

Equity Trade Reporting

Submission of “Clearing-Only, Non-Regulatory Reports” to the FINRA Equity Trade Reporting Facilities

Effective Date: February 1, 2016

Executive Summary

Pursuant to rule amendments that will be effective February 1, 2016, FINRA is introducing a new category of trade submissions—clearing-only, non-regulatory reports—that firms can use to submit to clearing those OTC transactions in equity securities that have been previously reported through a FINRA facility.¹ Clearing-only, non-regulatory reports cannot be used for regulatory reporting purposes. As such, firms can only use these reports where their regulatory reporting obligations to FINRA have been satisfied through other submissions (tape reports, *i.e.*, submitted for public dissemination purposes, or non-tape reports).

The amended rule text is available in the online FINRA Manual.

Questions regarding this *Notice* may be directed to:

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- ▶ FINRA Market Operations at (866) 776-0800;
- ▶ FINRA Product Management at (866) 899-2107; or
- ▶ Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190 or lisa.horrigan@finra.org.

Background and Discussion

Current FINRA rules require a firm operating an alternative trading system (ATS) to obtain for each ATS a single, unique market participant identifier (MPID) that is designated for exclusive use for reporting the ATS’s transactions (the ATS MPID requirement).² The firm must use such separate MPID to report all transactions executed within the ATS to FINRA, and a firm that operates multiple ATSs or engages in other lines of business requiring the use of MPIDs must obtain and use multiple MPIDs.

December 2015

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Alternative Display Facility (ADF)
- ▶ Alternative Trading Systems (ATS)
- ▶ Clearing
- ▶ OTC Reporting Facility (ORF)
- ▶ Trade Reporting
- ▶ Trade Reporting Facilities (TRF)

Referenced Rules & Notices

- ▶ FINRA Rules 6160
- ▶ FINRA Rule 6170
- ▶ FINRA Rule 6480
- ▶ FINRA Rule 7130
- ▶ FINRA Rule 7230A
- ▶ FINRA Rule 7230B
- ▶ FINRA Rule 7330
- ▶ Regulatory Notice 07-38

Some firms that operate an ATS and use a FINRA facility to submit trades to the National Securities Clearing Corporation (NSCC) for clearance and settlement prefer to use their main broker-dealer MPID on their clearing submissions. To accommodate these firms, FINRA has amended its rules to introduce “clearing-only, non-regulatory” reports.³ With this new type of report, the transaction is submitted solely to facilitate clearing and not for purposes of dissemination or satisfying a firm’s non-tape, regulatory reporting obligations, *e.g.*, to identify FINRA member firms that are parties to the trade and not otherwise identified in the tape report.⁴ Pursuant to the amendments, ATSs are relieved of the requirement to use their unique ATS MPID—and are permitted to use another MPID—on this subset of reports. In addition, FINRA notes that while the amendments were prompted by issues involving ATS trade reporting, any firm (*e.g.*, a firm that does not operate an ATS but nonetheless uses multiple MPIDs) could submit clearing-only, non-regulatory reports, in accordance with the amendments, if all other regulatory reporting requirements have been met.

As set forth in the amendments, a firm may submit a clearing-only, non-regulatory report to a FINRA facility only for a previously executed trade for which a tape report has been submitted to the facility, or for the offsetting portion of a riskless principal or agency transaction for which a non-tape, non-clearing report already has been submitted to the facility satisfying FINRA reporting requirements.⁵ In other words, the information contained in a clearing-only, non-regulatory report must be reported to the FINRA facility in other submissions. When submitting clearing-only, non-regulatory reports, firms must use a unique indicator to denote that the report is submitted solely for purposes of clearing the transaction and not for purposes of satisfying any regulatory reporting requirements.⁶

A clearing-only, non-regulatory report cannot be used to satisfy any regulatory reporting requirement under FINRA rules that may apply to the transaction. Thus, firms should submit such reports only where the firm’s regulatory reporting obligations have been satisfied through other reports (tape or non-tape, as applicable) submitted to the FINRA facility. Submission of a clearing-only, non-regulatory report constitutes certification by the firm that it has satisfied all regulatory reporting requirements that may apply to the transaction through its other submissions.⁷

FINRA notes that clearing-only, non-regulatory reports may only be submitted if the transaction was previously reported to a FINRA facility for regulatory purposes. Consequently, a step-out/step-in or offsetting riskless principal leg of a trade executed on an exchange should not be submitted as a clearing-only, non-regulatory report. While not required by FINRA rules, such entries do not duplicate entries previously submitted to FINRA. FINRA further notes that where a firm must cancel or reverse a trade for which a clearing-only, non-regulatory report has previously been submitted, the firm should also use the clearing-only, non-regulatory report indicator on the clearing report reflecting the cancellation or reversal.

