Canadian issues, foreign securities and non-exchange-listed DPP securities) and Restricted Equity Securities

Q100.3: What transactions in equity securities must be reported to FINRA?

A100.3: All OTC transactions in equity securities to which a FINRA member is a party must be reported to FINRA, unless expressly excepted from the trade reporting rules (as discussed more fully below). Reportable OTC transactions include trades in NMS stocks effected otherwise than on an exchange, which must be reported to the ADF or a TRF, as well as OTC trades in OTC Equity Securities and Restricted Equity Securities, which must be reported to the ORF.

Q100.4: What is a "trade" or "transaction" that must be reported under the trade reporting rules?

A100.4: For purposes of the trade reporting rules, a "trade" or "transaction" entails a change of beneficial ownership of securities between parties (e.g., a purchase or sale of securities) in which a member participates (e.g., as a dealer or an agent).

Q100.5: How is "customer" defined for purposes of the trade reporting rules?

A100.5: Pursuant to NASD Rule 0120(g), the term "customer shall not include a broker or dealer."

Q100.6: What is a "tape" report (also referred to as a "media" report)?

A100.6: A tape or media report is a trade report that is submitted to a FINRA Facility and reported to and publicly disseminated by the appropriate exclusive Securities Information Processor (SIP). Another term that is often used with respect to these trade reports is "for publication." In certain limited circumstances, trade reports submitted for publication may be suppressed from public dissemination (e.g., reports of odd-lot transactions).

Q100.7: What is a "non-tape" report (also referred to as a "non-media" report)?

A100.7: A non-tape report can be either a "regulatory" report or a "clearing" report, neither of which is publicly disseminated. A regulatory report, sometimes referred to in the trade reporting rules as a "non-tape, non-clearing" report, is submitted to FINRA solely to fulfill a regulatory requirement (e.g., to report certain transactions subject to a regulatory transaction fee or, where applicable, to report the offsetting "riskless" leg of a riskless principal transaction). A clearing report, sometimes referred to in the trade reporting rules as a "clearing-only" report, is used by members to clear and settle transactions; information reported to FINRA in a clearing report is transmitted by FINRA to the National Securities Clearing Corporation (NSCC). Clearing reports also can be used to satisfy a member's obligation to provide regulatory information to FINRA, if applicable.

Section 101: Reporting Time and Price**Q101.1: Must trade reports include the time the transaction was executed?**

A101.1: Yes. The trade reporting rules require that all trade reports submitted to a FINRA Facility must include the time of execution based on Eastern Time, except where another time is expressly required by rule. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). These exceptions include Stop Stock transactions (the trade report must include the time at which the member and the other party agreed to the Stop Stock Price in lieu of the actual time the trade was executed) and transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time (the trade report must include the prior reference time in lieu of the actual time the trade was executed). See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). In addition, FINRA published Member Alert: Guidance Relating to "Execution Time" for Purposes of Compliance with NASD Trade Reporting Rules (June 13, 2007), providing further clarification on the appropriate "execution time" to be reported under certain circumstances when executing a block transaction using the Intermarket Sweep Order (ISO) exception

(outbound), pursuant to SEC Rule 611(b)(6) of Regulation NMS. In all cases, the reported time must be in military format.

Q101.2: How many decimal places should a member use when reporting the price on trade reports?

A101.2: Members should report as many decimal places as the FINRA Facility permits. Thus, for example, if a member executes a trade at 10.123456 and the FINRA Facility permits entries up to six decimal places, then the member should report 10.123456. It should be noted, however, that if a trade is executed at 10.12, the member can report 10.12 and does not need to report 10.120000.

Q101.3: What is the "explicit fee" functionality provided by the FINRA/NASDAQ TRF and ORF?

A101.3: Pursuant to Rule 7230A(h) and, effective June 1, 2010, Rule 7330(i), members may agree in advance to transfer a transaction fee charged by one member to another member on an OTC transaction reported to the FINRA/NASDAQ TRF or the ORF, respectively. The transaction fee is transferred through the submission of a clearing report, which must provide, in addition to all other information required under the trade reporting rules, a total per share or contract price amount, inclusive of the transaction fee. Thus, members submit two price amounts as part of their report to the FINRA/NASDAQ TRF or ORF: one price including the transaction fee, which is submitted by the FINRA/NASDAQ TRF or ORF to NSCC for clearance and settlement; and one price exclusive of the transaction fee, which is reported for public dissemination.

Both members and their respective clearing firms, as applicable, must execute an agreement (PDF 25KB), as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the FINRA/NASDAQ TRF or ORF. Such agreement must be executed and submitted to the FINRA/NASDAQ TRF or ORF before the members can transfer a transaction fee. See also NASD Member Alert: Processing of Transaction Fees through the NASD/NASDAQ Trade Reporting Facility (July 3, 2007).

Q101.4: Member BD1 purchases 100 shares of ABCD security from member BD2 at \$10.00 per share and the parties agree to a transaction fee of \$.001 per share. If the parties use the explicit fee functionality to transfer the transaction fee, what price will be publicly disseminated?

A101.4: The trade price that is publicly disseminated is \$10.00, while the trade is cleared and settled by NSCC at \$10.001.

Q101.5: Member BD1 receives an order from member BD2 to buy 5,000 shares of ABCD security and works the order as riskless principal. BD1 accumulates the shares through five separate trades with other market participants and each of these five trades is reported to the tape. BD1 then sells the 5,000 shares of ABCD to BD2 at its volume-weighted average cost and submits a non-tape report reflecting the riskless leg. Can BD1 use the explicit fee functionality to transfer a per share transaction fee to BD2?

A101.5: Yes. Assuming that the parties have agreed in advance to the transaction fee and otherwise meet the requirements of Rule 7230A(h) or 7330(i), as applicable, BD1 can use the explicit fee functionality to transfer a transaction fee on the sale of the 5,000 shares to BD2.

Q101.6: If a firm executes an OTC trade in a security for which the price can be expressed as per share (or per unit) or as a percentage of par value, how should the price and quantity be reported to the ORF?

A101.6: When reporting an OTC trade to the ORF, firms must report a per share (or per unit) dollar price, irrespective of whether the price for the security may also be expressed as a percentage of par value. The quantity must be reported as the number of shares (or units) purchased (or sold) and not the total face value of the transaction. For example, if member BD1 executes an OTC trade for 10 shares with a \$25 par value at a price of \$24 per share (or per unit) for a total transaction value of \$240, BD1 reports \$24 as the price and 10 shares as the

quantity. If BD1 executes an OTC trade for 10 shares with a \$1000 par value at a price of \$1010 per share (or per unit) for a total transaction value of \$10,100, BD1 reports \$1010 as the price and 10 as the quantity. In this example, BD1 should not report the price as 101, which would be a percentage of par value, to the ORF.

Section 102: Timely Submission of Trade Report Information

Q102.1: When must OTC trades be reported to FINRA?

A102.1: Generally, members must submit tape reports of transactions in NMS stocks and OTC Equity Securities (including non-exchange listed foreign securities, ADRs, Canadian issues and Direct Participation Program (DPP) securities) as soon as practicable, but no later than 10 seconds, following trade execution during the hours that the FINRA Facility to which the member is reporting is open. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). See also [Regulatory Notice 13-19 \(May 2013\)](#). Trades executed before the Facility opens and after the close of the Facility must be reported, but such trades are subject to a different reporting time frame. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a); see also FAQ 102.3.

Transactions in Restricted Equity Securities effected pursuant to SEC Rule 144A must be reported to the ORF no later than 8:00 p.m. Eastern Time. Transactions in Restricted Equity Securities effected pursuant to SEC Rule 144A and executed between 8:00 p.m. and midnight must be reported the following business day (T+1) by 8:00 p.m. See Rule 6622(a)(4); see also [Regulatory Notice 10-26 \(May 2010\)](#).

Q102.2: Does the 10-second reporting requirement apply to the submission of non-tape reports to FINRA?

A102.2: No. Members are not required to submit non-tape reports to FINRA within 10 seconds of trade execution; however, regulatory reports generally are required to be submitted within specified time frames. For example, members must submit the non-tape report for the offsetting "riskless" leg of a riskless principal transaction as soon as practicable after the offsetting leg is executed, but no later than the time the FINRA Facility closes for the trading day. See [NTM 00-79 \(November 2000\)](#). However, to qualify for the exemption from the requirements of Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) for riskless principal transactions, a member must submit, contemporaneously with the execution of the facilitated order, a non-tape report reflecting the offsetting "riskless" leg of the transaction. See Rule 5320.03. For purposes of this exception, "contemporaneously" has been interpreted to require execution as soon as possible, but absent reasonable and documented justification, within one minute. See [NTMs 95-67 \(August 1995\)](#) and [98-78 \(September 1998\)](#). Additionally, non-tape reports that are submitted for regulatory transaction fee purposes under Section 3 of Schedule A to the By-Laws must be submitted by the end of the reporting session for the FINRA Facility. See Rules 7130(c), 7230A(g), 7230B(f) and 7330(g).

Q102.3: When must a trade in an NMS stock or an OTC Equity security that is executed outside normal market hours be reported?

A102.3: Trades in NMS stocks and OTC Equity Securities that are executed outside normal market hours (i.e., outside the hours of 9:30 a.m. and 4:00 p.m. Eastern Time) and during the hours the FINRA Facility to which the member is reporting is open must be reported as soon as practicable, but no later than 10 seconds following execution. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). Trades in NMS stocks and OTC Equity Securities executed during the hours the FINRA Facility to which the member is reporting is closed are not subject to 10-second reporting. Specifically, trades executed between midnight and 8:00 a.m. must be reported by 8:15 a.m. Eastern Time on trade date. Trades executed between the close of the Facility (6:30 p.m. for the ADF and 8:00 p.m. for the TRFs and the ORF) and midnight must be reported on an "as/of" basis by 8:15 a.m. Eastern Time the following business day. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). See also the [Reporting Requirements:](#)

[OTC Equity Transactions Outside Normal Market Hours Chart](#) (PDF 18 KB) and [Regulatory Notice 09-52](#) (August 2009) for additional guidance on reporting trades executed outside normal market hours.

Q102.4: If a trade is not reported within the time period prescribed by the trade reporting rules, must it still be reported?

A102.4: Yes. If a trade is not reported within the time period prescribed by the trade reporting rules (e.g., within 10 seconds of execution), it must be reported as soon as practicable and shall be designated as late. Trades that are required to be reported on trade date, but are not reported on trade date, must be reported on an "as/of" basis on a subsequent date (T+N) and shall be designated as late. Trades that are required to be reported on an "as/of" basis the following business day (T+1) (e.g., certain trades executed outside normal market hours), but are not reported on T+1, must be reported on a subsequent date (T+N) and shall be designated as late. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a).

Q102.5: What should firms do to satisfy the requirement to report "as soon as practicable" under FINRA trade reporting rules?

A102.5: Firms must adopt 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. Where a firm has such reasonably designed policies, procedures and systems in place, the firm generally would not be viewed as violating the "as soon as practicable" requirement because of delays in trade reporting due to extrinsic factors that are not reasonably predictable and where the firm does not purposely intend to delay the reporting of the trade (e.g., TRF systems issues). Firms must not purposely withhold trade reports, e.g., by programming their systems to delay reporting until the last permissible second. See Rules 6282.02, 6380A.02, 6380B.02 and 6622.03. See also [Regulatory Notice 13-19](#) (May 2013).

Q102.6: Firm BD1 must enter the details of a trade manually following trade execution, and although BD1 has established efficient reporting processes and commences to report the trade without delay, BD1 is unable to complete the trade reporting process within 10 seconds. Will FINRA take the manual nature of the trade reporting process into account when reviewing for a pattern or practice of late reporting?

A102.6: Yes. Where the details of a trade must be manually entered or typed into a trade reporting system following execution, FINRA will take such factors as the complexity and manual nature of the execution and reporting of the trade into consideration in determining whether "reasonable justification" exists to excuse what otherwise may be deemed to be a pattern or practice of late trade reporting. Among other things, FINRA will consider the complexity of a trade (e.g., a volume-weighted average trade or an options-related trade) and size of a trade (e.g., a trade that involves a basket of securities), as well as the fact that some amount of time must elapse between the commencement of the manual trade reporting process and the reporting of the trade. See Rules 6282.02, 6380A.02, 6380B.02 and 6622.03. See also [Regulatory Notice 13-19](#) (May 2013).

Firms must maintain, and provide upon request, documentation sufficient to demonstrate that a trade was reported late due to the manual nature of the trade entry process following execution.

Section 103: Trade Comparison and Acceptance

Q103.1: What FINRA Facilities provide trade acceptance and comparison functionality?

A103.1: Currently, the ADF, FINRA/NASDAQ TRF and ORF provide trade acceptance and comparison functionality. See Rules 7130(b), 7230A(b) and 7330(b). This means that the reporting party submits the trade information and the contra party then accepts (or declines) the trade information submitted by the reporting party.

Parties must utilize the trade acceptance and comparison functionality where no give-up agreement between the parties exists. See FAQ 200.1. In addition, the FINRA/NASDAQ TRF and ORF provide a matching functionality, where each party enters its own trade information, and the Facility matches the two reports. See Rules 7240A and 7340. The ADF does not offer such functionality and, thus, the contra party must either accept or decline the information entered by the reporting party; it cannot enter its own version of the trade.

The FINRA/NYSE TRF does not provide trade acceptance and comparison functionality and, therefore, trades must be locked-in before they can be submitted to this Facility. See Rules 7230B(a) and 7240B. This means that the parties must have a give-up agreement in place, which allows the reporting party to submit both sides of the trade and "lock-in" the trade without specific acceptance by the contra party. See FAQ 200.1.

Q103.2: Members BD1 and BD2 execute an OTC trade and BD2 has the reporting obligation under the trade reporting rules. The parties are using the trade comparison functionality to report the trade. How much time does BD1 have to accept or reject the trade report submitted by BD2 using the trade comparison functionality?

A103.2: BD1 has 20 minutes from the time of execution to accept or reject the trade information submitted by BD2. If the trade is executed during the hours that a FINRA Facility is closed, BD1 has until 8:20 a.m. Eastern Time to accept or reject the trade information submitted by BD2. See Rules 7130(b), 7230A(b) and 7330(b).

If the parties are reporting the trade as "locked in" pursuant to a give-up agreement (see Section 200), then the "20 minute rule" does not apply.

Q103.3: Members BD1 and BD2 execute an OTC trade and BD2 has the reporting obligation under the trade reporting rules. BD2 fails to report the trade within 10 seconds, as required under the trade reporting rules, and instead reports it 30 minutes after execution. Should BD1 wait until BD2 submits the trade to FINRA and then accept the trade?

A103.3: Not if the parties are reporting to the FINRA/NASDAQ TRF or ORF. In this circumstance, BD1 should submit its own version of the trade within 20 minutes of execution (or by 8:20 a.m. Eastern Time, with respect to trades executed during the hours that a FINRA Facility is closed). If BD1 fails to do so, it could be charged with a trade reporting violation. However, FINRA would take into consideration factors such as BD1 did not receive an execution report from BD2 within 20 minutes of execution and thus did not have sufficient information to submit its own version of the trade. See, e.g., [Regulatory and Compliance Alert: NASD Regulation Reiterates ACT Transaction Reporting Obligations of Order Entry Firms \(Spring 2002\)](#) (PDF 589 KB).

On the other hand, if the parties are reporting to the ADF, then the answer is "yes." BD1 would not be able to enter its own version of the trade into the ADF.

Q103.4: Members BD1 and BD2 execute an OTC trade and BD2 has the reporting obligation under the trade reporting rules. The parties are using the trade comparison functionality to report the trade. Is BD1 responsible for ensuring the accuracy of trade report information that it accepts?

A103.4: Yes, BD1 is responsible for ensuring the accuracy of the trade report information that it accepts relating to its side of the trade. If BD1 accepts incorrect information submitted by BD2 relating to BD1's side of the trade, BD1 could be charged with a trade reporting violation.

Section 104: Multiple MPIDs for Trade Reporting

Q104.1: Can FINRA members use multiple Market Participant Symbols (MPIDs) to report to a FINRA Facility?

A104.1: Yes. FINRA permits, on a pilot basis, the use of multiple MPIDs by members reporting trades to FINRA. Rules 6160 and 6480 provide that any member that wishes to use more than one MPID for purposes of reporting trades to a TRF or the ORF, respectively, must submit a written request to, and obtain approval from, FINRA Operations for additional MPIDs. Similarly, Rule 6170 sets forth the procedure for obtaining additional MPIDs for use on the ADF by Registered Reporting ADF ECNs.

