CHEEVERS
AND COMPANY, INC.

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

RE: SR-FINRA-2009-061
Proposed Rule Change to Require Members to Report OTC Transactions in Equity Securities Within 30 Seconds of Execution

Dear Mrs. Murphy,

Cheevers & Company, Inc. ("Cheevers" or "the firm") appreciates this opportunity to comment on the proposed FINRA Rule change to require members to report OTC transactions in equity securities within 30 seconds of execution. We have reviewed the proposed rule change and respectfully disagree with some of the intended changes for the following reasons.

Primarily, the firm has issue with the proposed change because it does not reflect the manual processes many firms have in place when reporting to a TRF. Specifically, many firms utilize WeblinkACT 2.0 a NASDAQ product which requires the manual typing of information into a browser based window in order to report transactions. This is not an "automated" process and is still "manual in nature." If the reporting time is changed to 30 seconds it is plausible that firms using WeblinkACT would have difficulty reporting within 30 seconds. This places an undue burden on firms with processes that are manual in nature. While many of the processes in the industry have been automated some remain manual.

Second, the proposed rule change notes "99.90% of trades were reported within 30 seconds or less."(p. 5). The firm questions the benefit of shortening the time required to report if the substantial majority of trades are already reported within 30 seconds. The proposed rule change makes statements such as:

> "FINRA believes that the proposed rule change will promote consistent and timely reporting by all members and enhance market transparency and price discovery by ensuring that trades are disseminated closer in time to execution. Timely reporting has become even more critical with the implementation of Regulation NMS."(p. 6)
>
> "FINRA believes that the proposed rule change will enhance market transparency and price discovery and promote more consistent trade reporting by members."(p. 12)

Cheevers fully supports FINRA's quest to create a transparent and fair market. However, the firm questions how is it possible to provide market transparency and consistency beyond 99.90%? It is rather unorthodox to think that shortening the time period will cause greater transparency of trades reported within 30 seconds given the levels currently attained.

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Third, the Firm primarily executes the stock portion of stock-option trades[1] which are received from Options broker dealers. These broker dealers are mostly options execution firms on the CBOE, NASDAQ OMX, NYSE Arca, and NYSE Amex. After the parties have agreed upon the terms of the trade, the options floor broker will phone in the stock portion to Cheevers. The Firm's job is to report the stock trade to the tape in accordance with the provisions of Reg NMS using the trading facilities of the Chicago Stock Exchange ("CHX") or the FINRA TRF[2]. These stock-option orders fall under the Qualified Contingent Trade ("QCT") Exemption of Reg NMS Rule 611 (d), and thus are exempt from the trade-through requirements of Reg NMS. This is important to note for a very specific reason. The order is *not*, nor can it be, exposed to the open marketplace because the parties to the transaction have already agreed upon price discovery. The prices reported are not available to other market participants and they are reported to the tape with a modifier denoting their unique status. Since these reports are not indicative of the current available market for the security, their increased timeliness adds little, if anything, to the transparency of the actionable market. If FINRA is determined to reduce the reporting time it should offer firms an exemption to the 30 second requirement for QCT trades because of the large amount of information that needs to be recorded prior to reporting (e.g. related details of the derivative transaction linked to the order) to ensure their qualification for the trade through exemption. The reporting of this type of trade within 30 seconds will not provide any greater transparency because the parties have agreed to all of the terms of the trade (e.g. price, shares, etc.) The SEC stated the benefit of these types of orders. "Contingent trades are one example of a wide variety of trades that contribute to the efficient functioning of the securities markets and the price discovery process."[3]

Fourth, The firm has a duty to initially attempt execution of the order on our local market, the CHX, pursuant to CHX Article 20 Rule 7(a)("…each institutional broker must clear the displayed and undisplayed orders in the Exchange's Matching System before sending a customer order to another market.") Under the proposed rule the firm could have difficulty evidencing our obligations to our local market if it would constitute a "trade-through"[4] because we would have limited time to evidence attempted clearing of the Matching System if required to report the trade to the TRF within 30 seconds. Once again, these trades are designated QCT and require no price discovery in the open market.

Finally, the firm does agree that members have an obligation to report their trades "as soon as practicable" and suggests that FINRA institute a Rule reflecting that specific obligation. Any firm found to have programmed a system to delay reporting until the last permissible second or holding orders for reporting purposes is acting inconsistent with just and equitable principles of trade. Implementing a rule that requires members to report

[1] As defined in CHX Article 20, Rule 9, I & P .01(b)
[2] The firm currently uses the TRF solely in a non-clearing capacity.
[3] Securities Exchange Act Release No. 57620 (April 4, 2008) 73 FR 19271 (April 9, 2008) (''QCT Release'')
[4] As defined in Reg NMS Rule 600

trades “as soon as practicable” would afford firms with manual processes the ability to remain compliant and require that automated processes are programmed to report orders promptly. Shortening the time period will only create greater regulatory burdens on smaller firms with manual processes.

In summary, we commend FINRA on promoting market transparency and fairness in relation to the reporting of trades. However, we feel that the proposed rule change will have an adverse affect on the number of firms with manual processes without materially benefiting the transparency of the market. Thank you for allowing Cheevers the opportunity to comment on the proposed rule. I welcome the opportunity to discuss our comments with the Commission or FINRA.

Sincerely,

James R. Downing
Chief Compliance Officer
Cheevers & Co., Inc.