

Corporate & Financial Weekly Digest

September 30, 2011 by [Daren R. Domina](#)

FINRA Reminds Firms of Trade Reporting Requirements in OTC Equity Securities and Restricted Equity Securities Transactions

The Financial Industry Regulatory Authority has issued a Trade Reporting Notice (the Notice) to remind firms that over-the-counter (OTC) trades in OTC Equity Securities and trades in Restricted Equity Securities under Securities Act Rule 144A must be reported to FINRA's OTC Reporting Facility (ORF) in accordance with FINRA trade reporting rules.

The term "OTC Equity Security" is defined in FINRA Rule 6420 as any equity security that is not a National Market System stock and is not a Restricted Equity Security. Thus, "OTC Equity Security" is broadly defined and could include non-exchange-listed equity securities of issuers that have recently emerged from bankruptcy, have no visible public market or are closely held, and non-exchange-listed contingent value rights. "Restricted Equity Security" is defined in Rule 6420 as any equity security that meets the definition of "restricted security" as contained in Securities Act Rule 144(a)(3).

The fact that a security does not have a valid symbol at the time of execution of the trade does not relieve a firm of its trade reporting obligations under FINRA rules. If a firm executes a trade in a security for which there is no valid OTC symbol, the firm must obtain a symbol so it can fulfill its trade reporting obligations. The Notice provides that failure to do so is a violation of FINRA trade reporting rules. Moreover, a pattern and practice of executing reportable trades without obtaining a symbol and reporting the trade to FINRA may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

In the Notice, FINRA reminds firms that they must have policies, procedures and internal controls in place, including, as necessary, consultation with their counsel regarding whether FINRA trade reporting obligations are triggered, whether a security meets the definition of OTC Equity Security or Restricted Equity Security, and whether any exceptions apply.

Click [here](#) to read the Trade Reporting Notice.