

Regulatory Notice

14-36

OTC Reporting Facility

FINRA Announces Elimination of OTC Bulletin Board Historical Research Reports; Fees for ORF Trade Reporting and Data

Effective Dates: September 30, 2014 (Elimination of OTCBB Historical Research Reports); November 17, 2014 (ORF Fees)

Executive Summary

Effective September 30, 2014, FINRA will no longer provide historical research reports for OTC Bulletin Board (OTCBB) securities, and FINRA Rule 7740, pursuant to which FINRA charges fees for such reports, is deleted as of that date. In addition, FINRA is announcing amendments to FINRA Rule 7710 relating to fees for OTC Reporting Facility (ORF) trade reporting and data, upon migration of the ORF to FINRA's Multi-Product Platform (MPP) on November 17, 2014.

The text of the amendments is available in Attachment A.

Questions regarding this *Notice* may be directed to:

- ▶ FINRA Market Operations at (866) 776-0800;
- ▶ FINRA Product Management at (866) 899-2107; or
- ▶ for legal or interpretive questions, Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190.

Background and Discussion

The ORF is the FINRA facility firms use to report transactions in OTC equity securities, *i.e.*, equity securities that are not NMS stocks, including OTCBB securities, and transactions in restricted equity securities effected pursuant to Securities Act Rule 144A.¹ Currently, the ORF uses technology provided by The NASDAQ OMX Group, Inc. (NASDAQ) that is based on NASDAQ's proprietary Automated Confirmation Transaction (ACT) platform. The ORF will migrate to the MPP on November 17, 2014, and as of that date, will no longer operate on the ACT platform.²

September 2014

Notice Type

- ▶ Rule Amendment

Suggested Routing

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

Key Topics

- ▶ FINRA Automated Data Delivery Service (FINRA ADDS) Fees
- ▶ Historical Research Reports
- ▶ OTC Bulletin Board (OTCBB)
- ▶ OTC Equity Securities
- ▶ OTC Reporting Facility (ORF)
- ▶ Restricted Equity Securities
- ▶ Trade Reporting
- ▶ Trade Reporting Fees
- ▶ Web Browser Access Fees

Referenced Rules & Notices

- ▶ FINRA Rule 6420
- ▶ FINRA Rule 7710
- ▶ FINRA Rule 7740
- ▶ NTM 00-79



Financial Industry Regulatory Authority

Pursuant to a proposed rule change filed with the SEC,³ FINRA deleted Rule 7740 relating to historical research reports for OTCBB securities, and amended Rule 7710 relating to fees for ORF trade reporting and data upon migration to the MPP. Specifically, FINRA (1) adopted fees for Web browser access to the ORF and for real-time “time and sales” ORF data through the Web browser; (2) adopted fees for ORF data through FINRA’s Automated Data Delivery Service (FINRA ADDS); and (3) clarified the application of existing transaction reporting fees, without modifying the fee amounts specified in the rule.

Elimination of Historical Research Reports

As of September 30, 2014, FINRA will no longer provide historical research reports regarding OTCBB securities through the OTCBB website.⁴ As the quotation activity through the OTCBB has declined significantly in recent years, the value of these reports has diminished, and users have found alternative ways to obtain this data. Accordingly, FINRA Rule 7740 (Historical Research and Administrative Reports), pursuant to which fees for such reports are charged, is deleted in its entirety, effective September 30, 2014.⁵

ORF Web Browser Access Fees

Following migration of the ORF to the MPP, FINRA will offer Web browser access to the ORF on the MPP; firms will no longer use the ACT Workstation.⁶ FINRA currently offers Web browser access to FINRA’s Trade Reporting and Comparison Engine (TRACE) and Alternative Display Facility (ADF) on the MPP.⁷

FINRA is offering two levels of Web browser access to the ORF: Level I (Trade Report or Clearing Firm View Only) access and Level II (Full Service) access. Level I access permits a member firm to report transactions to the ORF via the Web browser and provides access to trade management functions, such as trade reconciliation, cancel and correct. In addition, firms can access their trade data for the current trading day plus three prior days, as well as reference data, such as the Security Daily List, through the Web browser.