By rule, a member is required to identify on its application the bona fide business and/or regulatory purpose(s) and the system(s) for which the multiple MPIDs will be used, as well as the identity of the other SROs on whose systems the member intends to use the MPID(s), as applicable. FINRA will evaluate the use of multiple MPIDs based upon the stated purpose(s) and system(s) for which the additional MPID(s) will be used. Members must notify FINRA, and obtain FINRA approval, before using multiple MPIDs for new or unidentified purpose(s) or system(s). Moreover, a member that ceases to meet the obligations appurtenant to its primary MPID in any security shall not be permitted to use additional MPIDs for any purpose in that security.

Q104.2: Can a member's additional MPIDs be withdrawn or limited after issuance?

A104.2: FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. As such, if FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a member is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the member in its application, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s). See Rules 6160, 6170 and 6480.

Q104.3: Are members required to use the same MPID for purposes of posting a quotation and reporting a trade resulting from such posted quotation?

A104.3: Yes. For example, a member that posts quotations on the ADF may report trades resulting from those quotations to either the ADF or a TRF. In such circumstances, the member must use the same MPID when reporting a trade that resulted from its posted quotation to either the ADF or a TRF.

Section 105: Obtaining Security Symbols for Trade Reporting Purposes**Q105.1: What should a member do if it executes a trade in a security that is reportable to the ORF under Rule 6622, but does not have a symbol?**

A105.1: In those situations where a security does not have a valid U.S. symbol assigned, the member must promptly request that [FINRA Operations](#) assign a symbol to the security so that the member can fulfill its trade reporting obligations. Members should submit such request on the [OTC Equity Symbol Request Form](#) and must provide all requested information, including a CUSIP number for the security. If there is no symbol at the time the trade is executed, the trade should be reported to the ORF immediately upon the issuance of the symbol and be marked late, as applicable. If the trade is not reported on trade date, it should be reported on an "as/of" basis using the original execution date as the trade date.

Q105.2: Security ABCD is the subject of an initial public offering (IPO) and will later be listed on the NYSE. Immediately after the distribution and before the security becomes listed on the NYSE, the security begins trading OTC. Must these trades be reported to FINRA?

A105.2: Yes, these trades must be reported to FINRA. Until the security becomes listed, it generally would be considered an OTC Equity Security, as defined in Rule 6420, or a TRACE-eligible security, as defined in Rule 6710, and must be reported to either the ORF or TRACE, as applicable. If the security is deemed an OTC Equity Security and there is no OTC symbol for the security, the member should request a symbol from FINRA in accordance with FAQ 105.1.

Q105.3: Does FINRA assign symbols for securities listed on a national securities exchange?

A105.3: No. Members should contact the relevant exchange to determine the symbol for a listed security.

Q105.4: Does FINRA assign symbols for equity securities that do not have a CUSIP number?

A105.4: No, FINRA does not issue symbols for any equity security that does not have a CUSIP number.

Q105.5: [Trade Reporting Notice 9/23/2011](#) reminds firms of their trade reporting obligations relating to customer sales of low-value OTC Equity Securities. Does this Notice apply when a firm removes from a customer's account securities once they have been revoked by the SEC or canceled pursuant to a bankruptcy proceeding or final liquidation plan, and are firms required to obtain OTC symbols in such instances?

A105.5: No, this Notice does not apply when a firm removes from a customer's account securities once they have been revoked by the SEC or canceled pursuant to a bankruptcy proceeding or final liquidation plan. As such, firms should not request (and FINRA will not issue) OTC symbols in such instances.

Section 106: Scope of Reporting Requirements

Q106.1: Member BD1 buys at a discount a large block of previously restricted securities in XYZ Corp. from an XYZ Insider in compliance with SEC Rule 144, and then sells the block in pieces into the marketplace at market price (e.g., to BD2 and BD3). Is the sale from the XYZ Insider to BD1 reportable? Are the sales from BD1 to BD2 and BD3 reportable?

A106.1: If all applicable conditions of SEC Rule 144 are satisfied, BD1 has received unrestricted stock for purposes of the trade reporting rules and, therefore, the sale from the XYZ Insider to BD1 should be reported to the tape. The sales from BD1 to BD2 and BD3 are also tape reportable. Note, however, that this guidance may not address all administrative steps that must be taken before a restricted security can be sold freely (e.g., CUSIP conversion from restricted to unrestricted status and symbol creation for a security that was not otherwise publicly traded).

Q106.2: A registered investment advisor (RIA) operates within member broker-dealer BD1 (i.e., BD1 and RIA are part of the same legal entity). RIA routes an order for execution to member BD2. BD2 executes and reports the trade to FINRA. How should this trade be reported?

A106.2: Because the RIA is part of the same legal entity as the broker-dealer, this is considered the broker-dealer's trade for purposes of the trade reporting rules. BD2 should report the trade showing BD1 and BD2 as the parties to the trade on the tape report, and BD1 is subject to all applicable trade reporting rules (e.g., the 20 minute rule) with respect to the trade. BD2 must not report this as a trade with a customer (i.e., showing BD2 and a blank contra as the parties to the trade). If the RIA is a separate legal entity that is not a FINRA member, the RIA would not be subject to the trade reporting rules. (See also OATS FAQ (Compliance) #C3.)

Reporting Relationships and Responsibilities

Section 200: Reporting on Behalf of Another Member ("Give-Up" Relationships)

Q200.1: Can a FINRA member report to a FINRA Facility on behalf of (also referred to as "giving up") another FINRA member?

A200.1: Yes. A member may agree to allow another member to report and lock-in trades on its behalf to a TRF, the ADF or the ORF, provided that both parties have executed an agreement to that effect (a "give-up agreement") in the form specified by FINRA ([Uniform Service Bureau/Executing Broker Agreement](#)) (PDF 18 KB), and submitted such agreement to the FINRA Facility (or Facilities) to which the "give-up" or "on behalf of" relationship applies. See Rules 6380A(h), 6380B(g) and 6622(h); NASD Member Alert: Notice to All TRF, ADF and Other NASD Facility Participants Regarding AGU and QSR Relationships (January 25, 2007). Give-up agreements may only be used where the member that is being "given up" or on whose behalf the report is being submitted is a true executing party to the trade. In addition, the member being "given up" must have a valid MPID for the reporting member to use when reporting trades on its behalf

Q200.2: Is a give-up agreement required any time a member is "giving up" or reporting trade information to a FINRA Facility on behalf of another member?

A200.2: A give-up agreement, in the form specified by FINRA ([Uniform Service Bureau/Executing Broker Agreement](#)) (PDF 14 KB), is required any time a member is reporting trade information to a FINRA Facility on behalf of another member and acceptance by the other member is not otherwise required to lock-in the trade. For example, two FINRA members (BD1 and BD2) execute a trade and under the trade reporting rules, BD1 has the reporting obligation. For BD2 to report the trade on BD1's behalf, a valid, executed give-up agreement must be in place. Similarly, for BD1 to report the trade as locked-in and identify BD2 as the contra party to the trade, a valid, executed give-up agreement must be in place.

Where a tape only report is being submitted to a FINRA Facility, a give-up agreement is not required for the member with the reporting obligation to identify the contra party to the trade on the trade report. For example, two FINRA members (BD1 and BD2) execute a trade and under the trade reporting rules, BD1 has the reporting obligation. A give-up agreement is not required for BD1 to identify BD2 as the contra party to the trade on a tape only report.

Q200.3: Is a give-up agreement required even if the parties have executed a Qualified Service Representative (QSR) agreement?

A200.3: Yes. A QSR agreement is a National Securities Clearing Corporation (NSCC) agreement and only establishes that one party can send a trade to clearing on behalf of the other party. It does not establish that one party can trade report on behalf of another party for purposes of complying with the trade reporting rules. Therefore, a give-up agreement, in the form specified by FINRA ([Uniform Service Bureau/Executing Broker Agreement](#)) (PDF 14 KB), is required for a member to report trade information to a FINRA Facility on behalf of another member, even if the parties have a QSR agreement in effect. See NASD Member Alert: Notice to All TRF, ADF and Other NASD Facility Participants Regarding AGU and QSR Relationships (January 25, 2007).

Q200.4: What are the obligations of the member being "given up" or reported on behalf of with respect to the submission of trade information?

A200.4: A give-up agreement is a private contractual arrangement recognized by FINRA for trade reporting purposes, but it does not relieve the member being "given up" from its trade reporting obligations in the event of a failure of the reporting party to report pursuant to applicable rules. Both the member with the reporting obligation and the member submitting the trade report to FINRA are responsible for ensuring that the information submitted is in

compliance with all applicable rules and regulations. See Rules 6380A(h), 6380B(g) and 6622(h). Any member that agrees to allow another member to report trades on its behalf must establish, maintain and enforce supervisory procedures that allow it to determine that the other member is reporting in compliance with all applicable rules. See NTM 98-96 (December 1998).

Q200.5: Member BD1 has the reporting obligation under the trade reporting rules and has executed a give-up agreement with member BD2, whereby BD2 reports on behalf of BD1. BD2 fails to report the trade within 10 seconds of execution, as required under the trade reporting rules. Can BD1 be charged with late trade reporting?

A200.5: Yes. As noted in FAQ 200.4, both the member with the reporting obligation and the member submitting the trade to FINRA are responsible for ensuring that the trade is reported in compliance with all applicable rules. Thus, BD1 could be charged with late trade reporting if BD2 fails to report on BD1's behalf within the time prescribed by the trade reporting rules. BD1 could also be charged with failure to establish, maintain and enforce proper supervisory procedures under such circumstances.

Q200.6: Member BD1 matches as agent a buy order from member BD2 with a sell order from member BD3, and BD1 has give-up agreements with both BD2 and BD3. Can BD1 submit a single trade report as between BD2 and BD3, without BD1 appearing as a party to the trade?

A200.6:No. BD1 is a party to the trade and must appear on the trade report as such. It would be a rule violation for BD1 to submit a single trade report identifying BD2 and BD3 as the only parties to the trade.

BD1 could submit a three-party trade report in this instance. A three-party trade report is a single tape report that denotes three parties to the trade: the reporting member and two contra parties. The three-party report would allow BD1 to report all three parties to the trade (BD1, BD2 and BD3) in one trade report. Currently, the ADF is the only FINRA Facility that supports three-party trade reports. See Rule 6282(d).

Q200.7: Member BD1 has give-up agreements with member BD2 and member BD3. BD2 and BD3 execute an OTC trade. Can BD1 report the trade between BD2 and BD3?

A200.7: Yes. In this example, BD1 is not a party to the trade and is merely facilitating the reporting of the trade between BD2 and BD3. Thus, assuming valid, executed give-up agreements are in place (see FAQ 200.1), BD1 could report the trade identifying BD2 and BD3 as the parties to the trade.

Section 201: Order Routing, Execution and/or Reporting via Another Member

Q201.1: Member BD1 uses member BD2's system to route its orders to member BD3. BD3 receives the order from BD1 and executes the order. BD2 has no discretion over BD1's order and has no involvement in the routing or execution of the order, other than providing the routing mechanism. Which members should be identified as the parties to the trade on the tape report? Does the same guidance apply where BD1 clears through BD2?

A201.1: The parties to the trade on the tape report must be BD1 and BD3. In this example, BD3 views the order as coming from BD1 and BD2's role is solely to provide a routing mechanism.

This guidance also applies where, in the example above, BD1 clears through BD2, including on a fully disclosed basis.

Q201.2: Assume the same facts as FAQ 201.1. Is it permissible for BD2 to "give up" or report on behalf of BD1 on the tape report?

A201.2: Yes. In this instance BD2 can "give up" or report on behalf of BD1 for purposes of the tape report, provided that there is a valid, executed give-up agreement between BD1 and BD2. See FAQ 200.1. BD1 and BD3 must be identified on the tape report as the parties to the trade.

Q201.3: Member BD1 enters an order into member BD2's system. BD2 makes the order routing and execution decision and directs BD1's order to member BD3. BD3 executes it. Which members should be identified as the parties to the trade on the tape report? Does the same guidance apply where BD1 clears through BD2?

A201.3: The parties to the trade on the tape report must be BD2 and BD3. In this example, BD2 (and not BD1) is a party to the trade because BD2 is making the order routing and execution decision and directing BD1's order to BD3.

This guidance also applies where, in the example above, BD1 clears through BD2, including on a fully disclosed basis.

Q201.4: Assume the same facts as FAQ 201.3. Is it permissible for BD2 to "give up" or report on behalf of BD1 on the tape report?

A201.4: No, in this instance, BD2 cannot "give up" or report on behalf of BD1 for purposes of the tape report. BD1 is not a party to the trade between BD2 and BD3 and cannot be identified as such on the tape report.

Q201.5: Member BD1 executes a trade with its clearing firm, BD2, which is also a member. Can BD2 "give up" or report on behalf of BD1 on the tape report?

A201.5: Yes. In this instance, BD2 can "give up" or report on behalf of BD1, provided that there is a valid, executed give-up agreement between BD1 and BD2. See FAQ 200.1. BD1 and BD2 must be identified on the tape report as the parties to the trade.

Section 202: Reporting Trades With a Non-FINRA Member

Q202.1: How should trades executed with a broker-dealer that is not a FINRA member be reported to FINRA?

A202.1: When reporting a trade with a broker-dealer that is not a FINRA member, the non-member should not be identified on the trade report as the contra party to the trade.

There is a limited exception where a Canadian non-member firm uses the FINRA/NASDAQ TRF or ORF for purposes of comparing trades pursuant to a valid Non-Member Addendum to the NASDAQ Services Agreement. In that instance, however, the Canadian non-member must appear on the trade report as the contra party to the trade and not as the reporting party. For any trade report on which a Canadian non-member appears as a party to the trade, the FINRA member must appear as the reporting party.

Q202.2: Member BD1 executes a trade with non-member BD2. BD2's clearing firm is a FINRA member (BD3). Should BD2's clearing firm, BD3, appear on the tape report as the contra party to the trade?

A202.2: No. Only the parties that execute the trade should be identified as the parties to the trade on the tape report and, thus, BD3 should not appear on the tape report as the contra party. In this example, BD1 would report the trade

and would not identify a contra party. If the parties want to clear the trade through a FINRA Facility, a separate non-tape clearing-only report identifying BD1 and BD3 as the parties to the trade may be submitted, where permitted by rule. See FINRA [Regulatory Notice 07-38](#) (August 2007).

Q202.3: Two non-FINRA members execute an OTC trade (for example, on the floor of a regional or options exchange). Can a FINRA member report the trade to a FINRA Facility on behalf of the two non-members?

A202.3: No, it is not permissible for a FINRA member to report a trade to a FINRA Facility that was executed between two non-members if the FINRA member is not a party to the trade. If, however, the FINRA member is a party to the OTC trade, the FINRA member must report the trade to a FINRA Facility. Under such circumstances, the FINRA member would be obligated to comply with the trade reporting rules (e.g., the 10-second reporting obligation) and all other rules and regulations (e.g., the Order Protection Rule under Regulation NMS), as applicable.

Section 203: Reporting by an Alternative Trading System (ATS) or Electronic Communications Network (ECN)

Q203.1: Is an ATS subject to the same reporting requirements as an ECN?

A203.1: Yes. Under the "executing party" trade reporting structure, an ATS (a term that includes an ECN) is the executing party and has the reporting obligation where the transaction is executed on the ATS. If an ATS routes an order to another member firm for handling and/or execution, then the ATS would not be the executing party and would not have the reporting obligation. See [Regulatory Notice 09-08](#) (January 2009).

Q203.2: Must an ATS or ECN report trades in the same manner for each of its subscribers?

A203.2: Yes. With the implementation of the "executing party" trade reporting structure on August 3, 2009, the three different methods of reporting by an ECN or ATS were eliminated. See [Regulatory Notice 09-08](#) (January 2009).

Q203.3: If an ATS or ECN matches the orders of two FINRA members, can the ATS or ECN submit a single report showing the trade between the two members, without identifying itself as a party to the trade?

A203.3: No. The ATS or ECN must always appear on the trade report as a party to the trade. See FAQ 200.6.

Q203.4: Can an ATS or ECN use the three-party trade report to report to a FINRA Facility?

A203.4: Yes. The trade reporting rules allow for the use of three-party trade reports by Registered ECNs when reporting to the ADF. See Rule 6282(d). Currently, the other FINRA Facilities do not support three-party trade reports.

