# FREQUENTLY ASKED QUESTIONS ABOUT BLOCK TRADE REPORTING REQUIREMENTS

## Block Trades and Distributions

***What is a block trade?***

Many people use the term "block trade" colloquially. Technically, a block trade is an order or trade submitted for the sale or purchase of a large quantity of securities. Although the term is not defined under the securities laws, Rule 10b-18 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), refers to a "block" as a quantity of shares with a purchase price of $200,000 or more or a quantity of shares of at least 5,000 with a purchase price of at least $50,000. Block trades are typically executed by institutional investors (including mutual funds and pension funds), financial or private equity sponsors, venture capitalists and other large stockholders who may have acquired large quantities of securities in a merger, acquisition or other transaction and wish to sell down their position.

Block trades offer a number of advantages to selling shareholders. For instance, many securities exchanges permit large block trades to be privately negotiated and transacted off-exchange. In addition, a block trade allows a party to access a different and often larger investor base than regular electronic trading. Finally, block trades are often cheaper than standard underwritten transactions, and are fast and effective for smaller amounts of stock than are typically offered in an underwritten transaction.

***When must a block trade be reported for FINRA purposes?***

The execution of a block trade may vary. A block trade may be offered and sold in a manner that would render it a "distribution." For purposes of the Financial Industry Regulatory Authority, Inc. ("FINRA") trade reporting rules, "distribution" has the meaning set forth under Regulation M (see definition below). A "distribution" generally does not need to be reported under the trade reporting rules. However, a "distribution" may be subject to reporting under Regulation M. A FINRA member ("member") must notify FINRA when participating in any "trade" or "transaction" in an over-the-counter ("OTC") equity security that is not subject to an exemption under the trade reporting rules. For purposes of the trade reporting rules, a "trade" or "transaction" involves a change of beneficial ownership of securities between parties (*i.e.*, a purchase or sale of securities) in which a member participates (*i.e.*, as an agent or a dealer). FINRA Rule 5190 requires members to provide information related to a "distribution" of securities subject to a restricted period under Regulation M, such

as the determination of the restricted period under Regulation M, whether members are relying on the "actively-traded securities" exemption and pricing information.[1]

***Is there any helpful guidance under Regulation M for determining when a "distribution" exists?***

Regulation M was adopted by the Securities and Exchange Commission (the "SEC") in order to curtail manipulative practices by distribution participants and provides some guidance for determining whether a distribution exists. Under Regulation M, a "distribution" is defined 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."

*Magnitude of the offering*

In determining the "magnitude of the offering," the SEC will look at the number of shares being sold, the percentage that these shares represent of the total shares outstanding of that issuer, the issuer's public float and the average trading volume of the issuer's securities. The SEC has provided guidance regarding trading volume, as it relates to determining whether a transaction is deemed a "distribution." For example, Rule 144 ("Rule 144") under the Securities Act of 1933, as amended (the "Securities Act"), imposes a volume limitation requirement which provides a safe harbor for sales of securities that would otherwise be deemed a "distribution." Similarly, the block repurchase limitations under Rule 10b-18 under the Exchange Act provides a safe harbor from liability for market manipulation when an issuer or its affiliated purchaser engages in a block repurchase of shares of the issuer's common stock.

*Special selling efforts and selling methods*

Activities that may constitute "special selling efforts and selling methods" might include a broker-dealer receiving higher compensation than it ordinarily would receive for normal trading transactions or dealer activity, using sales documents, conducting a road show in connection with a transaction or holding investor meetings.

The guidance under Regulation M is useful because it narrows the broad scope of the definition of an underwriter by limiting the situations in which that definition is implicated. The definition of a distribution is based on facts and circumstances, and can lead to the similarly structured transactions being considered a distribution in one case but not in another. For this reason, a broker-dealer must analyze each situation not only on its merits, but also in the context of its regular activities. If a broker-dealer is concerned about whether its activities constitute a "distribution," the broker-dealer may find it prudent to conduct diligence activities and enter into an agreement with its client, providing for the making of representations and warranties and requiring the delivery of opinions of counsel.