Clearing firms can subscribe to Level I Web browser access to view data regarding their correspondents’ trades reported to the ORF associated with the subscribing clearing firm’s Clearing Number. Through the Web browser, clearing firms can access on a “view only” basis their correspondents’ trade data for the current trading day plus three prior days. A clearing firm can view its correspondent’s data—including, *e.g.*, trades on which the correspondent is the reporting party or contra party, open trades and declined trades—and also reference data, but cannot take advantage of other Trade Management functions unless it executes, with its correspondent, a [FINRA Uniform Services Agreement](#) (USA) and submits the executed agreement to FINRA Market Operations. Once the clearing firm has a valid agreement in place with its correspondent, it may accept or decline submissions on its correspondent’s behalf. In such circumstances, the correspondent, as the party to the trade, will be assessed any applicable transaction reporting fees under Rule 7710(a).

Level II (Full Service) Web browser access permits the reporting of transactions to the ORF and related trade management functionality, as well as access to real-time “time and sales” ORF data for a given security through the Web browser. Specifically, firms can query—by security symbol and trade date—for the following real-time ORF data: (1) trade details for disseminated trades in a given time period, which data will include the 52-week high and low prices and the dates such prices were attained; (2) the daily high price, low price, last sale price, most recent trade price and volume in a given time period; and (3) the weekly high price, low price and volume in a given time period, including the dates the high and low prices were attained.⁸

The charge for Level I (Trade Report or Clearing Firm View Only) Web browser access to the ORF is \$20 per month per user ID, and the charge for Level II Web browser access to the ORF is \$25 per month per user ID.⁹

Fees for ORF Data Through FINRA ADDS

FINRA ADDS is a secure website that provides member firms, by market participant identifier (MPID), access to trade journal files containing key information regarding the firm’s trades reported to FINRA. Currently, FINRA ADDS makes recent ADF and TRACE trade journals available for free through the FINRA ADDS website and offers subscribers the option of receiving historical data as well as retrieving data automatically via Secure File Transfer Protocol (SFTP) for a fee. FINRA has enhanced FINRA ADDS to include ORF data, to be delivered in the same format and via the same two methods currently used for TRACE and ADF data.¹⁰

FINRA ADDS—Firm Subscribers

FINRA ADDS provides firms with their own trade data. The ORF trade journals provided through FINRA ADDS replace the equity trade journals for ORF previously provided by NASDAQ. Through the FINRA ADDS website, a firm has access to ORF trade data associated with its MPID for the three prior business days free of charge without having to subscribe to the additional optional data services discussed below.¹¹ In addition, firms can access their trade data for dates older than the most recent three business days by subscribing to ORF Data Delivery Plus through FINRA ADDS for a fee. The fee will be charged per month to each MPID that is a subscriber for ORF Data Delivery Plus reports (Plus Reports), which will be provided in response to requests by the MPID.¹² The fees are based on (1) the average number of transactions reported to the ORF per month to which the MPID was a party in the prior calendar year, which number is used to assign the MPID to one of four tiers,¹³ and (2) the number of Plus Reports the subscriber receives in a month.¹⁴

The fee schedule for ORF Data Delivery Plus through FINRA ADDS is as follows:¹⁵

Tier Based on Average Number of Transactions per Month MPID Subscriber Was a Party to in Prior Calendar Year	0–5 Plus Reports Received per Month	6–25 Plus Reports Received per Month	> 25 Plus Reports Received per Month
Tier 1: 50,000 +	\$60	\$80	\$100
Tier 2: 10,000 - 49,999	\$40	\$55	\$70
Tier 3: 1,000 - 9,999	\$20	\$30	\$40
Tier 4: < 1,000	\$10	\$15	\$20

Firms also have the option of subscribing to the ORF Data Delivery SFTP service, which will enable them to automate the process of retrieving their ORF trade journal files. Files will be made available on a daily basis, and subscribers can connect to FINRA ADDS via SFTP to download their data.