Q203.5: Where an ECN matches the orders of two FINRA members and reports the transaction to a FINRA Facility, is the ECN required to submit a non-tape report to FINRA to reflect the offsetting leg of the transaction?

A203.5: Yes. Any member with the obligation to report the trade under FINRA rules that is acting in a riskless principal or agency capacity on behalf of one or more other members is required to submit to FINRA one or more non-tape report(s) identifying such other member(s) as a party to the transaction, if such other member(s) is not identified on the initial trade report or a report submitted to FINRA to reflect the offsetting leg of a riskless principal transaction. See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4); see also [Regulatory Notice 09-08](#) (January 2009). This requirement applies to all members, including ATSs (which term includes ECNs). For example, an ECN matches the orders of two members, BD1 and BD2, and executes the trade, and the tape report identifies

the ECN and one of the members (e.g., BD1) as the parties to the trade. The ECN is required to submit a non-tape report to reflect the offsetting leg of the transaction; in this example, ECN vs. BD2.

The guidance in FINRA [Trade Reporting Notice 2/19/08](#) (Guidance on Reporting Electronic Communications Network (ECN) Transactions) was superseded upon implementation of these rules on August 3, 2009.

Section 204: Trade Reporting Structure - Which Party Has Trade Reporting Obligation

Q204.1: Which party has the reporting obligation under the trade reporting rules?

A204.1: The following trade reporting structure is in place for purposes of reporting OTC transactions in NMS stocks, OTC Equity Securities and Restricted Equity Securities to FINRA:

1. in transactions between members, the "executing party" reports; and
2. in transactions between a member and a non-member or customer, the member reports.

See Rules 6282(b); 6380A(b) and 7230A(c); 6380B(b) and 7230B(c); and 6622(b) and 7330(c). See also [Regulatory Notice 09-08](#) (January 2009).

Q204.2: How is market maker status determined for purposes of determining which party has the responsibility for reporting a trade in an OTC Bulletin Board (OTCBB) or Pink Sheets security?

A204.2: With the implementation of the "executing party" trade reporting structure on August 3, 2009, guidance relating to the determination of market maker status for purposes of trade reporting is no longer applicable.

Q204.3: Which party has the obligation to report trade cancellations and reversals?

A204.3: The member with the obligation to report the original trade has the obligation to report the cancellation (if on trade date) or reversal (if on a date after trade date) of the trade to FINRA. See Rules 6282(j); 6380A(g)(1) and 7230A(f)(1); 6380B(f)(1) and 7230B(e)(1); and 6622(f)(1) and 7330(f)(1).

Q204.4: Member BD1 routes a sell order to member BD2 for handling and execution. BD2 does not re-route the order and executes the trade OTC with BD1. As such, BD2 is the executing party and has the obligation to report the trade under FINRA rules. If BD1 is selling short, is BD1 required to disclose this to BD2?

A204.4: The trade report submitted to FINRA must indicate that BD1 is selling short. If BD1 does not want to disclose to BD2 that it is selling short, then the parties may use the trade comparison and acceptance functionality of a FINRA Facility. In other words, BD2 will report the trade within 10 seconds of trade execution and BD1 will enter its own trade information-including that it was selling short-within 20 minutes of trade execution. See Section 103 (Trade Comparison and Acceptance). Additionally, BD1 could report on behalf of BD2 pursuant to a valid give-up agreement, in the form specified by FINRA ([Uniform Service Bureau/Executing Broker Agreement](#)) (PDF 18 KB), and in that instance, would not be required to disclose to BD2 that it was selling short. See Section 200 (Reporting on Behalf of Another Member ("Give-Up" Relationships)).

Q204.5: How is "executing party" defined for purposes of the trade reporting structure?

A204.5: Under FINRA rules, the "executing party" is defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. For transactions between two members where both members could reasonably maintain that they satisfy the definition of executing party (e.g., manually negotiated trades via the telephone), the member

representing the sell-side must report the transaction to FINRA, unless the parties agree otherwise and the member representing the sell-side contemporaneously documents such agreement. See Rules 6282(b), 6380A(b), 6380B(b), and 6622(b); see also [Regulatory Notice 09-08](#) (January 2009).

Q204.6: What impact does the executing party trade reporting structure have on the processing of regulatory transaction fees pursuant to Section 3 of Schedule A to the FINRA By-Laws ("Section 3")?

A204.6: The executing party trade reporting structure has no impact on the processing of Section 3 fees. FINRA always bills Section 3 fees to the clearing member identified as the sell-side on the tape report and, as such, it makes no difference for billing purposes which member appears on the tape report as the reporting party and contra party.

Q204.7: What impact does the executing party trade reporting structure have on reporting with give-up and Qualified Service Representative (QSR) agreements?

A204.7: The executing party trade reporting structure does not change the QSR process or member obligations with respect to give-up agreements. A QSR agreement is a National Securities Clearing Corporation agreement and, for FINRA purposes, merely establishes that one party to the trade can send the trade to clearing on behalf of the other party to the trade. A give-up agreement, in the form specified by FINRA ([Uniform Service Bureau/Executing Broker Agreement](#)) (PDF 18 KB), is required for a member to report trade information to FINRA on behalf of another member, even if the parties have a QSR agreement in effect. Under the executing party trade reporting structure, members can continue to agree to allow another member to report and lock-in trades on their behalf in accordance with the requirements discussed in Section 200 (Reporting on Behalf of Another Member ("Give-Up" Relationships)).

Section 205: Determining "Executing Party"

Section 205 provides guidance on members' obligations under the executing party trade reporting structure. FAQ 205.1 through 205.7 relate to determining which member is the executing party in different scenarios.

Q205.1 (member receives order for handling and execution): Member BD1 routes to member BD2 an order for handling and execution. BD2 does not re-route the order and executes the trade OTC with BD1. Which member is the executing party for purposes of reporting the trade to FINRA?

A205.1: In this example, BD2 is the executing party and has the trade reporting obligation, because BD2 received an order for handling and execution from BD1, did not re-route the order and executed the trade.

This guidance applies irrespective of the mechanism used by BD1 to route the order to BD2 (e.g., electronically, via the telephone, etc.).

Q205.2 (member receives order for execution): Member BD1 presents to member BD2 an order for execution. BD2 does not subsequently route BD1's order and executes the trade OTC with BD1 on the terms (i.e., quantity and price) presented. Which member is the executing party for purposes of reporting the trade to FINRA?

A205.2: In this example, BD2 is the executing party and has the trade reporting obligation, because BD2 received an order for execution from BD1, did not route the order and executed the trade.

This guidance applies irrespective of the mechanism used by BD1 to present the order to BD2 (e.g., electronically, via the telephone, etc.).

Q205.3 (matching scenario): Member BD1 matches as agent orders from members BD2 and BD3 and executes the trade OTC. Which member is the executing party for purposes of reporting the trade to FINRA?

A205.3: In this example, BD1 is the executing party and has the trade reporting obligation. See also Section 307 (Reporting Matches of Broker-Dealer Orders by a Member (Including an ATS or ECN)).

Q205.4 (member presented order against its quote): Member BD1 displays a quote (or order) and member BD2 presents an order to BD1 at BD1's quoted price. BD1 does not subsequently route BD2's order and executes the trade OTC. Which member is the executing party for purposes of reporting the trade to FINRA?

A205.4: In this example, BD1 is the executing party and has the trade reporting obligation, because BD1 was presented an order against its quote (or displayed order), did not route the order and executed the trade at BD1's quoted price.

This guidance applies irrespective of the mechanism used by BD2 to access BD1's quote (e.g., electronically, via the telephone, etc.).

Q205.5 (member asked to provide quote): Member BD1 requests a quote from member BD2, receives a quote and agrees to trade with BD2 at BD2's quoted price. Which member has the trade reporting obligation?

A205.5: In this example, BD2 is the executing party and has the trade reporting obligation, because BD2 was presented an order against its quote, did not route the order and executed the trade at BD2's quoted price.

Q205.6 (electronically negotiated and accepted trade): Member BD1 displays a quote (or order). Member BD2 electronically routes an order to BD1, but not at BD1's quoted price. The parties are using broker-to-broker negotiation software or a system, such as Pink Link, that permits parties to make and accept counter-offers electronically. BD1 electronically counters at a different price and BD2 accepts BD1's counter by pressing the "buy" or "accept" button. Which member has the trade reporting obligation?

A205.6: In this example, BD2 is the executing party because BD2 electronically accepted and executed the trade at the negotiated price.

Q205.7 (negotiated trade where both members may satisfy the definition of executing party): Member BD1 displays a quote (or order). Member BD2 contacts BD1 with an order, but not at BD1's quoted price. The two members negotiate the terms and ultimately agree to trade at a price different than BD1's quoted price. BD2 represents the sell-side, and based on the interaction between the members, both members could reasonably maintain that they satisfy the definition of executing party. Which member has the trade reporting obligation?

A205.7: In this example, because both members could reasonably maintain that they satisfy the definition of executing party, BD2, as the member representing the sell-side, has the trade reporting obligation, unless the parties agree otherwise. This guidance applies irrespective of the mechanism used by the members to negotiate the terms of the trade (e.g., via telephone or electronically) *but only if* both members could reasonably maintain they were the executing party because of the negotiated-nature of the interaction. In the vast majority of cases, it will be clear that one member is the ultimate executing party (e.g., during an electronic negotiation, the member that accepts and executes the trade) and that member has the trade reporting obligation. See FAQ 205.6.

FAQ 205.8 through 205.14 provide guidance on shifting the trade reporting obligation, and the applicable documentation requirements, if any, in the limited circumstance where it may not be clear which member is the executing party.

Q205.8: Member BD1 and member BD2 manually negotiate an OTC trade via the telephone. Because both members could reasonably maintain that they satisfy the definition of executing party, as the member representing the sell-side, BD2 has the trade reporting obligation under FINRA rules. If BD2 reports the trade, does the "contemporaneously documented agreement" requirement apply?

A205.8: No. The requirement relating to a contemporaneously documented agreement only applies where the trade reporting obligation is on the member representing the sell-side (in this example, BD2), but the parties have agreed that the member representing the buy-side (in this example, BD1) will report the trade. This requirement does *not* apply in this example because BD2, the member representing the sell-side, is reporting the trade in accordance with the trade reporting rules.

Q205.9: Member BD1 and member BD2 manually negotiate an OTC trade via the telephone. Because both members could reasonably maintain that they satisfy the definition of executing party, as the member representing the sell-side, BD2 has the trade reporting obligation under FINRA rules. Can the parties agree that BD1 will have the trade reporting obligation?

A205.9: Yes. Under FINRA rules, BD1 and BD2 can agree that BD1 will report the trade and in that instance, BD2 must contemporaneously document the parties' agreement. See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b); see also [Regulatory Notice 09-08](#) (January 2009).

Q205.10: Assume the same facts as FAQ 205.9. If the parties agree that BD1 will have the trade reporting obligation, what types of documentation would be acceptable for purposes of satisfying the requirement that BD2 contemporaneously document the parties' agreement?

A205.10: For purposes of satisfying this requirement, BD2 could produce, e.g., contemporaneous notes of a telephone conversation or notation on the order ticket. See [Regulatory Notice 09-08](#) (January 2009).

Additionally, the parties may comply with the "contemporaneously documented agreement" requirement through the use of a previously executed blanket agreement that expressly shifts the trade reporting obligation in this scenario (i.e., that in a manually negotiated trade between BD1 and BD2 where it is not clear which member is the executing party, the parties agree that BD1, as the member representing the buy-side, will have the reporting obligation).

Q205.11: Assume the same facts as FAQ 205.9. If the parties agree to shift the trade reporting obligation to BD1, is BD2 responsible for timely reporting of the trade?

A205.11: No. Because the parties have agreed to shift the trade reporting obligation under FINRA rules, BD1 is responsible for reporting the trade in compliance with FINRA rules. If, for example, BD1 were to report the trade late, BD2 would not be subject to a late trade reporting violation.

Q205.12: Assume the same facts as FAQ 205.9, but in this example, the parties do not agree to shift the trade reporting obligation. Can BD1 report the trade on behalf of BD2 pursuant to a previously executed give-up agreement in the form of FINRA's Uniform Service Bureau/Executing Broker Agreement?

A205.12: Yes. BD1 can report on *behalf* of BD2 pursuant to a previously executed give-up agreement; however, the trade reporting obligation does not shift to BD1 in this instance. Accordingly, BD2 would remain responsible for compliance with FINRA trade reporting rules and, for example, could be subject to a late trade reporting violation if BD1 fails to submit the tape report within 10 seconds of execution. See Section 200 (Reporting on Behalf of Another Member ("Give-Up" Relationships)).

A previously executed [Uniform Service Bureau/Executing Broker Agreement](#) (PDF 14 KB) can satisfy the "contemporaneously documented agreement" requirement required to shift the trade reporting obligation to BD1

only if it has been amended to contemplate this specific scenario (i.e., that in a manually negotiated trade between BD1 and BD2 where it is not clear which member is the executing party, the parties agree that BD1, as the member representing the buy-side, will have the reporting obligation).

Q205.13: Assume the same facts as FAQ 205.9. If the parties agree to shift the trade reporting obligation to BD1, can the trade comparison and acceptance functionality of the FINRA/NASDAQ TRF, ADF or ORF satisfy the requirement that BD2 contemporaneously document the parties' agreement? In other words, if BD1 (the member representing the buy-side) reports the trade and BD2 (the member representing the sell-side) accepts the trade information entered by BD1, would this be sufficient evidence of the parties' contemporaneous agreement to shift the trade reporting obligation to BD1?

A205.13: No. Use of the trade comparison and acceptance functionality (see Section 103) would not satisfy the "contemporaneously documented agreement" requirement for purposes of shifting the trade reporting obligation under FINRA rules.

Q205.14: Member BD1 routes to member BD2 an order for handling and execution. BD2 does not re-route the order and executes the trade OTC with BD1. BD2 is the executing party and, as such, has the trade reporting obligation. Can the parties agree to shift the trade reporting obligation to BD1 under FINRA rules?

A205.14: No. FINRA rules permit the parties to agree to shift the trade reporting obligation only where it may not be clear which party is the executing party (e.g., in the context of manually negotiated trades via the telephone). In this example, it is clear that BD2 is the executing party and has the trade reporting obligation. See FAQ 205.1. In this instance, BD1 could report on *behalf* of BD2 pursuant to a valid give-up agreement; however, BD2 would still be the member with the trade reporting obligation under FINRA rules and would be responsible for the trade information submitted by BD1.

Types of Reports/Transactions

Section 300: Non-Tape (Regulatory or Clearing-Only) Reports

Q300.1: Should trade report modifiers be used in non-tape (i.e., regulatory or clearing-only) reports submitted to a FINRA Facility?

A300.1: As a general rule, no. The only trade report modifiers that should be included in non-tape reports are: (1) trade settlement type modifiers (in byte 1); and (2) the modifiers used to designate that a trade is being reported for regulatory fee assessment purposes only (in byte 4). See FAQ 600.1. No other trade report modifiers should be used in a non-tape report.

Q300.2: Member BD1 reports a trade for public dissemination purposes to one FINRA Facility-e.g., the ADF. Can BD1 submit a clearing-only report for that same trade to another FINRA Facility-e.g., the FINRA/NASDAQ TRF-for transmission to National Securities Clearing Corporation (NSCC) for clearance and settlement purposes?

A300.2: No. The trade reporting rules provide that, with certain limited exceptions (discussed in FAQ 300.3), members cannot submit any non-tape report to one FINRA Facility associated with a previously executed trade that was not reported to that FINRA Facility for publication or regulatory transaction fee purposes. Thus, in this example, BD1 cannot use the ADF to tape report and the FINRA/NASDAQ TRF to clear the same trade; BD1 would be required to both tape report and clear the trade through either the ADF or the FINRA/NASDAQ TRF. See Rules 7130(d), 7230A(i), 7230B(h) and 7330(h); FINRA Regulatory Notice 07-38 (August 2007).

Members that report trades for publication purposes to a FINRA Facility that does not submit trades to clearing must make alternative arrangements to clear such trades (e.g., via Qualified Service Representative (QSR) agreements with NSCC).

Q300.3: Are there any exceptions to the prohibition discussed above?

A300.3: Yes, there is an exception to this prohibition for reports that reflect the offsetting portion of a riskless principal transaction, discussed in greater detail in Section 302 (Reporting Riskless Principal Transactions). This exception extends to agency transactions where a member acts as agent on behalf of another member, since such transactions are the functional equivalent of riskless principal transactions, discussed in greater detail in Section 303 (Reporting Agency Transactions). See Rules 7130(d), 7230A(i), 7230B(h) and 7330(h); [FINRA Regulatory Notice 07-38](#) (August 2007).