***What is a "distribution" in the context of a block trade?***

Generally, trading activities for a block may not rise to the level associated with a "distribution" under federal securities laws. Shares that are purchased and sold in a

[1] FINRA members are required to submit these Regulation M notices electronically through FINRA's "Firm Gateway" system. For more information regarding Regulation M, *see* our "Frequently Asked Questions About Regulation M" available at: http://media2.mofo/documents/faqs-regulation-m.pdf.

block trade are often placed quickly by an investment bank's block trade desk and executed for a standard "dealers' fee," without the use of sales documents and without special selling efforts. Further, these shares often are sold to relatively few institutional buyers who already may have expressed an interest in acquiring stock should a block become available. However, under certain circumstances, block trades may be considered a "distribution," which has the effect of exposing the broker-dealer to potential liability as a statutory underwriter.

Under Section 2(a)(11) of the Securities Act, an "underwriter" is defined as "any person who offers or sells for an issuer in connection with the distribution of any security." The SEC has defined "issuer" broadly to include any person directly or indirectly controlling or controlled by the issuer or under common control with the issuer. As a result, activities undertaken by a broker-dealer on behalf of affiliates of an issuer (officers, directors or greater than 10% stockholders) may raise the same concerns as those taken on behalf of the issuer. Further, a broker-dealer does not need to be engaged formally as an underwriter or placement agent in order to incur this potential liability. The broker-dealer's relationship to the transaction, the extent of its activities, and its fees, taken as a whole, will determine whether it may be considered to be acting as a statutory underwriter.

The nature of the party for whom the broker-dealer is executing the block trade also may implicate the broker-dealer as a potential underwriter. A broker-dealer will be considered a statutory underwriter if the broker-dealer participates in a distribution of securities for an issuer. A "distribution" may include a private transaction as well as a public (pursuant to a registration statement) transaction. As used in the Securities Act, an "issuer" is defined to include the issuer itself and its affiliates or control persons. In executing a block trade on behalf of an issuer or on behalf of an affiliate, a broker-dealer should consider the factors discussed above and may wish to structure its activities in a manner intended not to be a "distribution." However, if a broker-dealer is executing a block trade on behalf of a third party (unrelated to the issuer and not an affiliate or control person), depending on the facts and circumstances, the transaction will more likely than not be deemed to constitute a "distribution."

This broad definition of a "distribution" is fact-specific and the SEC has routinely refused to make determinations on specific cases, explaining that the individual or entity in question is in a better position to determine its status than the SEC. In addition, the Securities Act does not contain definitions for certain of the other terms used in Section 2(a)(11), including the term "distribution." It is clear that only when a distribution occurs can an underwriter be involved.

## Reporting Requirements

***What are the reporting requirements for block trades under the exchanges?***

In general, the transaction reporting requirements for the New York Stock Exchange (the "NYSE") and NASDAQ are similar. The NYSE has a general reporting rule specifying that transactions must be reported promptly. In particular, NYSE Rule 131 specifies that trades must be reported within an hour after the close of business on the day the trade was made.

The NASDAQ rules provide more detail as to the types of information a broker-dealer must provide for equity trades. A broker-dealer must specify the following information:

- the symbol of the stock;
- the number of shares bought or sold;
- the price paid or received for such shares;
- the type of transaction for the reporting party (buy, sell or cross); and
- the time of execution.

For equity trades executed outside normal market hours, FINRA has indicated that the actual execution price should be reported, rather than the last closing price on the relevant exchange.

***How long after a block trade is executed must a broker-dealer report the trade?***

Under FINRA Rule 6380B, trades must be reported to the FINRA/NYSE Trade Reporting Facility as a trade report that is reported to and publicly disseminated by the appropriate exclusive Securities Information Processor (a "tape" report). Trades executed during normal market hours (*i.e.*, between 9:30 a.m. and 4:00 p.m. ET) must be transmitted within 10 seconds of execution (unless the transaction involves restricted equity securities, in which case the trade must be reported no later than 8:00 p.m. ET on the trade date). Trades executed outside normal market hours and during the hours the relevant reporting facility is open must still be reported within 10 seconds of execution (unless the transaction involves restricted equity securities executed between 8:00 p.m. ET and midnight, in which case the trade must be reported no later than 8:00 p.m. ET on the following business day). Trades executed during the hours the relevant reporting facility is closed are not subject to the 10-second reporting requirement. Specifically, trades executed between midnight and 8:00 a.m. ET must be reported by 8:15 a.m. ET on the trade date, and trades executed between the close of the relevant reporting facility and midnight or on any non-business day (*i.e.*, holiday or weekend) must be reported on an "as/of" basis by 8:15 a.m. ET on the following business day.