The fees for ORF data via SFTP are (1) a one-time set up fee of \$250 and (2) a monthly fee of \$200 for each MPID that subscribes to the service.¹⁶

FINRA ADDS—Clearing Firm Subscribers

Clearing firms can subscribe to FINRA ADDS for access to data regarding their correspondents' clearing eligible trades reported to the ORF associated with the subscribing clearing firm's Clearing Number. This data replaces the clearing firm trade journal files for ORF previously provided by NASDAQ. ORF data for clearing firms is available through the FINRA ADDS website and via SFTP. Through the FINRA ADDS website, a clearing firm has access to its correspondents' ORF trade data associated with its Clearing Number for the three prior business days free of charge without having to subscribe to the additional optional data services. Clearing firms can access their correspondents' data for dates older than the most recent three business days for a monthly fee.

The charge for Clearing Data Delivery Plus service through FINRA ADDS is a flat fee of \$150 per Clearing Number¹⁷ per month, irrespective of the number of reports received.¹⁸ The charge for the Clearing Data Delivery SFTP service is a one-time start-up fee of \$250 and \$300 per month for each Clearing Number that subscribes to the service.¹⁹

ORF Transaction Reporting Fees

FINRA amended Rule 7710 to clarify the rule's application, without modifying the transaction reporting fee amounts specified in the rule, as follows.

- ▶ First, where the same market participant is on both sides of a trade report (*e.g.*, a cross transaction, which can be reported with the executing party's MPID on both sides of the trade), applicable fees assessed on a "per side" basis are assessed once, rather than twice, and the market participant is assessed the fee as the executing party side only. This is consistent with the manner in which trades reported to the ORF currently are billed.
- ▶ Second, trades reported for regulatory purposes only (*i.e.*, trades that are submitted neither for public dissemination nor clearing through the ORF, also referred to as "non-tape, non-clearing reports") are not assessed a fee. This codifies FINRA's current billing methodology as set forth in *Notice to Members 00-79* (November 2000).
- ▶ Third, the "Late Report—T+N" fee of \$0.288 is charged only to the executing party for a late trade report submitted one or more days after trade date (T+N).²⁰ Prior to the amendments, this fee was charged to both sides.
- ▶ Fourth, the "Query" charge has been deleted, because it relates to functionality that is specific to ACT and does not apply on the MPP. Upon migration of the ORF to the MPP, firms can still search for their trades, but there is no charge for such functionality. In addition, the Corrective Transaction Charge applies to "Cancel/Correct" transactions only; the ORF no longer supports "Error, Inhibit, Kill, or No/Was" transactions, which are ACT-specific.
- ▶ Finally, transactions that are not subject to comparison²¹ through the ORF are charged a fee of \$0.029 per side. In the course of a recent review of ORF billing methodology, FINRA determined that for "tape only" transactions between two FINRA member firms (*i.e.*, transactions that are reported for public dissemination purposes and are not cleared through the ORF or locked-in via AGU or QSR), only the reporting party was charged.

Upon migration of the ORF to the MPP, in accordance with the existing rule, both sides will be charged for all transactions reported to the ORF that are not subject to comparison, including all "tape only" trades that are not cleared through the ORF, as well as trades that are cleared through the ORF and locked-in via AGU or QSR agreements.²² Although the rule language remains unchanged, some firms that are identified as the contra party on trade reports submitted to the ORF will be impacted, *i.e.*, some firms will see an increase in their fees and other firms will start receiving ORF invoices for the first time.²³

FINRA notes that historically, if a firm's total ORF fees over a six-month period fell below the threshold amount of \$20.00, FINRA would not invoice the firm and would write off the fees for that period. FINRA is discontinuing this threshold billing policy, and all parties will receive a bill irrespective of the total amount due.