Where a transaction falls within this exception for riskless principal or agency transactions, members must identify on non-tape reports the market or facility where an associated trade was reported, if the related tape and non-tape reports are submitted to different FINRA Facilities or the non-tape report is associated with a trade that was reported to the tape through an exchange. See Section 405 (Related Market Center).

Section 301: Reporting Step-Outs

Q301.1: What is a step-out for purposes of the trade reporting rules?

A301.1: A step-out allows a member to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership. The step-out function was designed and implemented as a service to facilitate the clearing process for members involved in these types of transfers.

For example, member BD1 buys 1000 shares of ABCD security on behalf of its client and reports that trade to the FINRA/NASDAQ TRF and then submits a clearing-only report to the FINRA/NASDAQ TRF to allocate those shares at the same price to that client's account at member BD2. See NTMs [98-40](#) (May 1998) and [05-11](#) (February 2005); [FINRA Regulatory Notice 07-38](#) (August 2007).

Q301.2: Are there any restrictions on the submission of non-tape reports for step-outs to a FINRA Facility?

A301.2: Yes. The trade reporting rules prohibit members from submitting to a FINRA Facility any non-tape report (including but not limited to reports of step-outs) associated with a previously executed trade that was not reported to that FINRA Facility. For example, a clearing-only entry for a step-out relating to a trade executed on and reported through the NASDAQ Exchange cannot be submitted to the FINRA/NASDAQ TRF. See Rules 7130(d), 7230A(i), 7230B(h) and 7330(h); [FINRA Regulatory Notice 07-38](#) (August 2007). Members should check with the relevant exchanges to determine whether they support step-out functionality.

Q301.3: Member BD1 accumulates 10,000 shares of ABCD security by executing the following trades: four separate exchange trades for 2,000 shares each, one OTC trade for 1,000 shares that is reported to TRF A and one OTC trade for 1,000 shares that is reported to TRF B. Can BD1 step-out of the 10,000 shares on TRF A?

A301.3: No. BD1 can only step-out of a trade on a FINRA Facility that was previously reported to that FINRA Facility. Thus, in this example, BD1 can step-out of 1,000 shares on TRF A.

Q301.4: What time should be entered in the execution time field on a non-tape report for a step-out?

A301.4: The time that should be entered in the execution time field on the non-tape report should be the time at which the step-out was allocated to another party. Firms must populate this field accurately and should not, for example, use an internal default time (e.g., 12:00 noon) on such reports.

Q301.5: What time should be entered in the execution time field on non-tape reports of "bulk" step-outs? For example, if member BD1 executes 100 shares at 12:00:00, 100 shares at 12:01:00 and 100 shares at 12:04:00 (and each of these trades is reported to the tape); determines the weighted average price of the three trades and communicates this to member BD2 at 12:20:00; and allocates the shares to BD2 at 12:21:00, what time should be entered in the execution time field on the non-tape report of the step-out?

A301.5: The time that should be entered in the execution time field on the report of a "bulk step-out" should be the time at which the step-out was allocated. Thus, in this example, the time in the execution time field should be 12:21:00.

Q301.6: My firm is a member and participant of both the FINRA/NASDAQ TRF and the NASDAQ Exchange and reports step-outs to both facilities. How does my firm distinguish between a step-out reported through the FINRA/NASDAQ TRF versus the NASDAQ Exchange?

A301.6: The Automated Confirmation Transaction Service (ACT) is a technology system owned by the NASDAQ Exchange that serves as a mechanism for the submission of certain non-tape reports under the NASDAQ Exchange. ACT also has been licensed for use by the FINRA/NASDAQ TRF as a technology platform for collecting OTC trade reports for public dissemination and regulatory purposes. In this dual role, ACT accepts step-out entries submitted to the NASDAQ Exchange as well as to the FINRA/NASDAQ TRF. However, although they share the ACT technology platform, the NASDAQ Exchange and the FINRA/NASDAQ TRF are separate facilities and are governed by separate rule sets. Thus, when using ACT, firms must be mindful of the facility to which they are submitting step-out entries and must comply with the rules and technology specifications applicable to that facility. For example, firms must indicate on the entry that the step-out is a FINRA step-out or a NASDAQ Exchange step-out as specified in ACT entry protocols. See [NASDAQ Head Trader Alert 2008-019](#) (February 22, 2008).

Q301.7: Member BD1 purchases 100,000 shares of ABCD on behalf of its customer and the customer instructs BD1 to step-out of 30,000 of those shares to the customer's account at member BD2. BD1 and BD2 have agreed that BD1 will charge a per share fee for this service. Can BD1 include the fee in the price on the clearing-only report submitted to FINRA for purposes of allocating the shares to BD2?

A301.7: No, BD1 cannot include such a fee in the price on a clearing-only report submitted to FINRA. A step-out submitted to FINRA must be allocated at the same price as the previously executed trade and cannot include a fee; however, members can transfer a transaction fee in accordance with Rules 7230A(h) and 7330(i) in connection with a step-out entry submitted to the FINRA/NASDAQ TRF or the ORF, respectively.

Section 302: Reporting Riskless Principal Transactions**Q302.1: What is a "riskless principal" transaction?**

A302.1: For purposes of OTC transaction reporting requirements applicable to equity securities, a "riskless principal" transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the same price (the offsetting "riskless" leg). Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; hence, there is no "risk" in the interdependent transactions when completed. See [NTM 99-65](#) (August 1999).

Q302.2: How are OTC riskless principal transactions reported to FINRA?

A302.2: Members can report OTC riskless principal transactions by submitting a single tape report to a FINRA Facility in the same manner as an agency transaction, marked with a "riskless principal" capacity indicator, excluding the mark-up or mark-down, commission-equivalent or other fee. Alternatively, members can report an OTC riskless principal transaction by submitting two (or more, as necessary) reports: (1) a tape report to reflect the initial leg of the transaction with a capacity of principal; and (2) a non-tape (regulatory or clearing-only) report to reflect the offsetting "riskless" leg of the transaction with a capacity of riskless principal. See Rules 6282(e)(1)(C)(ii), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B); NTMs 99-65 (August 1999), 99-66 (August 1999) and 00-79 (November 2000). Where the tape report for an OTC riskless principal trade incorrectly reflects a capacity of "principal," the non-tape report is required under the trade reporting rules.

Q302.3: If the tape report for the initial leg of a riskless principal transaction is submitted to a FINRA Facility, must the non-tape report for the offsetting "riskless" leg be submitted to that same FINRA Facility?

A302.3: No. The trade reporting rules require that where the tape report for the initial leg of a riskless principal transaction is reported to FINRA, the non-tape report for the offsetting "riskless" leg must also be reported to FINRA; however, in such instance, members are not required to report both legs of the transaction to the same FINRA Facility. See Rules 6282(e)(1)(C)(ii), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B).

FINRA amended the trade reporting rules to avoid the unintended consequence of requiring members to be participants in all TRFs in order to comply with the trade reporting rules. See [FINRA Regulatory Notice 07-38](#) (August 2007). For example, members BD1 and BD2 execute an OTC trade, and BD2 is acting as riskless principal for its customer. BD1 submits a tape report to TRF A reflecting BD2's capacity as principal. BD2 would be required to submit a non-tape report reflecting the offsetting customer leg of the transaction and its correct capacity as riskless principal. However, BD2 would not be required to submit the non-tape report to TRF A; BD2 could submit the non-tape report to TRF B. (Where the tape report is properly marked "riskless principal," a non-tape report is not required under the trade reporting rules. See FAQ 302.2.)

FINRA expects that, where possible, members will report both legs of a riskless principal transaction to the same FINRA Facility. See [FINRA Regulatory Notice 07-38](#) (August 2007). Thus, if one member is reporting both legs of the transaction, FINRA expects that the member will report both legs to the same FINRA Facility.

Q302.4: Can members report riskless principal transactions to FINRA where the initial leg is executed on and reported through an exchange?

A302.4: Yes. Where the initial leg of a riskless principal transaction was previously reported by an exchange for public dissemination, the member would be permitted, but not required, to submit a non-tape report to a TRF or the ADF for the offsetting "riskless" leg. See Rules 6282(e)(1)(C)(ii), 6380A(d)(3)(B) and 6380B(d)(3)(B). Similarly, members may, but are not required to, submit a non-tape report to the ORF for the offsetting "riskless" leg of a riskless principal transaction where the initial leg is executed on and reported through a foreign exchange. Members that choose to report such transactions to FINRA must include all data elements required to be reported under the trade reporting rules. Members should not report the exchange trade to FINRA for public dissemination purposes, as that would result in double (tape) reporting of the same transaction. See Rules 6282(i), 6380A(e), 6380B(e) and 6622(g).

Q302.5: Member BD1 receives an order to buy a security, purchases the security for its own account and then sells the security to satisfy the original order at a different price than the price at which BD1 acquired the security. Does this constitute a "riskless principal" transaction?

A302.5: No. Transactions at different prices are not riskless principal transactions for purposes of the trade reporting rules, even though the transactions may otherwise be "riskless." Thus, each trade, at each respective price, must be reported separately to the tape. See NTMs 99-65 (August 1999), 00-79 (November 2000) and 01-85 (December 2001). See also Section 304 (Reporting Net Trades).

Q302.6: Member BD1 receives an order to buy a security, purchases the security for its own account and then sells the security to satisfy the original order at the same price; however, the settlement types, and thus the settlement dates, of the two legs of the transaction are different. Does this constitute a "riskless principal" transaction?

A302.6: Yes. A riskless principal transaction for purposes of the trade reporting rules can comprise legs that are of differing settlement types, assuming that the legs are effected at the same price and the transaction is otherwise deemed "riskless" to the member. If, however, the staggered settlements result in the two legs being executed at different prices, then the transaction would no longer qualify as a riskless principal transaction and both legs must be reported to the tape.

Q302.7: What time should be entered in the execution time field on a non-tape report for the offsetting leg of a riskless principal transaction?

A302.7: The time that should be entered in the execution time field on the non-tape report should be the time at which the offsetting leg of the transaction was allocated to another party. Firms must populate this field accurately and should not, for example, use an internal default time (e.g., 12:00 noon) on such reports.

Q302.8: What time should be entered in the execution time field on the non-tape report for the offsetting "riskless" leg of a riskless principal transaction that is associated with multiple first legs? For example, if member BD1 buys 100 shares at 12:00:00, 100 shares at 12:01:00 and 100 shares at 12:04:00 (and each of these trades is reported to the tape); determines the weighted average price of the three trades and communicates this to the customer at 12:20:00; and at 12:21:00 allocates the shares to its customer at the weighted average price of the three trades, what time should be entered in the execution time field on the non-tape report of the offsetting leg?

A302.8: The time that should be entered in the execution time field on the non-tape report should be the time at which the offsetting leg of the transaction was allocated. Thus, in this example, the time in the execution time field should be 12:21:00.

Q302.9: Member BD1, as riskless principal on behalf of member BD2, routes an order to member BD3 for execution OTC. BD3 executes the trade with BD1 and has the trade reporting obligation under FINRA rules. Is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?

A302.9: If the tape report submitted by BD3 does not properly reflect BD1's capacity as riskless principal, then BD1 must submit a non-tape report identifying BD1 and BD2 as the parties to the trade with BD1's capacity marked as riskless principal. If BD1's capacity is properly marked as riskless principal on the tape report, then BD1 would not be required to submit a non-tape report for purposes of correcting its capacity. See Rules 6282(e)(1)(C)(ii), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B).

The non-tape reporting requirement (see FAQ 302.11) creates no new reporting obligation for BD1 in this instance because BD1 is not the member with the obligation to report the trade for tape purposes.

302.10: Member BD1 is handling a customer order on a riskless principal basis, and routes its order for handling to member BD2. BD2 handles BD1's order on a riskless principal basis and routes the order for execution to member BD3. BD3 executes the trade and the following reports are submitted to FINRA:

- › **Tape Report (submitted by BD3): BD3 vs BD2 (capacity incorrectly marked as principal)**
- › **Non-Tape Report (submitted by BD2): BD2 (capacity correctly marked as riskless principal) vs BD1**

Under FINRA rules, does BD1 have an obligation to submit a non-tape report reflecting the offsetting riskless leg with its customer?

A302.10: No. BD1 is not required to submit a non-tape report reflecting the offsetting leg with its customer. Under FINRA riskless principal reporting requirements, a member has an obligation to submit a non-tape report for the offsetting riskless leg with its customer only if its capacity is incorrectly reflected on the tape report submitted to FINRA. See Rules 6282(e)(1)(C)(ii), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B). In this example, BD1 is not identified on the tape report (BD2 and BD3 are identified on the tape report) and accordingly, BD1 does not have a non-tape reporting obligation.

Q302.11: Member BD1, as riskless principal on behalf of member BD2, and member BD3 execute an OTC trade. For purposes of this example, BD1 has the trade reporting obligation under FINRA rules and correctly reports its capacity as riskless principal. Is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?

A302.11: Yes. Because BD1 has the obligation under FINRA rules to report the trade for tape purposes, BD1 is required to submit a non-tape report identifying BD1 and BD2 as the parties to the trade to indicate that BD1 was acting on behalf of BD2 (referred to in this Section 302 as the "non-tape reporting requirement"). See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). [See also Regulatory Notice 09-08](#) (January 2009).

Q302.12: Member BD1, as riskless principal on behalf of member BD2, executes a trade on an exchange, and the trade is reported to the tape by the exchange. Under the non-tape reporting requirement, is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?

A302.12: No. BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate that it was acting as riskless principal on behalf of BD2 because the trade was executed on and reported through an exchange. See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). However, as explained in FAQ 302.4, BD1 may submit a clearing-only report to clear the offsetting leg of the transaction between BD1 and BD2 through a FINRA Facility. [See Regulatory Notice 09-08](#) (January 2009) and [07-38](#) (August 2007).

Q302.13: Member BD1, as riskless principal on behalf of non-member BD2, and member BD3 execute an OTC trade. For purposes of this example, BD1 has the trade reporting obligation under FINRA rules and correctly reports its capacity as riskless principal. Is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?

A302.13: No. Although BD1 has the obligation under FINRA rules to report the trade for tape purposes, BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate it was acting on behalf of BD2, because BD2 is a non-member. See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). [See also Regulatory Notice 09-08](#) (January 2009).

Section 303: Reporting Agency Transactions

Q303.1: Can a broker-dealer (BD1) trade as agent for another broker-dealer (BD2)?

A303.1: Yes, BD1 can act as agent for BD2 and execute BD2's order with a third party, assuming that the trade is not executed in, or does not otherwise pass through, a proprietary account of BD1.

Q303.2: In an agency transaction where a member acts as agent on behalf of another member, if the tape report is submitted to a FINRA Facility, must the non-tape report for the offsetting leg be submitted to that same FINRA Facility?

A303.2: No. Similar to the riskless principal reporting structure, if the first leg of an agency transaction where a member acts as agent on behalf of another member is an OTC trade, the related tape and non-tape reports are not required to be submitted to the same FINRA Facility. See FINRA [Regulatory Notice 07-38](#) (August 2007). FINRA expects that where possible, members will report both legs of an agency transaction to the same FINRA Facility. Thus, if one member is reporting both legs of the transaction, FINRA expects that the member will report both legs to the same FINRA Facility.

Q303.3: Member BD1, as agent on behalf of member BD2, executes a trade on an exchange. May BD1 submit a non-tape (regulatory or clearing-only) report to FINRA to reflect the offsetting portion of the agency transaction between BD1 and BD2?

A303.3: Yes. BD1 may submit a non-tape (regulatory or clearing-only) report to FINRA to reflect the offsetting portion of the agency trade between BD1 and BD2. Similar to the riskless principal reporting structure, where the initial leg of the transaction was previously reported by an exchange for public dissemination, the member would be permitted, but not required, to submit a non-tape report to FINRA for the offsetting leg. See FINRA [Regulatory Notice 07-38](#) (August 2007). Members that choose to report such transactions to FINRA must include all data elements required to be reported under the trade reporting rules. Members should not report the exchange trade to FINRA for public dissemination purposes, as that would result in double (tape) reporting of the same transaction. See Rules 6282(i), 6380A(e), 6380B(e) and 6622(g).

Q303.4: What time should be entered in the execution time field on a non-tape report for the offsetting leg of an agency transaction where a member acts as agent for another member?