It is important to note that all transactions reported after 10 seconds will be considered reported late.

***Which party is responsible for reporting a block trade?***

The answer depends on the parties involved. In transactions between members, the "executing party" must report. In transactions between a member and a non-member or customer, the member is obligated to report. The determination of market maker status for purposes of trade reporting obligations is no longer applicable.

***How is the "executing party" defined?***

The "executing party," for purposes of FINRA trade reporting, is defined as the member that (1) receives an order for handling or execution or is presented with an order against its quote, (2) does not subsequently re-route the order, and (3) 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.

***What types of transactions are excluded from the reporting requirements?***

A broker-dealer is not required to report to the tape the following transactions:

- transactions reported on or through an exchange, such as the NYSE or NASDAQ;
- transactions that are part of a primary distribution by an issuer, a registered secondary distribution (other than shelf distributions), or an unregistered secondary distribution such as a selling shareholder block trade or PIPE transaction;[2]
- transactions made in reliance on Section 4(a)(2) of the Securities Act;[3]
- the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and
- purchases of securities off the floor of an exchange pursuant to a tender offer.

Unfortunately, self-regulatory organizations, such as FINRA, do not provide a definition for many of the terms referenced above. As a matter of practice, broker-dealers and their counsel should refer to the rules and regulations promulgated under the Securities Act and the Exchange Act for further guidance.

[2] In the case of a transaction that consists of both a primary distribution and a secondary distribution, each type of distribution would be analyzed separately.

[3] In the case of debt securities, including unlisted convertible debt securities, exempt from registration pursuant to Rule 144A under the Securities Act, the sale from the issuer to the initial purchaser does not need to be reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"), but the resale of securities by the initial purchaser to investors needs to be reported to TRACE. All subsequent resales of Rule 144A debt securities, including unlisted convertible debt securities, must also be reported to TRACE. TRACE reporting is beyond the scope of these Frequently Asked Questions.

***What information must a broker-dealer relying on an unregistered secondary distribution provide to FINRA?***

A member that would otherwise have the trade reporting obligation must provide notice to FINRA that it is relying on the exception for transactions that are part of an unregistered secondary distribution. A member relying on the unregistered secondary distribution exception must provide the following information to FINRA:

- security name and symbol;
- execution date;
- execution time;
- number of shares;
- trade price; and
- members that are parties to the transaction.

Notice and information regarding the unregistered secondary distribution must be provided to FINRA no later than three business days following the trade date. If the trade executions occur over multiple days, then the initial notice and available information must be provided no later than three business days following the first trade date and the final notice and information must be provided no later than three business days following the last trade date.

***Must a broker-dealer report a transaction made pursuant to an asset purchase agreement?***

Securities that are transferred pursuant to an asset purchase agreement ("APA") are 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.

***Must a broker-dealer report block trades made for the purpose of creating or redeeming an instrument that shows ownership of or otherwise tracks the underlying securities transferred?***

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 and exchange-traded funds) are not considered OTC transactions for purposes of the trade reporting rules. Such trades are not reportable events, and therefore are not required to be reported to the tape.

***Must a broker-dealer report block trades in foreign equity securities?***

A broker-dealer is not obligated to report 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. Members must also have policies and procedures and internal controls in place to determine whether a transaction qualifies for an exception under the trade reporting rules.

***Must a cancellation or reversal of a trade be reported?***

Yes. A cancellation (if made on the trade date) or reversal (if made on a date after the trade date) must be reported by the same party responsible for reporting the initial block trade.