The amendments to Rule 7710 are effective on November 17, 2014.

Endnotes

1. “OTC equity security” and “restricted equity security” are defined under Rule 6420.
2. Firms can obtain additional information relating to ORF migration on the [FINRA OTC Reporting Facility \(ORF\) Migration](#) page.
3. See Securities Exchange Act Release No. 72595 (July 11, 2014), 79 FR 41711 (July 17, 2014) (Notice of Filing and Immediate Effectiveness; SR-FINRA-2014-032).
4. The last date on which to order a report is September 29, 2014.
5. FINRA intends to file a proposed rule change with the SEC to revise the operative date for the deletion of Rule 7740. As proposed in SR-FINRA-2014-032, the operative date would have been the date of migration of the ORF to the MPP, which originally was scheduled for September 15, 2014.
6. In addition to Web browser access, firms can report trades to the ORF via computer-to-computer interface (CTCI), a Financial Information eXchange (FIX) line or indirectly via third party intermediaries (e.g., service bureaus). Following migration to the MPP, firms will continue to be able to connect to the ORF using any of these three methods. Firms that report to the ORF via CTCI or FIX—either directly or indirectly through third party intermediaries—will continue to pay NASDAQ, as FINRA’s technology service provider for the MPP, charges associated with FIX and CTCI ports to connect to the ORF data center.
7. A firm that utilizes the TRACE Web browser, the ADF Web browser and the ORF Web browser would pay three separate fees under Rules 7730(a)(1), 7510(c)(1) and 7710(b).
8. While a Level II Web browser subscriber will see all ORF trades at the time of the query in a specific security, the subscriber will not see the continuous real-time ORF transaction feed (or TDDS), and the Web browser will not include quote data from the real-time OTCBB quote feed (or BBDS).
9. See Rule 7710(b).
10. FINRA notes that a firm that subscribes to FINRA ADDS for TRACE, ADF and ORF data would pay three separate fees under Rules 7730(g), 7510(d) and 7710(c).
11. As noted above, firms that have Web browser access can download up to three days’ worth of their prior day ORF trade data through the Trade Management functionality on the MPP at no additional charge (once the firm has paid any applicable fees, e.g., for ORF Web browser access); however, the data is not in the same format as available through FINRA ADDS. Specifically, the Trade Management data through the Web browser is “living” for three days after trade date (T+3), whereas FINRA ADDS files are produced at the end of the trading day and will not change (e.g., to reflect trades that were subsequently canceled or corrected). For example, on Wednesday, a firm cancels a trade that it executed on Monday. Through FINRA ADDS, the firm will see the trade from Monday, with no indication that the trade was subsequently canceled. Through Trade Management, the status of the trade will be updated from “New” to “Canceled.”
12. To access trade information for multiple MPIDs, a firm must obtain a subscription for each MPID.