Although clearing-only, non-regulatory reports cannot be used by firms to satisfy their regulatory reporting obligations, the information contained in such reports must nonetheless be consistent with previously submitted information for the same transaction, unless otherwise expressly provided under FINRA rules. Pursuant to the amendments, firms that operate an ATS are expressly allowed to use an MPID other than their ATS MPID on clearing-only, non-regulatory reports.⁸ This relief relates solely to the ATS MPID requirement, and the firm with the trade reporting obligation under FINRA rules (“executing party”) must continue to be identified as such in all clearing-only, non-regulatory reports.

In addition, firms are not required to use the short sale (or short sale exempt) indicator, if applicable, on clearing-only, non-regulatory reports.⁹ In accordance with current guidance, the short sale indicator must be included on the tape report and, if submitted, on the non-tape, non-clearing report that identifies the FINRA member firm that is selling short (or short exempt).¹⁰ This guidance is not changing, and pursuant to the amendments, the firm is not required to duplicate this information on the clearing-only, non-regulatory report.

As of February 1, 2016, pursuant to the amendments, a firm that operates an ATS and elects to use an MPID other than its unique ATS MPID on its clearing submissions to FINRA is required to submit clearing-only, non-regulatory reports, in addition to the regulatory reports submitted under the firm’s ATS MPID.

Application of the Amendments

To further illustrate the application of the amendments, FINRA is providing the following detailed example: FINRA member Firm 1 operates an ATS that uses the MPID “MATS,” and Firm 1’s main broker-dealer MPID is “MAIN.” Firm 1 executes an agency cross transaction in its ATS between FINRA member Firm 2, as the buyer, and FINRA member Firm 3, as the seller. In this example, the ATS knows the identity of the two FINRA member firms whose orders are being crossed in the ATS. Under FINRA rules, using its ATS MPID “MATS,” Firm 1 must report the transaction to FINRA for public dissemination (for purposes of this example, “MATS” reports a cross transaction) and must submit non-tape report(s) to identify Firms 2 and 3 as parties to the trade, because they are FINRA member firms (“MATS” sells to Firm 2 and “MATS” buys from Firm 3).

Firm 1 has the option, but is not required, to report the transaction to FINRA for submission to NSCC for clearance and settlement. Firm 1 may elect to use its ATS MPID on its clearing submissions, *i.e.*, Firm 1 would designate the non-tape reports showing “MATS” sells to Firm 2 and “MATS” buys from Firm 3 for clearing. In that instance, Firm 1 would not use the clearing-only, non-regulatory report, because the clearing reports are also satisfying Firm 1’s reporting obligation under FINRA rules to identify Firms 2 and 3 as parties to the trade.

Alternatively, Firm 1 may use an MPID other than its ATS MPID, *e.g.*, its main broker-dealer MPID, on its clearing submissions. In that instance, pursuant to the amendments, Firm 1 must submit two additional reports—*i.e.*, two clearing-only, non-regulatory reports with the firm's main broker-dealer MPID (“MAIN” sells to Firm 2 and “MAIN” buys from Firm 3). In making such submissions, Firm 1 is certifying that it has satisfied all regulatory reporting requirements through the submission of the tape (“MATS” reports a cross) and non-tape, non-clearing (“MATS” sells to Firm 2 and “MATS” buys from Firm 3) reports.¹¹ The same would be true if the firm used an MPID other than its main broker-dealer MPID or its unique MPID used for the ATS.