***How are "riskless principal" transactions reported?***

A "riskless principal" transaction is a trade in which a member who has received a customer order immediately executes an identical order in the marketplace, while taking on the role of principal, in order to fill the customer order. Members can report "riskless principal" transactions by submitting a single report to the tape in the same manner as an agency transaction. Alternatively, members can submit 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.[4]

***Must a broker-dealer report unregistered block trades?***

*Unregistered block trades executed on behalf of an issuer*

A block trade executed on an issuer's behalf on an agency or best efforts basis in a transaction exempt from registration under Section 4(a)(2) of the Securities Act does not need to be reported to the tape regardless of whether the transaction is considered a "distribution."

*Unregistered block trades executed on behalf of an affiliate*

A block trade executed on behalf of an affiliate or control person on an agency or best efforts basis in a transaction exempt from registration under Section 4(a)(1½)[5] or Section 4(a)(7) under the Securities

[4] In the case of agency transactions with matching orders, members can submit a single report to the tape so long as the matches occur in a single execution or single event, otherwise each individual transaction must be reported separately. Sequential executions (even those occurring very close in time) would not be considered a single execution or single event and must be reported separately to the tape.

[5] Section 4(a)(1½), although not specifically provided for in the Securities Act, has been recognized by the SEC and provides a hybrid exemption from registration. Section 4(a)(1½) consists of (1) the exemption under Section 4(a)(1) of the Securities Act,

Act ("Section 4(a)(7)")[6] does not need to be reported to the tape if the transaction is considered a "distribution." If the unregistered transaction does not constitute a "distribution," then the transaction must be reported to the tape following the procedures outlined in the relevant exchange regulations for reporting agency trades, unless the block trade is effected off the floor of the relevant exchange, which would be the case in a Section 4(a)(1½) or Section 4(a)(7) transaction. A block trade executed on behalf of an affiliate or control person on an agency or best efforts basis in a sale effected pursuant to Rule 144 would not constitute a "distribution," and thus would not need to be reported to the tape.

*Unregistered block trades executed on behalf of a non-affiliate*

A block trade executed on behalf of a non-affiliate or non-control person in a transaction exempt from registration under Section 4(a)(1½) or Section 4(a)(7) does not need to be reported to the tape if the transaction is considered a "distribution." If the unregistered transaction does not constitute a "distribution," then the transaction must be reported to the tape following the procedures outlined in the relevant exchange regulations for reporting agency trades, unless the block trade is effected off the floor of the relevant exchange, which would typically be the case in a Section 4(a)(1½) or Section 4(a)(7) transaction.

For a helpful summary, see the "SUMMARY TABLE" at the end of these Frequently Asked Questions.

***Must a broker-dealer report registered block trades?***

A block trade executed either on behalf of an affiliate or control person (or on behalf of a non-affiliate holding restricted shares if such shares were issued in a private offering and the non-affiliate holding the restricted shares has not satisfied the six-month holding period under Rule 144) may be executed in a registered transaction, such as a "takedown" off of an existing shelf registration statement (including at-the-market sales) or a new stand-alone registration statement covering resales.

*Registered block trades executed on behalf of an issuer*

A block trade executed on an issuer's behalf on an agency or best efforts basis in a registered transaction does not need to be reported to the tape if the transaction is considered a "distribution." If the registered transaction does not constitute a "distribution," then the transaction must be reported to the tape following the procedures outlined in the relevant exchange regulations for reporting agency trades.

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which exempts transactions by anyone other than an "issuer, underwriter or dealer" and (2) the analysis under Section 4(a)(2) of the Securities Act to determine whether the seller is an "underwriter." For more information, see our Frequently Asked Questions About Bought Deals and Block Trades, available at http://www.mofo.com/files/Uploads/Images/FAQs-Bought-Deals-Block-Trades.pdf.