A303.4: The time that should be entered in the execution time field on the non-tape report should be the time at which the offsetting leg of the transaction was allocated to another party. Firms must populate this field accurately and should not, for example, use an internal default time (e.g., 12:00 noon) on such reports.

Q303.5: What time should be entered in the execution time field on the non-tape report for the second leg of an agency transaction that is associated with multiple first legs? For example, if member BD1, as agent on behalf of member BD2, buys 100 shares at 12:00:00, 100 shares at 12:01:00 and 100 shares at 12:04:00 (and each of these trades is reported to the tape); determines the weighted average price of the three trades and communicates this to BD2 at 12:20:00; and at 12:21:00 allocates the shares to BD2 at the weighted average price of the three trades, what time should be entered in the execution time field on the non-tape report of the second leg?

A303.5: The time that should be entered in the execution time field on the non-tape report should be the time at which the offsetting leg of the transaction was allocated. Thus, in this example, the time in the execution time field should be 12:21:00.

Q303.6: What are the requirements for reporting trades where a member matches, as agent, orders of customers and/or other broker-dealers?

A303.6: The requirements for reporting trades where a member matches, as agent, orders of customers and/or other broker-dealers are discussed in Sections 306, 307 and 308.

Q303.7: Member BD1, as agent on behalf of member BD2, and member BD3 execute an OTC trade. For purposes of this example, BD1 has the trade reporting obligation under FINRA rules. Under the non-tape reporting requirement is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?

A303.7: Yes. Because BD1 has the obligation under FINRA rules to report the trade for tape purposes, BD1 is required to submit a non-tape report identifying BD1 and BD2 as the parties to the trade to indicate that BD1 was acting on behalf of BD2 (referred to in this Section 303 as the "non-tape reporting requirement"). See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

Q303.8: Member BD1, as agent on behalf of member BD2, routes an order to member BD3 for execution OTC. BD3 executes the trade and has the trade reporting obligation under FINRA rules. Under the non-tape reporting requirement, is BD1 required to submit a report to FINRA to reflect the offsetting leg between BD1 and BD2?

A303.8: No. BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate that it was acting on behalf of BD2 because BD1 is not the member with the obligation under FINRA rules to report the trade for tape purposes. See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4).

Q303.9: Member BD1, as agent on behalf of member BD2, executes a trade on an exchange, and the trade is reported to the tape by the exchange. Under the non-tape reporting requirement, is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?

A303.9: No. BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate that it was acting as agent on behalf of BD2 because the trade was executed on and reported through an exchange. See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). However, as explained in FAQ 303.3, BD1 may submit a clearing-only report to clear the offsetting leg of the transaction between BD1 and BD2 through a FINRA Facility. See [Regulatory Notice 09-08](#) (January 2009) and [Regulatory Notice 07-38](#) (August 2007).

Q303.10: Member BD1, as agent on behalf of non-member BD2, and member BD3 execute an OTC trade. For purposes of this example, BD1 has the trade reporting obligation under FINRA rules. Under the non-tape reporting requirement, is BD1 required to submit a non-tape report to FINRA to reflect the offsetting leg between BD1 and BD2?

A303.10: No. Although BD1 has the obligation under FINRA rules to report the trade for tape purposes, BD1 is not required under the non-tape reporting requirement to submit a non-tape report to indicate that it was acting on behalf of BD2, because BD2 is a non-member. See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

Section 304: Reporting Net Trades

Q304.1: What is a net trade?

A304.1: A net trade is a principal trade in which a broker-dealer, after having received an order to buy (sell) an equity security, purchases (sells) the security at one price and satisfies the original order by selling (buying) the security at a different price. The difference between the price of the initial transaction and the price of the offsetting transaction generally is considered the broker-dealer's compensation.

For net trades by a market maker, the market maker's compensation generally is not separately disclosed on a customer confirmation; however Rule 2124 imposes certain disclosure and consent obligations on the market

maker. See NTMs [00-79](#) (November 2000), [01-85](#) (December 2001) and [06-47](#) (September 2006). See also Rule 2124(e), which is discussed in FAQ 304.3. Because a non-market maker's compensation would be separately disclosed on a customer confirmation under SEC Rule 10b-10(a), Rule 2124 does not impose disclosure and consent obligations on non-market makers.

Q304.2: Member BD1 receives an order to buy a security, purchases the security for its own account and then sells the security to satisfy the original order at a different price than the price at which BD1 acquired the security. How should these trades be reported?

A304.2: Because the two transactions are effected at two different prices, this is considered a net trade and both transactions must be reported to the tape. See [NTM 01-85](#) (December 2001).

Q304.3: What disclosure requirements apply when a market maker is trading on a net basis with a customer?

A304.3: Pursuant to Rule 2124, a market maker is required to provide disclosure to, and obtain consent from, a customer prior to executing a transaction with a customer on a net basis. The disclosure and consent requirements under the rule apply only to market makers and differ depending on whether the market maker is trading with an institutional or non-institutional customer. See [NTM 06-47](#) (September 2006).

Q304.4: Does Rule 2124 apply to riskless principal transactions?

A304.4: No. Rule 2124 applies when a market maker, after having received an order to buy (sell) from a customer, purchases (sells) the security as principal at one price and then sells to (buys from) the customer at a different price. By contrast, in a riskless principal transaction, a firm, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price (exclusive of a disclosed commission, mark-up or mark-down) to satisfy that order. The Rule does not apply to riskless principal transactions because the compensation is required to be disclosed on the confirmation pursuant to SEC Rule 10b-10.

Section 305: As/Of (T+N) Reports Including Reversal Entries

Q305.1: What is an "as/of" (T+N) report?

A305.1: A report is marked "as/of" (T+N) when reporting a trade that occurred earlier than the current day and was not reported, or when reporting the cancellation of a trade that was reported in error from a previous day.

Q305.2: Should reports of "as/of" (or T+N) trades be marked "media" or "for publication" (i.e., for submission to the tape)?

A305.2: If the trade would have been marked "media" or "for publication" had it been reported on trade date, the "as/of" report should be marked "media" or "for publication." All other "as/of" reports should be marked as "non-media" (i.e., not for submission to the tape).

Q305.3: Should "as/of" reports include trade report modifiers?

A305.3: Yes, "as/of" reports marked for publication must include trade report modifiers. See Rules 6282, 6380A, 6380B and 6622. Thus, for example, all "as/of" reports for public dissemination should include the modifier denoting that the trade was reported more than 10 seconds after execution, unless the trade is not subject to the 10-second reporting requirement. "As/of" reports that are not media reported should not include trade report modifiers.

Q305.4: Are "as/of" reports that are submitted to a FINRA Facility disseminated by the appropriate Securities Information Processor (SIP)?

A305.4: Today, with the exception of odd-lot trade reports, all "as/of" reports of transactions in NMS stocks that are marked "for publication" are disseminated by the appropriate SIP. However, these reports are not commingled with current trade date reports and do not affect high-low-last statistics. "As/of" reports of transactions in OTC Equity Securities currently are not disseminated by FINRA via the Trade Data Dissemination Service (TDDS) feed.

Q305.5: Are trade report modifiers required on reports of reversals?

A305.5: If the original trade report was marked "for publication" or "media" and thus was disseminated, the reversal must also be marked "for publication" or "media." Accordingly, the reversal entry should include all modifiers that are on the original tape report.

Q305.6: Member BD1 and member BD2 execute an OTC trade and BD1 has the obligation under FINRA rules to report the trade. The next day, the parties agree to reverse the trade. How should the reversal be reported?

A305.6: The member firm with the obligation to report the original trade has the obligation to report the cancellation (if on trade date) or reversal (if on a date other than trade date) of the trade in accordance with FINRA rules. See Rules 6282(j); 6380A(g)(1) and 7230A(f)(1); 6380B(f)(1) and 7230B(e)(1); and 6622(f)(1) and 7330(f)(1).

In this example, BD1 must report the reversal on an "as/of" basis and must identify itself as the reporting member and BD2 as the contra party on the report. The same sides of the market, i.e., the buy and sell sides, should appear on both the original trade report and the reversal report. Thus, if BD1 was the sell-side (and BD2 was the buy-side) on the original trade report, BD1 should identify itself as the sell-side (and BD2 as the buy-side) on the reversal entry. See [Trade Reporting Notice 3/25/13](#). Trade report modifiers should be appended on the reversal entry in accordance with FAQ 305.5.

Section 306: Reporting Matches of Customer Orders by a Member (Including an ATS or ECN)**Q306.1: Member BD1 matches as agent a customer (as defined in NASD Rule 0120(g)) buy order and a customer sell order for the same quantity of shares at the same price. Can this transaction be reported as a cross?**

A306.1: Yes. This is an agency cross, also referred to as a dual agency trade. See Rules 6282(e)(1)(B), 6380A(d)(2), 6380B(d)(2) and 6622(d)(2).

Q306.2: Member BD1 satisfies a customer's order to buy with inventory from BD1's proprietary account. Can this transaction be reported as a cross?

A306.2: No. BD1 should report the trade as a principal sale to its customer.

Q306.3: Member BD1 matches as agent the orders of multiple customers on one side with the orders of one or more customers on the other side. For example, BD1 matches as agent a customer buy order for 100,000 shares with three customer sell orders for 50,000 shares, 20,000 shares and 30,000 shares. Should this be reported as a single transaction or separate transactions?

A306.3: If the matches occur in multiple executions, it would not be permissible to report the transactions as a single cross. Each individual execution must be reported separately to the tape. This is a more accurate reflection of the transaction. If, however, the matches occur in a single execution or a "single event" (e.g., with the press of a button

or pursuant to an automated execution algorithm), the transaction could be reported to the tape as a single cross. Sequential executions-even those occurring very close in time-would not be considered a single event and must be reported separately to the tape.

Please see the [ATS OATS and Trade Reporting guidance](#) that will become effective November 10, 2014. This guidance addresses orders from customers, other FINRA members and non-FINRA member broker-dealers and will supersede existing guidance for the reporting of trades executed on an ATS.

Section 307: Reporting Matches of Broker-Dealer Orders by a Member (Including an ATS or ECN)

Q307.1: Member BD1 matches as agent a buy order from member BD2 and a sell order for the same quantity of shares at the same price from member BD3. How should this transaction be reported?

A307.1: BD1 is the executing party and has the trade reporting obligation.

BD1 can report this transaction in one of three ways:

Alternative #1

Tape report: BD1 (as agent) reports a cross

Non-tape report #1: BD1 (as agent) buys from BD3

Non-tape report #2: BD1 (as agent) sells to BD2

Alternative #2

Tape report: BD1 (as agent) buys from BD3

Non-tape report: BD1 (as agent) sells to BD2

Alternative #3

Tape report: BD1 (as agent) sells to BD2

Non-tape report: BD1 (as agent) buys from BD3

See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

Q307.2: Member BD1 matches as agent the orders of multiple members on one side with the orders of one or more members on the other side. For example, BD1 matches as agent a buy order from member BD2 for 100,000 shares with sell orders from members BD3, BD4 and BD5 for 50,000 shares, 20,000 shares and 30,000 shares, respectively. Should this be reported as a single transaction or separate transactions?

A307.2: If the matches occur in multiple executions, it would not be permissible to report the transactions as a single cross. Each individual execution must be reported separately to the tape. This is a more accurate reflection of the transaction. If, however, the matches occur in a single execution or a "single event" (e.g., with the press of a button or pursuant to an automated execution algorithm), the transaction could be reported to the tape as a single cross. Sequential executions-even those occurring very close in time-would not be considered a single event and must be reported separately to the tape.

If the transaction is a "single event" and BD1 reports the trade as a single cross, BD1 must also submit the following non-tape reports to indicate that BD1 was acting on behalf of the other members:

- 1) BD1 (as agent) sells 100,000 shares to BD2
- 2) BD1 (as agent) buys 50,000 shares from BD3
- 3) BD1 (as agent) buys 20,000 shares from BD4
- 4) BD1 (as agent) buys 30,000 shares from BD5

Q307.3: Member BD1 matches as agent a buy order from non-member BD2 and a sell order for the same quantity of shares at the same price from non-member BD3. How should this transaction be reported?

A307.3: BD1 should report this as an agency cross. Because BD1 is not acting on behalf of another member, BD1 has no non-tape reporting obligation under FINRA rules. See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4).

Q307.4: Assume the same facts as FAQ 307.1. Should the execution time on the non-tape report(s) be the same as the execution time on the tape report?

A307.4: Yes. Where a member is matching orders of one or more members and submitting non-tape report(s) to identify the other members that are parties to the trade, the execution time on the non-tape report(s) should be the same as the execution time on the tape report.

Q307.5: Member BD1 matches as agent a buy order from member BD2 and a sell order for the same quantity of shares at the same price also from member BD2. BD2 is acting as agent on behalf of two different customers, the buyer and seller. Is BD1 required to submit non-tape reports, as necessary, to identify BD2 on both the buy-side and sell-side?

A307.5: Yes, BD1 must submit non-tape reports, as necessary, to identify BD2 on both sides of the trade.

BD1 is the executing party and has the trade reporting obligation (see FAQ 307.1). BD1 can report this transaction in one of three ways:

Alternative #1

Tape report: BD1 (as agent) reports a cross

Non-tape report #1: BD1 (as agent) buys from BD2 (as agent)

Non-tape report #2: BD1 (as agent) sells to BD2 (as agent)

Alternative #2

Tape report: BD1 (as agent) buys from BD2 (as agent)

Non-tape report: BD1 (as agent) sells to BD2 (as agent)

Alternative #3

Tape report: BD1 (as agent) sells to BD2 (as agent)

Non-tape report: BD1 (as agent) buys from BD2 (as agent)

BD1 must not submit a single report (tape or non-tape) showing BD2, as agent, buying from (selling to) BD2, as agent. See FAQ 200.6.

Please see the [ATS OATS and Trade Reporting guidance](#) that will become effective November 10, 2014. This guidance addresses orders from customers, other FINRA members and non-FINRA member broker-dealers and will supersede existing guidance for the reporting of trades executed on an ATS.

Section 308: Reporting Matches of Member Orders and Customer or Non-Member Orders by a Member (Including an ATS or ECN)

Q308.1: Member BD1 matches as agent a buy order from member BD2 and a sell order for the same quantity of shares at the same price from a customer. How should this transaction be reported?

A308.1: BD1 is the executing party and has the trade reporting obligation.

BD1 can report this transaction in one of three ways:

Alternative #1

Tape report: BD1 (as agent) reports a cross

Non-tape report: BD1 (as agent) sells to BD2

Alternative #2

Tape report: BD1 (as agent) sells to BD2

Non-tape report: Not required

Alternative #3

Tape report: BD1 (as agent) buys from customer (blank contra or other way to indicate a trade with a customer)

Non-tape report: BD1 (as agent) sells to BD2

See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

Q308.2: Member BD1 matches as agent a buy order from member BD2 and a sell order for the same quantity of shares at the same price from non-member BD3. How should this transaction be reported?

A308.2: BD1 is the executing party and has the trade reporting obligation.

BD1 can report this transaction in one of three ways:

Alternative #1

Tape report: BD1 (as agent) reports a cross

Non-tape report: BD1 (as agent) sells to BD2

Alternative #2

Tape report: BD1 (as agent) sells to BD2

Non-tape report: Not required

Alternative #3

Tape report: BD1 (as agent) buys from non-member (blank contra or other way to indicate a trade with a non-member)

Non-tape report: BD1 (as agent) sells to BD2

See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4). See also [Regulatory Notice 09-08](#) (January 2009).

Q308.3: Assume the same facts as FAQ 308.1 or 308.2. Should the execution time on the non-tape report(s) be the same as the execution time on the tape report?

A308.3: Yes. Where a member is matching orders of one or more members and submitting non-tape report(s) to identify the other members that are parties to the trade, the execution time on the non-tape report(s) should be the same as the execution time on the tape report.

Please see the [ATS OATS and Trade Reporting guidance](#) that will become effective November 10, 2014. This guidance addresses orders from customers, other FINRA members and non-FINRA member broker-dealers and will supersede existing guidance for the reporting of trades executed on an ATS.

Section 309: Reporting Customer Price Adjustment Transactions

Q309.1: Member BD1 receives a customer order to buy 10,000 shares of a security and purchases the shares on behalf of the customer from BD2 at a price of \$10 per share. After purchasing the shares, BD1 determines that the customer should have received a price of \$9.98 per share. To effect the price adjustment, BD1 cancels the original trade with BD2 at \$10 per share and executes a new trade with BD3 at \$9.98 per share to fill the customer order. How should the transactions be reported?