13. Once assigned to a tier, a subscriber remains in the tier for the remainder of the calendar year. For example, an MPID that subscribes in November 2014 will be assigned to a tier based upon the ORF transactions reported in 2013 in which the MPID was a party, and will remain in that tier until December 31, 2014. In 2015, the MPID will be re-evaluated and assigned to a tier for 2015 fee purposes, based upon the MPID's ORF trades in 2014. Where there is no historical data associated with an MPID (*e.g.*, the MPID is new), the lowest tier applies.
14. A subscriber's fee will be assessed each month and accordingly may vary during a calendar year, depending on the number of reports FINRA makes available to the subscriber in response to the subscriber's requests. The ORF Data Delivery Plus fee is based upon the number of reports provided to avoid charging for data requests that FINRA may be unable to provide (*e.g.*, a request for data that pre-dates migration of the ORF to the MPP).
15. See Rule 7710(c)(1).
16. See Rule 7710(c)(1).
17. To access trade information for multiple Clearing Numbers, a firm must obtain a subscription for each Clearing Number.
18. See Rule 7710(c)(2).
19. See Rule 7710(c)(2).
20. Under FINRA rules, trades that are executed between 8:00 p.m. and midnight and trades that are executed on non-business days (pursuant to amendments approved under SR-FINRA-2013-050 and also effective for the ORF on November 17, 2014) must be reported by 8:15 a.m. the next business day following execution. Such T+N trades are timely and are not assessed the late fee under Rule 7710. All other T+N trades are late under FINRA rules and as such are subject to this fee.
21. Transactions that are not subject to comparison include trades that are not cleared through the ORF and trades that are locked-in for clearing at the time of submission via an automatic give-up agreement (AGU) or a National Securities Clearing Corporation's qualified special representative (QSR) agreement.
22. As noted above, neither side is charged a fee for trades that are submitted for regulatory purposes only, *i.e.*, non-tape, non-clearing reports.
23. While FINRA believes that the overall impact on firms is relatively modest, FINRA is contacting the firms that will be most affected by the change in billing methodology to make them aware of the potential increase in their invoices as of the November 17, 2014, effective date. FINRA will not retroactively bill affected contra parties in accordance with the existing rule.

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Attachment A

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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7700. CHARGES FOR OTC REPORTING FACILITY, OTC BULLETIN BOARD AND TRADE REPORTING AND COMPLIANCE ENGINE SERVICES

7710. OTC Reporting Facility

(a) Transaction Related Charges

The following charges shall be paid by the participant for trade reporting to the OTC Reporting Facility[:]. In the case of trades where the same market participant is on both sides of a trade report, applicable fees assessed on a “per side” basis will be assessed once, rather than twice, and the market participant will be assessed applicable charges for reporting transactions not subject to comparison as the Executing Party side only.

Transaction Related Charges:	
Reporting of transactions not subject to comparison through the OTC Reporting Facility	\$0.029/side
<u>Submission of non-tape, non-clearing (regulatory) reports</u>	<u>No fee</u>
Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7330(i)	\$0.03/side
Comparison	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report — T+N	\$0.288/[side]trade (charged to the <u>Executing Party</u>)
[Query]	[\$0.50/query]
Corrective Transaction Charge	\$0.25/Cancel, <u>Correct</u> [Error, Inhibit, Kill, or ‘No’ portion of No/Was] transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party

(b) Web Browser Access

A member that elects to report transactions to the OTC Reporting Facility pursuant to the Rule 6600 and 7300 Series via an OTC Reporting Facility web browser or a Clearing Firm that elects to view correspondent transaction data associated with its Clearing Number via the OTC Reporting Facility web browser shall be charged:

(1) For Level I (Trade Report or Clearing Firm View Only) web browser access, \$20 per month per user ID; or

(2) For Level II (Full Service) web browser access, which includes “time and sales” query access to real-time ORF data, \$25 per month per user ID.

(c) FINRA ADDS Fees

The FINRA Automated Data Delivery System (“FINRA ADDS”) provides (1) a member access to OTC Reporting Facility trade journal files associated with its own market participant identifier (“MPID”) and (2) a clearing firm access to OTC Reporting Facility trade journal files associated with the clearing firm’s correspondent(s).

(1) Member Firm Data Per MPID

The following fees are for two optional FINRA ADDS services: OTC Reporting Facility Data Delivery Plus and OTC Reporting Facility Data Delivery Secure File Transfer Protocol.