[6] Section 4(a)(7) became effective immediately after the Fixing America's Surface Transportation Act was signed into law on December 4, 2015. Section 4(a)(7) provides a resale exemption for certain transactions involving unregistered resales and partially resembles the Section 4(a)(1½) exemption for private resales of restricted securities although it is more limited in scope. The Section 4(a)(7) resale exemption requires, among other things, that (1) each purchaser is an accredited investor, (2) neither the seller nor any person acting on the seller's behalf engages in any form of general solicitation and (3) in the case of an issuer that is not a reporting company, exempt from the reporting requirements pursuant to Rule 12g3-2(b) under the Exchange Act, or a foreign government eligible to register securities on Schedule B, at the request of the seller, the seller and a prospective purchaser obtain from the issuer reasonably current information. For more information, see our Frequently Asked Questions About Bought Deals and Block Trades, available at http://media.mofo.com/files/Uploads/Images/FAQs-Bought-Deals-Block-Trades.pdf.

*Registered block trades executed on behalf of an affiliate*

A block trade executed on behalf of an affiliate or control person in a registered transaction does not need to be reported to the tape if the transaction (1) does not involve a shelf takedown and (2) is considered a "distribution." If the registered transaction involves a shelf takedown and does not constitute a "distribution," then the transaction must be reported to the tape following the procedures outlined in the relevant exchange regulations for reporting agency trades, unless the shares are sold to or through a market maker.

*Registered block trades executed on behalf of a non-affiliate*

A block trade executed on behalf of a non-affiliate or non-control person in a registered transaction does not need to be reported to the tape if the transaction (1) does not involve a shelf takedown and (2) is considered a "distribution." If the registered transaction involves a shelf takedown and does not constitute a "distribution," then the transaction must be reported to the tape following the procedures outlined in the relevant exchange regulations for reporting agency trades, unless the shares are sold to or through a market maker.

For a helpful summary, see the "SUMMARY TABLE" at the end of these Frequently Asked Questions.

## Impact of FINRA Rules and Interpretive Memos

***What rules must a broker-dealer consider with respect to prices and commissions earned in connection with block trades?***

Generally, markups, markdowns, and commissions are required to be "fair" under the circumstances. FINRA Rule 2121, which supersedes FINRA IM-2440-1, expands on this general policy by stating a 5% guideline for markups and markdowns, and lists various factors that would affect the reasonableness of a markup, including the following:

- the type of security involved;
- the availability of the security in the market;
- the price of the security;
- the amount of money involved in a transaction;
- any disclosure to the customer before the trade is effected indicating the amount of commission charged in an agency transaction or markup made in a principal transaction;
- the pattern of a member's markups; and
- the nature of the member's business.

***Which rules must a broker-dealer consider with respect to "best execution" of block trades?***

Under FINRA Rule 5310, a broker-dealer has a duty to effect a "best execution" for its customers at the best price, under the circumstances. The subject of what is "best execution" and how to achieve it is frequently a complex question, inasmuch as customers can put more or less weight on the importance of speed, confidentiality, willingness of a broker-dealer to position securities, skill in handling a "not held" order, or other factors apart from a simple question of the lowest price for the first 100 shares of a block to be bought or the highest price for the first 100 shares of a block to be sold. In the case of block trades, the skill and resources of the broker-dealer are more likely to be a factor in the determination of best execution than in the case of a retail trade for a single round lot.

***Must a broker-dealer consider whether a particular transaction is suitable for its client?***

Pursuant to FINRA Rule 2111(a), a member must obtain certain information about its customers as part of its obligation to determine customer suitability. However, there are certain exceptions to the suitability requirements for institutional customers. Typically, block trades are executed for institutional customers, and under FINRA Rule 2111(b), a member is not required to conduct a suitability analysis if (1) the member or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities, and (2) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the member's or associated person's recommendations.

In order to facilitate compliance with FINRA Rule 2111(b), some third-party distributors have created institutional suitability certificates to be provided by institutional customers, indicating that the institutional customer is familiar with the transaction and is not relying on recommendations from broker-dealers. However, it is important to note that FINRA has not approved or endorsed these certificates, and that the use of such certificates does not constitute a safe harbor from FINRA Rule 2111(b).

***Must a broker-dealer avoid trading ahead of a customer's limit order?***

Yes. Under FINRA Rule 5320, a member that accepts and holds an order in an equity security from its own customers, or a customer of another broker-dealer, without immediately executing the order is prohibited from trading that security on the same side of the market for its own account. The prohibition under Rule 5320 does not apply if the member, immediately after accepting the customer's order, executes the customer order up to the size and at the same (or better) prices at which it traded for its own accounts.