A309.1: The following must be reported for public dissemination purposes: (1) the original trade between BD1 and BD2 at \$10 per share; (2) the cancellation of the original trade between BD1 and BD2; and (3) the new trade between BD1 and BD3 at \$9.98 per share, with the prior reference price (PRP) modifier appended (see FAQ 309.5).

Q309.2: Assume the same facts as FAQ 309.1, but rather than cancel the original trade and execute a new trade with BD3, BD1 sells the shares, as principal, to the customer at \$9.98 per share. How should the transactions be reported?

A309.2: The following must be reported for public dissemination purposes: (1) the original trade between BD1 and BD2 at \$10 per share; and (2) the sale by BD1 to the customer at the price of \$9.98, with the prior reference price (PRP) modifier appended (see FAQ 309.5). Because the trades are effected at two different prices, they are considered two separate trades and both must be reported to the tape.

Note that if BD1 had effected the original trade with BD2 at \$10 on a riskless principal basis and submitted a non-tape report to FINRA to reflect the "riskless" leg of the transaction with its customer, then BD1 also would be required to cancel the non-tape report (in addition to reporting as set forth above).

Q309.3: Member BD1 receives a customer order to buy 10,000 shares of a security and executes 10 trades of 1,000 shares each for an average price of \$10 per share to fill the customer order. After purchasing the shares, BD1 determines that the customer should have received a price of \$9.98 per share. To effect the price adjustment, BD1 cancels all 10 original trades at \$10 per share and executes a new trade(s) at \$9.98 per share to fill the customer order. How should the transactions be reported?

A309.3: The following must be reported for public dissemination purposes: (1) the original 10 trades of 1,000 shares each at an average price of \$10 per share; (2) the cancellations of the original 10 trades; and (3) the new trade(s) at the price of \$9.98 per share, with the prior reference price (PRP) modifier appended (see FAQ 309.5).

Q309.4: Assume the same facts as FAQ 309.3, but rather than cancel the original trades and execute new trade(s), BD1 sells the 10,000 shares, as principal, to the customer at \$9.98. How should the transactions be reported?

A309.4: The following must be reported for public dissemination purposes: (1) the 10 trades of 1,000 shares each; and (2) the sale by BD1 to the customer at the price of \$9.98, with the prior reference price (PRP) modifier appended (see FAQ 309.5).

Q309.5: Are members required to use a special trade modifier when reporting trades at the adjusted price?

A309.5: Yes, as noted in FAQs 309.1-.4, when reporting the trades at \$9.98 (either a new trade(s) executed to replace a canceled trade(s) or a separate trade executed with the customer) to FINRA, BD1 must append the prior reference price (PRP) trade modifier in the Trade Modifier Field 4 (SRO Required Detail). Members are reminded that these trades are subject to the Regulation NMS Order Protection Rule, unless a specific exception or exemption applies. See SEC Rule 611 and applicable guidance, including [SEC Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, FAQ 3.06](#).

Q309.6: When using the prior reference price (PRP) trade modifier for purposes of reporting trades at the adjusted price, what time should be reflected in the trade report?

A309.6: The prior reference time that should be used in the trade report is the time of execution of the original trade. Where the trade at the adjusted price relates to multiple original trades, the prior reference time should be the time of the first original trade.

Q309.7: Assume that in FAQ 309.2 and 309.4, BD1 acted on an agency or riskless principal basis in executing the original trade(s) on behalf of the customer. Due to the decision to adjust the price and execute the subsequent trade with the customer at the new price, BD1 ultimately acted on a principal basis. Is BD1 required to correct its capacity in the original trade report(s) submitted to FINRA?

A309.7: No, in this limited instance, BD1 is not required to correct its capacity in the original trade report(s) submitted to FINRA. However, BD1 must be able to clearly demonstrate that at the time of the original trade, the firm believed that it was acting as agent or riskless principal on behalf of its customer, and it was only after the trade was completed that the decision was made to adjust the price to the customer by trading from a firm account at a different price.

Trade Report Modifiers and Other Indicators

Section 400: General

Q400.1: Is there any guidance relating to the four level or byte trade report modifier format for reporting to a FINRA Facility?

A400.1: Yes, members should refer to the [Trade Reporting Modifier Chart](#) (PDF 62 KB) for guidance on how to populate each of the information levels or bytes. The chart provides the uniform methodology for reporting trade modifiers; however, the specific data entries used to report trades may vary depending upon the specific platform or system used. Therefore, the chart should be read in conjunction with the [applicable technical specifications](#).

The facts and circumstances of the particular trade dictate the appropriate modifier that members must report in each field. Accordingly, the reporting firm must include in the transaction report all of the information that is pertinent to a particular transaction. To determine what modifiers firms must include in a particular transaction report, members should analyze each column individually in the Trade Reporting Modifier Chart to determine what, if any, modifier is applicable for the transaction that is being reported.

Q400.2: Does the four level or byte trade report modifier format allow for combinations of modifiers, where appropriate?

A400.2: Yes. Except with respect to reports of transactions in OTC Equity Securities and Restricted Equity Securities, discussed in Section 401 (Trade Report Modifiers on Reports Submitted to the ORF) below, the four level or byte format allows for combinations of trade report modifiers. For example, a member can report that a transaction is both a weighted average price (.W) and outside market hours (.T) transaction. In the past, when both the .W and .T modifiers applied to a particular transaction, members were instructed to use the .W modifier rather than the .T modifier. Under the four level or byte modifier format, both modifiers can be accommodated on the transaction report and must be used if applicable.

Q400.3: How should members report to FINRA trades that qualify for an exemption or exception from the Regulation NMS requirements?

A400.3: Members should refer to NASD [NTM 07-23](#) (May 2007) and [Trade Reporting Notice 2/24/09](#) (FINRA Announces Two New Trade Reporting Modifiers Related to Regulation NMS) for guidance on the proper use of FINRA's trade report modifiers when reporting certain transactions to FINRA Facilities that are exempt or excepted from SEC Rule 611 of Regulation NMS. See also FAQ 400.5.

Q400.4: Do the FINRA Facilities automatically append trade report modifiers to trade reports?

A400.4: Certain FINRA Facilities will automatically append certain trade report modifiers-e.g., the outside market hours (.T) modifier-where byte 3 is not populated on the trade report submitted by the member. Members should consult the trade reporting rules and technical specifications applicable to the relevant FINRA Facility to determine whether, and under what circumstances, a trade report modifier will be automatically appended by the system.

Q400.5: When reporting trades to FINRA in securities that qualify under the SEC's Order Exempting Non-Convertible Preferred Securities from Rule 611(a) of Regulation NMS, how should members populate the SEC Rule 611 Trade-Through Exception/Exemption flag?

A400.5: Members should populate the Trade-Through Exception/Exemption flag as "yes" for trades in securities that qualify under the SEC's Order Exempting Non-Convertible Preferred Securities from Rule 611(a) of Regulation NMS. However, there is no byte 2 (Reason for SEC Rule 611 Exception/ Exemption) modifier for such trades and that byte should be left blank.

Section 401: Trade Report Modifiers on Reports Submitted to the ORF

Q401.1: Does the four level or byte trade report modifier format apply to reports of trades that are submitted to the ORF?

A401.1: Yes, members reporting trades in OTC Equity Securities and Restricted Equity Securities to the ORF are required to use the four level or byte format. However, the Regulation NMS-related trade report modifiers do not apply to transactions in these securities and, accordingly, should not be used when reporting to the ORF. See [NTM 07-23](#) (May 2007). In addition, members currently cannot populate certain bytes or submit certain modifier combinations (e.g., both byte 3 and byte 4) on a trade report submitted to the ORF and thus, for purposes of reporting trades to the ORF, members should use FINRA guidance to determine which modifier would take priority. Members should refer to NASDAQ [Technical Update #2007-024](#) (June 25, 2007) for guidance on submitting trade reports to the ORF in the four level or byte format.

Q401.2: For purposes of reporting trades to the ORF, which trade report modifier would take priority as between the late (.Z) modifier in byte 3 and the stop stock modifier in byte 4?

A401.2: In this instance, members should use the stop stock trade report modifier. This guidance applies only to the reporting of transactions to the ORF because currently, both bytes 3 and 4 cannot be populated. See FAQ 401.1. See also FAQ 402.2.

Q401.3: For purposes of reporting trades to the ORF, which trade report modifier would take priority as between the outside market hours (.T) modifier in byte 3 and the stop stock modifier in byte 4?

A401.3: In this instance, members should use the stop stock trade report modifier. This guidance applies only to the reporting of transactions to the ORF because currently, both bytes 3 and 4 cannot be populated. See FAQ 401.1. See also FAQ 402.2.

Q401.4: For purposes of reporting trades to the ORF, which trade report modifier would take priority as between the outside market hours (.T) modifier in byte 3 and the prior reference price (.PRP) modifier in byte 4?

A401.4: In this instance, members should use the outside market hours trade report modifier. This guidance applies only to the reporting of transactions to the ORF because currently, both bytes 3 and 4 cannot be populated. See FAQ 401.1.

Q401.5: For purposes of reporting trades to the ORF, which trade report modifier would take priority as between a non-regular way settlement (i.e., cash, next day or seller's option) modifier in byte 1 or the stop stock modifier in byte 4?

A401.5: In this instance, members should use the non-regular way settlement trade report modifier. This guidance applies only to the reporting of transactions to the ORF because currently, both bytes 1 and 4 cannot be populated. See FAQ 401.1.

Q401.6: For purposes of reporting trades to the ORF, which trade report modifier would take priority as between a non-regular way settlement (i.e., cash, next day or seller's option) modifier in byte 1 or the weighted average price/special pricing formula (.W) modifier in byte 4?

A401.6: In this instance, members should use the non-regular way settlement trade report modifier. This guidance applies only to the reporting of transactions to the ORF because currently, both bytes 1 and 4 cannot be populated. See FAQ 401.1.

Q401.7: For purposes of reporting trades to the ORF, which trade report modifier would take priority as between the outside market hours (.T) modifier in byte 3 and the weighted average price/special pricing formula (.W) modifier in byte 4?

A401.7: In this instance, members should use the weighted average price/special pricing formula modifier. This guidance applies only to the reporting of transactions to the ORF because currently, both bytes 3 and 4 cannot be populated. See FAQ 401.1.

Q401.8: For purposes of reporting trades to the ORF, which trade report modifier would take priority as between the late (.Z) modifier in byte 3 and the weighted average price/special pricing formula (.W) modifier in byte 4?

A401.8: In this instance, members should use the weighted average price/special pricing formula modifier. This guidance applies only to the reporting of transactions to the ORF because currently, both bytes 3 and 4 cannot be populated. See FAQ 401.1.

Section 402: Stop Stock Transactions

Q402.1: Is a "Stop Stock" transaction the same as a "Stop Order"?

A402.1: No. A "Stop Stock" transaction is defined under the trade reporting rules as any transaction that meets both of the following conditions: (1) the transaction is the result of an order in which a member and another party agree that the order will be executed at a Stop Stock Price or better; and (2) the order is executed at the Stop Stock Price or better. See Rules 6220, 6320A, 6320B and 6420. Generally, Stop Stock transactions are reported with a special trade report modifier (see FAQ 402.3), and a report of a Stop Stock transaction may be flagged as trade-through exempt, if it qualifies as such under SEC Rule 611 of Regulation NMS.

A "Stop Order" is a market or limit order that does not become effective until a certain market price is reached (e.g., a transaction takes place in the market at that price), after which the order is executable according to its terms and conditions and applicable rules and regulations. For trade reporting purposes, the activated Stop Order is reported when executed, with the actual execution time and price, and unlike Stop Stock transactions, Stop Order transactions are not reported with a special trade report modifier.

Q402.2: What trade report modifier should members use to report a Stop Stock transaction to the ORF?

A402.2: Effective November 1, 2010, members are required to use a special trade report modifier to specifically identify Stop Stock transactions reported to the ORF (and should no longer use the weighted average price/special pricing formula (.W) trade modifier for such transactions). See Rule 6622(a). Stop Stock transactions will be disseminated to the public with the .W trade modifier, which is consistent with the current dissemination policy for Stop Stock transactions that are submitted to the ADF and TRFs. See Regulatory Notice 10-29 (June 2010).

Q402.3: How should members report a Stop Stock transaction that is executed within 10 seconds of the time the member and the other party agree to the Stop Stock price?

A402.3: Generally, Stop Stock transactions must be reported with a special trade report modifier as specified by FINRA, and the trade report must include the time at which the member and the other party agreed to the Stop Stock Price in lieu of the actual time the trade was executed. See Rules 6282(a), 6380A(a), 6380B(a) and 6622(a). However, if the Stop Stock transaction is executed and reported within 10 seconds of the time the member and the other party agree to the Stop Stock Price, then the special trade report modifier should not be used and the execution time should be the actual time the trade was executed (not the time the parties agreed to the Stop Stock Price).

Section 403: Aggregated or "Bunched" Reports

Q403.1: What does the prohibition on aggregation in the trade reporting rules cover?

A403.1: The trade reporting rules prohibit the aggregation of multiple executions into a single tape report (previously reported using the .B modifier). Such prohibition does not apply to the matching or crossing of multiple orders in a single execution (e.g., via an ATS or broker-dealer order management system) or to transactions that are designated as .W (i.e., exchange-for physical, weighted average price or other special pricing formula transactions). Such transactions previously were not reported as bunched or aggregated using the .B modifier. See Rules 6282(f), 6380A(f) and 6380B(h).

Q403.2: Can members use the .B modifier on any trade reports today?

A403.2: No. The .B modifier cannot be used on trade reports submitted to any FINRA Facility.

Section 404: Weighted Average Price/Special Pricing Formula Transactions

Q404.1: Member BD1 executes multiple trades to satisfy a customer order and then trades with the customer at a price equal to the volume-weighted average cost of the original trades plus a net difference in accordance with a net trading agreement with its customer. How should BD1 report the trade with its customer?

A404.1: The original trades and the customer leg of the transaction should be reported to the tape, and the report of the customer leg should include the weighted average price (.W) modifier. For example, member BD1 receives an order from a customer to buy 5,000 shares of ABCD security and accumulates the shares through five separate trades. Each of these five trades is reported to the tape. BD1 then sells the 5,000 shares of ABCD to its customer at its volume-weighted average cost with a net difference to reflect the compensation agreement between BD1 and its customer. BD1 should report the sale of 5,000 shares to its customer to the tape with the weighted average price modifier.

Q404.2: Should a net trade always be marked with a weighted average price (.W) modifier?

A404.2: No. The mark-up of a trade does not in itself qualify a trade to be marked with a weighted average price modifier. A net trade can be marked with this modifier only if, as in the example in FAQ 404.1, the price would qualify as a weighted average price or based on another special pricing formula.

Q404.3: Member BD1 executes multiple trades to fill a customer order and then trades with the customer at a price equal to the volume-weighted average cost of the original trades. How should BD1 report the trade with its customer?

A404.3: Assuming the transaction meets the riskless principal requirements, the transaction should be reported on a riskless principal basis and the weighted average price (.W) modifier should not be used. For example, member BD1 receives an order from a customer to buy 5,000 shares of ABCD security, and BD1, as principal, accumulates the shares through five separate trades. Each of these five trades is reported to the tape. When BD1, as principal, sells the 5,000 shares of ABCD to its customer at its volume-weighted average cost, BD1 should submit a non-tape report showing the sale of 5,000 shares to the customer; the weighted average price modifier should not be included on the non-tape report. Members should not rely on the guidance provided in NASDAQ [Head Trader Alert 00-53](#) (July 28, 2000), which states that the sale to the customer of 5,000 shares should be reported to the tape with the weighted average price modifier. See NASDAQ [General News: Riskless Principal Negative Consent Letters and .W Modifier](#) (January 31, 2001).

Q404.4: Are members required to use the weighted average price/special pricing formula (.W) modifier when reporting trades that qualify for the Qualified Contingent Transaction, Error Correction and Print Protection exemptions to Rule 611 of SEC Regulation NMS?

A404.4: Yes. Members are required to use the .W modifier when reporting these types of transactions to FINRA. See [Trade Reporting Notice 8/19/2010](#).

Q404.5: Does the guidance relating to use of the weighted average price/special pricing formula (.W) modifier in Trade Reporting Notice 8/19/2010 apply to trades reported to the ORF?

A404.5: Yes. Although the Qualified Contingent Transaction, Error Correction and Print Protection exemptions to Rule 611 of SEC Regulation NMS do not apply to transactions reported to the ORF, if a member is reporting a transaction that otherwise would qualify for such an exemption if it were in an NMS stock, then the member should append the .W modifier to the trade report. See [Trade Reporting Notice 8/19/2010](#).