(A) OTC Reporting Facility Data Delivery Plus Fee

The OTC Reporting Facility Data Delivery Plus fee is charged per month to an MPID that is a subscriber for OTC Reporting Facility Data Delivery Plus reports (“Plus reports”) provided in response to requests by the MPID. (Plus reports do not include a report in response to a request for an OTC Reporting Facility trade journal file for a specified date, if the specified date is within three (3) business days of the date of the request; such reports are provided to an MPID at no charge.) The fee is based on the average number of transactions per month to which the MPID was a party in the prior calendar year, which number is used to assign the MPID to one of the four tiers, and the number of Plus reports the subscriber receives in a month as follows:

<u>Tier Based on Average Number of Transactions per Month MPID Subscriber Was a Party to in Prior Calendar Year</u>	<u>0–5 Plus Reports Received per Month</u>	<u>6–25 Plus Reports Received per Month</u>	<u>> 25 Plus Reports Received per Month</u>
Tier 1: 50,000 +	\$60	\$80	\$100
Tier 2: 10,000 - 49,999	\$40	\$55	\$70
Tier 3: 1,000 - 9,999	\$20	\$30	\$40
Tier 4: < 1,000	\$10	\$15	\$20

Where there is no historical data associated with an MPID (*e.g.*, the MPID is new), the lowest tier applies.

(B) OTC Reporting Facility Data Delivery Secure File Transfer Protocol Fee

The OTC Reporting Facility Data Delivery Secure File Transfer Protocol (“OTC Reporting Facility Data Delivery SFTP”) fees are charged to an MPID that is a subscriber and are:

- (i) Set-Up Fee — a one-time fee of \$250 per MPID.
- (ii) Monthly Fee — a monthly fee of \$200 per MPID.

(2) Clearing Data Per Clearing Number

The following fees are for two optional FINRA ADDS services: OTC Reporting Facility Clearing Data Delivery Plus and OTC Reporting Facility Clearing Data Delivery Secure File Transfer Protocol.

(A) OTC Reporting Facility Clearing Data Delivery Plus Fee

The OTC Reporting Facility Clearing Data Delivery Plus fee is \$150 per month per Clearing Number that is a subscriber for OTC Reporting Facility Clearing Data Delivery Plus reports (“Clearing Plus reports”) provided in response to requests by the Clearing Number. (Clearing Plus reports do not include a report in response to a request for an OTC Reporting Facility Clearing trade journal file for a specified date, if the specified date is within three (3) business days of the date of the request; such reports are provided to a Clearing Number at no charge.)

(B) OTC Reporting Facility Clearing Data Delivery Secure File Transfer Protocol Fee

The OTC Reporting Facility Clearing Data Delivery Secure File Transfer Protocol (“OTC Reporting Facility Clearing Data Delivery SFTP”) fees are charged to a Clearing Number that is a subscriber and are:

- (i) Set-Up Fee — a one-time fee of \$250 per Clearing Number.
- (ii) Monthly Fee — a monthly fee of \$300 per Clearing Number.

• • • Supplementary Material: -----

.01 “Executing Party” shall be defined as the party with the trade reporting obligation under Rule 6622.

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[7740. Historical Research and Administrative Reports]

[(a) The charge to be paid by the purchaser of an Historical Research Report regarding OTC Bulletin Board security or other OTC security through the web site shall be determined in accordance with the following schedule:]

	[Number of fields of information in the report]		
	[1–10]	[11–15]	[16 or more]
[A. Issues Summary Statistics]			
[For a security for a day]	[\$10]	[\$15]	[\$20]
[For a security for a month, quarter, or year]	[\$20]	[\$30]	[\$40]
[For all issues for a day]	[\$50]	[\$75]	[\$100]
[For all issues for a month, quarter, or year]	[\$100]	[\$150]	[\$200]
[B. Intra-Day Quote and Intra-Day Time and Sales Data]			
[For a security and/or a market participant for a day]	[\$15]	[\$25]	[\$35]

[For all market participants for a day or for all securities for a day]	[\$30]	[\$40]	[\$50]
[(For purposes of this report, market participants are those entities qualified to participate in the OTC Bulletin Board Service pursuant to Rule 6540(a) and (b)).]			
[C. FINRA may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.]			
[D. All OTCBB Issuers Directory]		[\$250]	

[(b) Administrative Reports — \$25 per user, per month.]

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