

## Addendum:

### Relevant FINRA Trade Reporting FAQs (excerpts from the complete list found on [FINRA's website](#))

#### Section 205: Determining "Executing Party" (effective August 3, 2009)

*Section 205 provides guidance on members' obligations under the executing party trade reporting structure effective on August 3, 2009. 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), 6622(b) and 6643(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 90 seconds of execution. See Section 200 (Reporting on Behalf of Another Member ("Give-Up" Relationships)).

A previously executed [Uniform Service Bureau/Executing Broker Agreement](#) 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.

## Section 302: Reporting Riskless Principal Transactions

**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 new rules in effect on August 3, 2009, would create 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.

**Q302.10:** 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 (effective August 3, 2009):** 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. See Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4), 6622(d)(4), 6633(a)(3) and 6643(d)(5). See also [Regulatory Notice 09-08](#) (January 2009).

**Q302.12 (effective August 3, 2009):** 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 new rules in effect on August 3, 2009, 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 new rules in effect on August 3, 2009, 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), 6622(d)(4), 6633(a)(3) and 6643(d)(5). 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 (effective August 3, 2009):** 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 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), 6622(d)(4), 6633(a)(3) and 6643(d)(5). See also [Regulatory Notice 09-08](#) (January 2009).

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