Section 405: Related Market Center

Q405.1: When is the Related Market Center indicator required?

A405.1: Members must use the Related Market Center (RMC) indicator when submitting a non-tape report for the offsetting leg of a riskless principal or agency transaction to a FINRA Facility that is related to a tape report that was not submitted to that same FINRA Facility. The RMC indicator identifies the market or facility where the associated tape report was submitted. See [Regulatory Notice 09-54](#) (September 2009) and [Trade Reporting Notice 2/8/2010](#).

Q405.2: Is there any guidance on how to populate the Related Market Center field?

A405.2: Yes, members should refer to [Regulatory Notice 09-54](#) (September 2009), [Trade Reporting Notice 2/8/2010](#) and the [Related Market Center Chart](#) (PDF 33 KB) (originally published in Trade Reporting Notice 2/8/2010) for guidance on how to populate the Related Market Center field.

Section 406: Price Override Indicator

Q406.1: What is the price override indicator?

A406.1: The price override indicator is used in trade reports only after a trade has been rejected by a FINRA Facility because the reported trade price falls outside the price validation parameters established by FINRA. Following rejection of a trade, the reporting firm must review the trade to determine its accuracy; if accurate, the firm can resubmit the trade with a price override indicator. (If the firm realizes the trade price was reported in error, then it must re-report the trade with the correct price.) By using this indicator, the reporting firm is confirming that the price it originally entered is correct, even though it is away from the current market. After the trade has been resubmitted with the price override indicator, it is price validated a second time with significantly wider parameters. See [Trade Reporting Notice 9/17/2010](#).

Q406.2: Can my firm program its system to automatically append the price override indicator to its trade reports?

A406.2: No. The purpose of the price override function is to reduce the likelihood that erroneously reported trade prices are disseminated to the tape. As stated in [Trade Reporting Notice 9/17/2010](#), firms must not report trades in a manner designed to circumvent this important system and operational protocol. If a firm programs its system to automatically append the price override indicator - either before or after rejection of the trade - it would not be performing the necessary price check required by FINRA's price validation protocol. Rejection of a trade outside the price validation parameters requires that the reporting firm confirm that the reported price is, in fact, the correct price as agreed upon by the parties. As noted in FAQ 406.1 and Trade Reporting Notice 9/17/2010, by using the price override indicator, the reporting firm is confirming that the price it originally entered is correct, even though it is away from the current market.

To the extent this process (i.e., rejection of the trade by the FINRA Facility and re-entry of that trade by the reporting firm) results in a late reported trade, FINRA will take this into account when enforcing the rules on timely trade reporting. See Trade Reporting Notice 9/17/2010.

Section 407: Short Sale and Short Sale Exempt Indicators

Q407.1: Members BD1 and BD2 execute a trade. BD1 has the trade reporting obligation and BD2 is selling short (or short exempt). Is BD1 responsible for showing that BD2 is selling short (or short exempt) in the trade report submitted to FINRA?

A407.1: Yes; if BD2 will not have an opportunity to submit its own trade information by using the acceptance and comparison functionality, then BD1 must indicate in the trade report that BD2 was selling short (or short exempt). If the parties are using the acceptance and comparison functionality, then BD2 would indicate that it was selling short (or short exempt) when submitting its own trade information; BD1 would not be responsible for providing such information. See Rules 6282(c), 6282(d), 7230A(d), 7230B(d) and 7330(d). See also FAQ 204.4.

Q407.2: Member BD1 executes a trade with its customer (or a non-member broker-dealer). BD1 has the trade reporting obligation and the customer (or non-member broker-dealer) is selling short (or short exempt). Is BD1 responsible for showing that the customer (or non-member broker-dealer) is selling short (or short exempt) in the trade report submitted to FINRA?

A407.2: Yes, BD1 is responsible for showing that the customer (or non-member broker-dealer) is selling short (or short exempt) in the trade report. See Rules 6282(c), 6282(d), 7230A(d), 7230B(d) and 7330(d).

Q407.3: When reporting a cross trade to FINRA, should the trade report be marked with the short sale (or short sale exempt) indicator, if applicable?

A407.3: Yes. Reports of cross trades should be marked with the short sale (or short sale exempt) indicator, if applicable, but only in accordance with the guidance set forth in this Section 407. See Rules 6282(c), 6282(d), 7230A(d), 7230B(d) and 7330(d).

Q407.4: Member BD1 matches as agent a buy order from a customer (or non-member broker-dealer) with an order to sell short (or short exempt) for the same quantity of shares at the same price from another customer (or non-member broker-dealer). How should this transaction be reported?

A407.4: BD1 is the executing party and has the trade reporting obligation. BD1 should report this trade as an agency cross (see FAQ 306.1) and should include the short sale (or short sale exempt) indicator in the trade report.

Q407.5: Member BD1 matches as agent a buy order from member BD2 and an order to sell short (or short exempt) for the same quantity of shares at the same price from member BD3. How should this transaction be reported?

A407.5: BD1 is the executing party and has the trade reporting obligation. (See FAQ 307.1.)

BD1 can report this transaction in one of three ways, and because the party selling short (or short exempt), BD3, is a FINRA member, BD1 should include the short sale (or short sale exempt) indicator only in the report (tape or non-tape) that identifies BD3 as the seller:

Alternative #1

Tape report: BD1 (as agent) reports a cross-no short sale (or short sale exempt) indicator

Non-tape report #1: BD1 (as agent) buys from BD3-short sale (or short sale exempt) indicator

Non-tape report #2: BD1 (as agent) sells to BD2-no short sale (or short sale exempt) indicator

Alternative #2

Tape report: BD1 (as agent) buys from BD3-short sale (or short sale exempt) indicator

Non-tape report: BD1 (as agent) sells to BD2-no short sale (or short sale exempt) indicator

Alternative #3

Tape report: BD1 (as agent) sells to BD2-no short sale (or short sale exempt) indicator

Non-tape report: BD1 (as agent) buys from BD3-short sale (or short sale exempt) indicator

Q407.6: Assume the same facts as FAQ 407.5. For purposes of this example, BD1 elects to report under Alternative #2 (i.e., the tape report shows BD1 and BD3 as the parties to the trade). BD1 fails to include the short sale (or short sale exempt) indicator in the tape report. Can BD1 submit a non-tape report to show that BD3 was selling short (or short exempt)?

A407.6: No. If BD1 identifies BD3 in the tape report, but fails to include the short sale (or short sale exempt) indicator in that report, BD1 must cancel and replace the original tape report with a new tape report that includes the short sale (or short sale exempt) indicator. In such instance, BD1 would not be required to cancel an associated clearing-only report, assuming that BD1 submits a tape only cancellation and then re-reports the trade between BD1 and BD3, with the short sale (or short sale exempt) indicator, as tape only.

Q407.7: Assume the same facts as FAQ 407.5. For purposes of this example, BD1 elects to report under Alternative #3 (i.e., the non-tape report shows BD1 and BD3 as the parties to the trade). BD1 fails to include the short sale (or short sale exempt) indicator in the non-tape report. Can BD1 submit a second non-tape report to show that BD3 was selling short (or short exempt)?

A407.7: No. If BD1 identifies BD3 in the non-tape report, but fails to include the short sale (or short sale exempt) indicator in that report, BD1 must cancel and replace the original non-tape report with a new non-tape report that includes the short sale (or short sale exempt) indicator. In such instance, BD1 would not be required to cancel the original tape report.

Q407.8: Member BD1 matches as agent a buy order from member BD2 and an order to sell short (or short exempt) for the same quantity of shares at the same price from a customer (or non-member broker-dealer). How should this transaction be reported?

A407.8: BD1 is the executing party and has the trade reporting obligation. (See FAQ 308.1.)

BD1 can report this transaction in one of three ways, and because the party that is selling short (or short exempt) is not a member, BD1 should include the short sale (or short sale exempt) indicator in the tape report under all three alternatives:

Alternative #1

Tape report: BD1 (as agent) reports a cross-short sale (or short sale exempt) indicator

Non-tape report: BD1 (as agent) sells to BD2-no short sale (or short sale exempt) indicator

Alternative #2

Tape report: BD1 (as agent) sells to BD2-short sale (or short sale exempt) indicator

Non-tape report: Not required

Alternative #3

Tape report: BD1 (as agent) buys from customer (or non-member)-short sale (or short sale exempt) indicator

Non-tape report: BD1 (as agent) sells to BD2-no short sale (or short sale exempt) indicator

Q407.9: Member BD1 matches as agent a buy order from a customer (or non-member broker-dealer) and an order to sell short (or short exempt) for the same quantity of shares at the same price from member BD2. How should this transaction be reported?

A407.9: BD1 is the executing party and has the trade reporting obligation. (See FAQ 308.1.)

BD1 can report this transaction in one of three ways, and because the party selling short (or short exempt), BD2, is a FINRA member, BD1 should include the short sale (or short sale exempt) indicator only in the report (tape or non-tape) that identifies BD2 as the seller:

Alternative #1

Tape report: BD1 (as agent) reports a cross-no short sale (or short sale exempt) indicator

Non-tape report: BD1 (as agent) buys from BD2-short sale (or short sale exempt) indicator

Alternative #2

Tape report: BD1 (as agent) buys from BD2-short sale (or short sale exempt) indicator

Non-tape report: Not required

Alternative #3

Tape report: BD1 (as agent) sells to customer or non-member-no short sale (or short sale exempt) indicator

Non-tape report: BD1 (as agent) buys from BD2-short sale (or short sale exempt) indicator

Q407.10: Member BD1's customer wants to sell 100 shares of ABCD, and BD1 will handle the customer's order on a riskless principal basis. The customer is long the 100 shares of ABCD; however, BD1 does not have 100 shares of ABCD in its proprietary account. Is BD1 required to mark its sale to the street with the short sale (or short sale exempt) indicator?

A407.10: Yes. Even though BD1's customer is long the shares, since BD1 does not have the shares in its proprietary account, it must use the short sale (or short sale exempt) indicator when routing the order to the street for execution. Accordingly, the trade report(s) showing the sale from BD1 to the street must include the short sale (or short sale exempt) indicator.

Q407.11: If the tape report of a trade contains the short sale (or short sale exempt) indicator, should the non-tape report for that same trade also contain the short sale (or short sale exempt) indicator?

A407.11: No. Firms should include the short sale (or short sale exempt) indicator in only one report, i.e., the report that identifies the short (or short exempt) seller. If both the tape report and non-tape report identify the short (or short exempt) seller, then the short sale (or short sale exempt) indicator should be used in the tape report only.

Transactions Not Reported to FINRA

Section 500: General

Q500.1: What transactions do not get reported to FINRA for publication or regulatory purposes?

A500.1: The trade reporting rules expressly provide that certain types of transactions are not to be reported to FINRA for publication or regulatory purposes, including: (1) transactions reported on or through an exchange; (2) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than

"shelf distributions") or of an unregistered secondary distribution (for purposes of this trade reporting exception, "distribution" has the meaning set forth under SEC Regulation M) (see Section 501); (3) transactions made in reliance on Section 4(2) of the Securities Act of 1933; (4) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and (5) purchases of securities off the floor of an exchange pursuant to a tender offer. These exceptions are consistent with those of the Consolidated Transaction Association Plan and NASDAQ Unlisted Trading Privileges Plan, which provide that such transactions shall not be reported to the tape. See Rules 6282(i)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

FINRA trade reporting rules contain certain additional exceptions. First, where securities are transferred pursuant to an asset purchase agreement (APA), such transfer is not reportable if (1) the APA is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters; and (2) the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA. See Rules 6282(i)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

Second, transfers of equity securities for the sole purpose of creating or redeeming an instrument that shows ownership of or otherwise tracks the underlying securities transferred (e.g., American Depositary Receipts (ADRs) and exchange-traded funds (ETFs)) are not reportable. See Section 502.

Finally, Rule 6622 contains a general exception for trades executed on an exchange and, pursuant to Rule 6622(g), the trade reporting requirements of Rule 6622 do not apply to transactions in foreign equity securities if: (1) the transaction is executed on and reported to a foreign securities exchange; or (2) the transaction is executed OTC in a foreign country and is reported to the regulator of securities markets for that country. See NTM 07-25 (May 2007). See also Section 700.

See "Reporting Transactions for Regulatory Purposes" below for a discussion of the transactions that are not required to be reported to FINRA for publication purposes, but must be reported for regulatory purposes.

A member must have policies and procedures and internal controls in place to determine whether a transaction qualifies for an exception under the trade reporting rules.

Section 501: Transactions That Are Part of a Distribution

Q501.1: What does the trade reporting exception for transactions that are part of a securities distribution encompass?

A501.1: Under the trade reporting rules, firms are not required to report to FINRA-for dissemination or regulatory purposes-transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution. For purposes of this trade reporting exception, "distribution" has the meaning set forth under SEC Regulation M. See Rules 6282(i)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

Notwithstanding the foregoing, firms that would otherwise have the trade reporting obligation under FINRA rules must provide notice to FINRA that they are relying on the exception for transactions that are part of an "unregistered secondary distribution." See FAQ 501.3.

Q501.2: For purposes of the trade reporting rules, what does the term "distribution" mean?

A501.2: For purposes of the trade reporting rules, "distribution" has the meaning set forth under SEC Regulation M. A "distribution" is defined under Rule 100 of Regulation M as "an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods."

Q501.3: What are the notice requirements for firms relying on the exception for unregistered secondary distributions?

A501.3: Firms that would otherwise have the trade reporting obligation under FINRA rules must provide notice to FINRA that they are relying on the exception for transactions that are part of an "unregistered secondary distribution." The firm also must provide the following information to FINRA for each transaction that is part of the unregistered secondary distribution and not trade reported:

- > security name and symbol;
- > execution date;
- > execution time;
- > number of shares;
- > trade price; and
- > FINRA member firms that are parties to the trade.

See Rules 6282.01, 6380A.01, 6380B.01 and 6622.02.

Members should refer to [Regulatory Notice 11-40](#) (August 2011) for the specific notice requirements, including the timing of such notice. See also [Regulatory Notice 12-19](#) (April 2012).

Q501.4: Are transactions that are part of a secondary shelf distribution reportable?

A501.4: Yes, pursuant to the trade reporting rules, transactions that are part of a secondary shelf distribution must be reported to FINRA. Transactions that are part of a primary shelf distribution are not reportable. See Rules 6282(i)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1).

Section 502: Transfers of Equity Securities to Create or Redeem Instruments such as ADRs and ETFs

Q502.1: Is the transfer of equity securities for the purpose of creating an instrument such as an American Depositary Receipt (ADR) or exchange-traded fund (ETF) reportable?

A502.1: No, firms are not required to report the transfer of equity securities for the sole purpose of creating or redeeming an instrument such as an ADR or ETF that shows ownership of or otherwise tracks the underlying securities transferred. See Rules 6282(i)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1). See also [Regulatory Notice 11-40](#) (August 2011).

Q502.2: Member BD1 is an authorized participant of an ETF. BD1 transfers securities to the ETF and in return receives ETF creation units. Is the transfer of the shares and receipt of ETF creation units by BD1 reportable?

A502.2: No. Neither the transfer of equity securities from BD1 to the ETF nor the transfer of ETF creation units from the ETF to BD1 is reportable. See Rules 6282(i)(1), 6380A(e)(1), 6380B(e)(1) and 6622(e)(1). See also [Regulatory Notice 11-40](#) (August 2011). The transfers in this example (from BD1 to the ETF, and from the ETF to BD1) are not reportable, irrespective of whether BD1 is acting as principal, agent or riskless principal in effecting the transfers.

Q502.3: Assume the same facts as FAQ 502.2, and in this example, BD1 is acting as riskless principal on behalf of its customer. After receiving the ETF creation units, BD1 transfers or "flips" the ETF creation units to its customer. Is this flip reportable?

A502.3: No. In this example, the flip of ETF creation units from BD1 to its customer is not reportable.

Q502.4: Assume the same facts as FAQ 502.2; however, BD1 must first purchase the underlying securities that will be transferred to the ETF. If BD1 purchases the underlying securities in an OTC trade (or series of OTC trades), is this reportable?

A502.4: Yes, an OTC purchase of the underlying securities must be reported to FINRA for dissemination purposes in accordance with the trade reporting rules.

Q502.5: Assume the same facts as FAQ 502.2. After receiving the ETF creation units, BD1, as principal, sells ETF shares in the secondary market. Is this sale reportable?