Current Trade Reporting Guidance Is Not Changing

FINRA notes that use of the clearing-only, non-regulatory report is not mandatory, and firms may continue to use their clearing submissions to satisfy their regulatory reporting obligations. In that instance, a firm that operates an ATS is required to use its ATS MPID on all tape and non-tape reports, including clearing reports, submitted to FINRA, except where otherwise expressly permitted under current guidance. Specifically, on required non-tape reports, a firm that operates an ATS is permitted to use the MPID of the firm's desk or department that originally received and routed the order to the ATS in the limited instance where the ATS does not know the identity of the other FINRA member firms that are parties to the trade.¹²

For example, a firm receives two FINRA member firm client orders at another department and routes the orders to the firm's ATS. The orders are crossed against each other in the ATS. The identities of the FINRA member firm clients are not known by the ATS. The ATS uses the MPID “MATS” and the other department uses the MPID “MOTH.” The firm must use the ATS MPID on the tape report. However, because the ATS does not know the identity of the two FINRA member firms, current guidance permits the firm to use the non-ATS MPID “MOTH” on the non-tape report(s) required to satisfy the firm's regulatory reporting obligation to identify the other FINRA member firms involved in the trade.

FINRA is not changing this guidance as a result of the amendments, and firms are not required to use their ATS MPID in this limited instance. If, in the example above, the firm submits a clearing report using the MPID “MOTH” that is also intended to satisfy its regulatory reporting obligations, then it should not use the new clearing-only, non-regulatory report.

Endnotes

1. For purposes of this *Notice*, the FINRA facilities are the Alternative Display Facility (ADF) and the Trade Reporting Facilities (TRF), to which firms report OTC transactions in NMS stocks, and the OTC Reporting Facility (ORF), to which firms report transactions in OTC equity securities, as defined in Rule 6420 (*i.e.*, non-NMS stocks such as OTC Bulletin Board and OTC Market securities), as well as transactions in restricted equity securities, as defined in Rule 6420, effected pursuant to Securities Act Rule 144A.
2. See Rules 6160, 6170 and 6480.
3. See Securities Exchange Act Release No. 76061 (September 30, 2015), 80 FR 60421 (October 6, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-035).
4. See Rules 6282(d)(4), 6380A(d)(4), 6380B(d)(4) and 6622(d)(4).
5. See, *e.g.*, current Rules 7130(g)(1), 7230A(i)(1), 7230B(h)(1) and 7330(h)(1), which prohibit firms from submitting to a FINRA facility any non-tape report associated with a previously executed trade that was not reported to that FINRA facility, except where submitting the offsetting portion of a riskless principal or agency transaction. See also [Regulatory Notice 07-38](#) (August 2007).
6. Firms should review and report in accordance with the applicable system technical specifications.
7. FINRA notes that firms will not be required to provide information (*e.g.*, the system-assigned control number) to identify the associated trade report(s) in the clearing-only, non-regulatory report.
8. See Rules 6160, 6170 and 6480.
9. See Rules 7130(d), 7230A(d), 7230B(d) and 7330(d).
10. See, *e.g.*, [Trade Reporting Frequently Asked Questions, FAQ # 407.5](#).
11. If Firm 1 were to subsequently cancel (or reverse) the trade in this example, Firm 1 would be required to submit a cancellation (or reversal) for each leg previously reported with the MATS MPID (*i.e.*, cancellation (or reversal) of the tape report reflecting a “MATS” cross and the two non-tape reports reflecting MATS sells to Firm 2 and MATS buys from Firm 3). These entries would not be marked as clearing-only, non-regulatory reports since they are cancelling original entries required by FINRA rules. Firm 1 would also have to submit clearing-only, non-regulatory reports to reflect the cancellation (or reversal) of the previously submitted clearing-only, non-regulatory entries reflecting MAIN sells to Firm 2 and MAIN buys from Firm 3. With respect to the cancellation (reversal) of the MAIN entries, because the original entries were submitted as clearing-only, non-regulatory reports, the cancellations (or reversals) should also be submitted as clearing-only, non-regulatory reports.
12. See [guidance](#) on reporting ATS transactions to FINRA’s Order Audit Trail System (OATS) and FINRA trade reporting facilities. Firms are reminded that in all instances, the ATS MPID must be used on the tape report.