With respect to large-sized orders (*i.e.*, orders of 10,000 shares or more and greater than $100,000 in value) or orders from institutional accounts, FINRA Rule 5320.01 generally permits members to negotiate terms and conditions that would permit them to trade ahead of, or along with, such orders. Under FINRA Rule 5320.01, a member must provide a clear and comprehensive written disclosure to the customer at the time of the account's opening and annually thereafter that:

- discloses that the member may trade proprietarily at prices that would satisfy the customer order; and
- provides the customer with a meaningful opportunity to opt in to the protections of FINRA Rule 5320 with respect to all or any portion of its order.

FINRA Rule 5320.01 also permits members to provide clear and comprehensive oral disclosure to, and obtain consent from, the customer on an order-by-order basis, in lieu of the written disclosure requirement. In order to avail themselves of such requirements, members must keep records of who provided such consent and that the consent evidences the customer's understanding of the terms and conditions of the order.

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**SUMMARY TABLE**

The following table provides a summary of the various reporting requirements discussed above for different types of block trades, including unregistered block trades that may or may not qualify as "distributions" under Regulation M. If a block trade must be reported, the report must generally include (1) the symbol of the stock, (2) the number of shares bought or sold, (3) the price paid or received for such shares (for the relevant trade), (4) whether, for the reporting party, the trade was a buy, sell or cross- transaction, and (5) the time of execution. The table is not a complete discussion of all applicable requirements and should be read in conjunction with the Frequently Asked Questions and the applicable rules.

| SUMMARY REPORTING BY DEAL TYPE | | |
|---|---|---|
| **Type of Block Trade** | **Does the Block Trade Involve a "Distribution"?** | **Does the Block Trade Need to be Reported?** |
| **Section 4(a)(2):** | | |
| Issuer Shares | -Yes<br>-No | -No<br>-No |
| **Section 4(a)(1½):** | | |
| Affiliate Shares | -Yes<br>-No | -No<br>-Yes[2] |
| Non-affiliate Shares | -Yes<br>-No | -No<br>-Yes[2] |
| **Section 4(a)(7):**[1] | | |
| Affiliate Shares | -Yes<br>-No | -No<br>-Yes[2] |
| Non-affiliate Shares | -Yes<br>-No | -No<br>- Yes[2] |
| **Rule 144:** | | |
| Affiliate Shares | -No[3] | -Yes |
| Non-affiliate Shares | -Yes<br>-No | -No<br>-Yes |
| **Shelf Takedown:** | | |
| Issuer Shares | -Yes<br>-No | -No<br>-Yes |
| Affiliate Shares | -Yes<br>-No | -Yes[4]<br>-Yes[4] |
| Non-affiliate Shares | -Yes<br>-No | -Yes[4]<br>-Yes[4] |
| **ATM Sale:** | | |
| Issuer Shares | -Yes<br>-No | -No<br>-No |
| Affiliate Shares | -Yes<br>-No | -No<br>-No |
| Non-affiliate Shares | -Yes<br>-No | -No<br>-No |
| **Registered Sale (Non-shelf):** | | |
| Issuer Shares | -Yes<br>-No | -No<br>-Yes |
| Affiliate Shares | -Yes<br>-No | -No<br>-Yes[4] |
| Non-affiliate Shares | -Yes<br>-No | -No<br>-Yes[4] |
| **Clean Shares: (not being sold pursuant to registration statement):**[5] | -Yes[6]<br>-No | -No<br>-Yes |

[1] Although FINRA has yet to provide guidance with respect to trade reporting for Section 4(a)(7) offerings, we anticipate that the trade reporting requirements will be similar to that for Section 4(a)(1½) offerings.

[2] Unless the block trade is effected off the floor of the exchange, which would typically be the case.

[3] Under Rule 144, sellers who are affiliates would be subject to volume and manner of sale limitations, thus precluding a "distribution."

[4] Unless the shares are sold to or through a market maker, in which case the block trade does not need to be reported.

[5] Clean shares held by an affiliate will no longer be unrestricted.

[6] However, in practice this would be highly unlikely.