A502.5: Yes, any OTC sale of ETF shares in the secondary market must be reported to FINRA for dissemination purposes in accordance with the trade reporting rules.

Q502.6: If an ADR is being created instead of an ETF in FAQs 502.2 through 502.5 (i.e., ordinary shares are converted into the ADR), would the answer be the same in each of those FAQs?

A502.6: Yes, the trade reporting rules and the above guidance apply equally to the creation and redemption of ADRs and ETFs.

Reporting Transactions for Regulatory Purposes

Section 600: General

Q600.1: Are there certain transactions that are not required to be reported for public dissemination purposes, but nonetheless must be reported to FINRA for regulatory purposes?

A600.1: Yes. Transactions where the buyer and seller have agreed to a price substantially unrelated to the current market for the security (also referred to as "away from the market sales"), purchases or sales of securities effected upon the exercise of an OTC option, and transfers of proprietary securities positions effected in connection with certain corporate control transactions must not be reported to FINRA for publication purposes, but must be reported for purposes of assessing a regulatory transaction fee under Section 3 of Schedule A to the By-Laws (Section 3). See Rules 6282(i)(2), 6380A(e)(2), 6380B(e)(2) and 6622(e)(2). Members must submit non-tape reports to FINRA with respect to such transactions and must denote, in the manner specified by FINRA, that the transactions are reported for regulatory and not dissemination purposes. See Rules 7130(c), 7230A(g), 7230B(f) and 7330(g); [NTM 06-39](#) (August 2006). See also Sections 601 (Away from the Market Sales), 602 (Transactions Effected Upon the Exercise of Options) and 603 (Transfers of Proprietary Securities Positions in Connection with Certain Corporate Control Transactions).

Transactions in Restricted Equity Securities effected pursuant to SEC Rule 144A must be reported to FINRA for regulatory purposes; however, such transactions are not subject to regulatory transaction fees, nor are they disseminated to the tape. See [Regulatory Notice 10-26](#) (May 2010).

For guidance on reporting odd lot transactions, see Section 604.

Section 601: Away from the Market Sales

Q601.1: What is an "away from the market" sale?

A601.1: "Away from the market sale" for purposes of Rules 6282(i), 6380A(e), 6380B(e) and 6622(e) applies to transactions that occur without reference to current market pricing and investment, commercial or trading considerations. Given the underlying goals of transaction reporting, FINRA interprets the exception from the trade reporting rules for away from the market sales very narrowly, and the mere fact that a trade has occurred outside of the current inside would not, in and of itself, qualify for the exception. See [NTM 05-11](#) (February 2005). Gifts and inheritances where the shares must be transferred by giving nominal consideration would be deemed away from the market sales. For example, Party 1 wants to give Party 2 50 shares of ABCD security, but to have the shares transferred correctly, Party 2 must "buy" them for a nominal value that is unrelated to the share price. Member BD1 effects the sale from Party 1 to Party 2 and would be required to submit a non-tape report to FINRA with the .RA trade report modifier.

Q601.2: Would the sale of a block of stock at a discount reflecting the risk in purchasing such a large block constitute an "away from the market sale" under the trade reporting rules, such that it would not be reportable to the tape?

A601.2: No. Trades at a discount (or a premium) are not considered "away from the market sales" under Rules 6282(i), 6380A(e), 6380B(e) and 6622(e). Members are reminded that trades at a discount (or premium) are subject to the Regulation NMS Order Protection Rule. See SEC Rule 611.

Q601.3: If shares are acquired or sold as part of a structured transaction and the price is not based on the current market (e.g., the month-end closing price or the volume-weighted average price for the month), would this be considered an away from the market sale?

A601.3: No, this would not be considered an away from the market sale because it was based on investment, commercial or trading considerations.

Q601.4: How should an away from the market sale be reported?

A601.4: Members should report away from the market sales by submitting a non-tape report with a special trade report modifier (.RA) to denote that the transaction is reported for regulatory transaction fee assessment purposes. Such transactions must be reported by the close of the FINRA Facility on trade date, and can be entered for clearing or non-clearing. See Rules 7130(c), 7230A(g), 7230B(f) and 7330(g).

Section 602: Transactions Effected Upon the Exercise of Options

Q602.1: BD1 buys an option to purchase stock and later decides to exercise the option. Is the purchase effected upon the exercise of the option a reportable event?

A602.1: Except as discussed in FAQ 602.2, the purchase or sale of a security effected upon the exercise of an option pursuant to the terms thereof should not be reported to FINRA. See Rules 6282(i), 6380A(e), 6380B(e) and 6622(e).

Q602.2: Under what circumstances should a transaction effected pursuant to the exercise of an option be reported to FINRA?

A602.2: Members must submit non-tape reports to FINRA with respect to certain transactions that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the By-Laws, including transactions effected pursuant to the exercise of an OTC option. See Rules 7130(c), 7230A(g), 7230B(f) and 7330(g); [NTM 06-39](#) (August 2006). Specifically, members must report transactions resulting from the exercise of options settled by physical delivery and not listed or traded on a national securities exchange (i.e., unlisted or conventional options). Thus, the requirement does not apply to transactions resulting from the exercise of cash-settled or exchange-listed options.

Q602.3: How should transactions effected pursuant to the exercise of an OTC option be reported to FINRA?

A602.3: Members should report transactions effected pursuant to the exercise of an OTC option by submitting a non-tape report with a special trade report modifier (.RX) to denote that the transaction is reported for regulatory transaction fee assessment purposes. Such transactions must be reported by the close of the FINRA Facility on trade date, and can be entered for clearing or non-clearing. Rules 7130(c), 7230A(g), 7230B(f) and 7330(g).

Section 603: Transfers of Proprietary Securities Positions in Connection With Certain Corporate Control Transactions

Q603.1: To what types of transfers does this trade reporting exception apply?

A603.1: Members are not required to report to FINRA for purposes of publication transfers of proprietary positions where the transfer (1) is effected in connection with a merger or direct or indirect acquisition and (2) is not in furtherance of a trading or investment strategy. While such transfers are not reportable for publication purposes, members nonetheless must report them to FINRA for regulatory purposes and for purposes of assessing applicable regulatory transaction fees and/or trading activity fees. See Rules 6282(i)(2) and 7130(c); 6380A(e)(2) and 7230A(g); 6380B(e)(2) and 7230B(f); and 6622(e)(2) and 7330(g).

Members should refer to [Regulatory Notice 09-21](#) (April 2009) for the specific reporting requirements—including the requirement to provide FINRA advance written notice—that members must follow when relying on this exception.

Q603.2: Member BD1 acquires all of the assets of BD2. In connection with this corporate control transaction, BD1 and BD2 consolidate their separate sales and trading businesses onto a single platform and, along with the migration of sales and trading personnel, clients and systems and technology, BD2's proprietary positions are transferred to BD1. Must this transfer be reported for publication purposes?

A603.2: No. In this instance, the transfer from BD2 to BD1 is not reportable for publication purposes, but must be reported to FINRA for regulatory purposes.

Q603.3: Member BD1 and BD2 are wholly owned by the same parent company and operate separately. BD1 owns 100,000 shares of ABCD security and the value of ABCD has increased substantially since BD1 purchased the shares. As part of an investment strategy, BD1 sells the shares to BD2. Must this transfer be reported for publication purposes?

A603.3: Yes. In this instance, the sale from BD1 to BD2 must be reported to FINRA for publication purposes.

Q603.4: Member BD1's parent company acquires a non-broker-dealer financial institution, and as part of the corporate control transaction, the financial institution's proprietary positions are transferred to BD1. Must this transfer be reported for publication purposes?

A603.4: No. In this instance, the transfer from the financial institution to BD1 is not reportable for publication purposes, but must be reported to FINRA for regulatory purposes.

Q603.5: Member BD1's parent company acquires two new subsidiaries, Sub 1 and Sub 2, both of which are non-broker-dealer financial institutions, and, as part of the corporate control transaction, the proprietary positions of Sub 1 are transferred to Sub 2. Sub 1 and Sub 2 have custodial accounts at BD1, and BD1 facilitates the transfer. Must this transfer be reported for publication purposes?

A603.5: No. In this instance, the transfer from Sub 1 to Sub 2, facilitated by BD1, is not reportable for publication purposes, but must be reported to FINRA for regulatory purposes.

Section 604: Odd Lot Transactions

Q604.1: What is an odd lot for purposes of the trade reporting rules?

A604.1: For purposes of the trade reporting rules, an odd lot is less than a "normal unit of trading," which is generally defined as "100 shares of a security unless, with respect to a particular security, FINRA determines that a normal unit of trading shall constitute other than 100 shares." See, e.g., Rules 6320A and 6320B.

Q604.2: How should odd lot transactions be reported to FINRA for regulatory transaction fee purposes?

A604.2: When reporting odd lot transactions to FINRA for regulatory transaction fee purposes, firms must mark the trade report for media dissemination (i.e., "for publication" or as "tape eligible"), and report to FINRA within 10 seconds of trade execution. See, e.g., FAQ 102.1.

Q604.3: Are odd lot transactions disseminated?

A604.3: Effective December 9, 2013, reports of odd lot transactions that are marked "for publication" or as "tape eligible" are publicly disseminated by FINRA and the securities information processors, as applicable; however, odd lot transactions do not update the high, low and last sale price for the security. For certain high-priced OTC Equity Securities, FINRA will continue to change the "unit of trade" from 100 shares to one share; transactions in such securities below 100 shares will be disseminated as round lot transactions and will update the high, low and last sale price See [Trade Reporting Notice 3/18/08](#) (Revised Policy for Disseminating Reports of Fewer Than 100 Shares).

Foreign Securities Transactions

Section 700: Reporting Transactions in Foreign Securities

Q700.1: Are members required to report trades in foreign securities to FINRA?

A700.1: Rule 6622 requires members to report transactions in OTC Equity Securities, the definition of which includes foreign equity securities. However, Rule 6622(g) excludes from the reporting requirements transactions in foreign equity securities if (1) the transaction is executed on and reported through a foreign securities exchange or (2) the transaction is executed OTC and reported to the regulator of a foreign securities markets. See [NTM 07-25](#)

(May 2007). For purposes of the trade reporting rules, a "foreign equity security" is any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

Q700.2: What should a member do if it trades a foreign equity security OTC that does not have a U.S. symbol, but is reportable under Rule 6622?

A700.2: Rule 6622(c)(1) requires that a last sale report include the symbol of the OTC Equity Security that is the subject of the trade. In those situations where the security does not have a valid U.S. symbol, the member must promptly request that FINRA assign a symbol in accordance with FAQ 105.1.

Q700.3: If a member effects a trade in a foreign security that must be reported to FINRA, can the member report the trade in a foreign currency if the trade was effected in that currency?

A700.3: No. All trades reported to FINRA must be reported in U.S. dollars. When converting the currency, a member is permitted to use any reasonable business practice for the conversion. The member should document its practice regarding currency conversion and must apply the methodology consistently. See NTM 07-25 (May 2007).

Q700.4: Member BD1 receives an order from its customer to buy a foreign security, purchases the foreign security for its own account in the foreign country and the transaction is reported by a foreign market. BD1 then sells the security to its customer at the same price, adjusted solely to reflect the conversion to U.S. dollars, at which BD1 acquired the security on a riskless principal basis. How should the transaction be reported?

A700.4: Because the first leg of the transaction is reported by a foreign market, it should not be reported to FINRA. Assuming the transaction meets the riskless principal requirements, it is permissible to submit to FINRA a non-tape report for the offsetting leg of the transaction, but it is not required. For example, BD1 executes a trade on a Canadian exchange at \$1 Canadian per share and the transaction is reported through the Canadian exchange. As discussed in FAQ 700.1, BD1 is not required to report this trade to FINRA because it was executed and reported in the foreign country. The trade at \$1 Canadian per share converts to \$1.40 US per share and BD1 sells the shares to its customer OTC in the U.S. at \$1.40. BD1 may, but would not be required to, submit a non-tape report to the ORF for the offsetting customer leg at \$1.40 with a capacity of riskless principal.

Q700.5: Member BD1 receives an order from its customer to buy a foreign security, purchases the foreign security for its own account and the transaction is reported in the foreign country. BD1 then sells the security OTC in the U.S. to satisfy the original customer order at a different price, in addition to any change in price due to currency conversion, from which BD1 acquired the security. How should the transactions be reported?

A700.5: Because the two transactions are effected at two different prices, this is considered a net trade and both transactions must be reported. See FAQ 304.2. For example, BD1 executes a trade in Canada at \$1 Canadian per share and the transaction is reported in Canada. As discussed in FAQ 700.1, BD1 is not required to report this trade to FINRA because it was executed and reported in the foreign country. The trade at \$1 Canadian per share converts to \$1.40 US per share and BD1 sells the shares to its customer OTC in the U.S. at \$1.41. BD1 must report the transaction at \$1.41 to the ORF.

Q700.6: Member BD1 executes a transaction on behalf of member BD2 in a foreign security on a foreign exchange, which is reported to the foreign exchange. BD1 wants to charge a fee to member BD2 for the currency conversion into U.S. dollars. Can BD1 report the offsetting leg of the transaction with BD2 via the ORF and add the currency conversion fee to the per share price?

A700.6: No, BD1 cannot use the ORF for a back office function such as charging a currency conversion fee. For example, BD1 executes a trade in Canada for \$1 Canadian per share and the transaction is reported in Canada. The trade at \$1 Canadian per share converts to \$1.40 US per share. BD1 adds a \$.01 per share fee for the currency conversion. BD1 cannot submit a report to the ORF to reflect a transaction with BD2 at \$1.41. While it may be permissible for BD1 to charge its customer a reasonable fee for the currency conversion, such fee cannot be transferred via the ORF.

Q700.7: Member BD1 and member BD2 execute a trade in a foreign security OTC and BD1 reports the trade to the regulator of the foreign securities market. Does BD2 have an obligation to report its side of the transaction to the ORF under Rule 7330(b) as an order-entry (OE)-side submission?

A700.7: No. As discussed in FAQ 700.1, BD1 would have no obligation to report the transaction to the ORF because it has reported the transaction to the regulator of the foreign securities market. In addition, BD2 would have no obligation to report its side of the transaction to the ORF where BD1 reported the transaction to the regulator of the foreign securities market.

Q700.8: Are transactions in foreign securities subject to real-time reporting and dissemination?

A700.8: Yes, transactions in foreign securities are subject to the same reporting requirements as other OTC Equity Securities (unless expressly exempt from reporting under Rule 6622(g)), and FINRA disseminates last sale information for transactions in foreign securities, as well as ADRs and Canadian issues, on a real-time basis. See Regulatory Notice 08-51 (September 2008).

Section 701: Dually Listed Securities

Q701.1: How should a member report a trade for a dually listed security (i.e., a security that is listed on both a foreign securities exchange and a national securities exchange in the U.S.)?

A701.1: The location and manner in which the trade is effected dictates whether and how the trade must be reported. Because dually listed securities are listed on a national securities exchange, they do not fall within the definition of "OTC Equity Securities" for purposes of the Rule 6620 Series. Consequently, transactions in dually listed securities should never be reported to the ORF. If a member effects an OTC transaction in a dually listed security, the trade must be reported to a TRF or the ADF. If a member effects a trade in a dually listed security on the foreign exchange and the trade is reported through that exchange, the member is not required to report the trade to FINRA because the trade was executed "on or through an exchange," namely, the foreign exchange. See Rules 6282(i), 6380A(e) and 6380B(e).

Section 702: ADR "Swap" Transactions

Q702.1: How should a member report a "cross-book" transaction (i.e., a transaction where the member "swaps" ordinary shares and American Depositary Receipts (ADRs) between two customers)?

A702.1: OTC "cross-book" transactions, also known as ADR swap transactions, must be reported to FINRA. In these types of transactions, a member matches holders of ADRs with holders of the foreign ordinary equity security (referred to as the "ordinary" or "ordinaries") in the same company. To effect the "swap," the member typically will execute the equivalent of two cross transactions in the two securities between the holders. Because the ADRs and the ordinary shares are separate securities and they are executed in separate transactions, both the ADR and the

foreign ordinary share transactions must be reported separately to FINRA for public dissemination pursuant to the trade reporting rules. See [NTM 07-25](#) (May 2007).

The conversion of ordinary shares into an ADR and the conversion of an ADR into ordinary shares are not OTC transactions for purposes of the trade reporting rules. Consequently, these types of conversions are not reportable to FINRA. See [Regulatory Notice 11-40](#) (August 2011) and [NTM 07-25](#) (May 2007).

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