



November 12, 2007

Barbara Z. Sweeney
Office of Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 07-46 ("FINRA Requests Comments on Proposed Amendments to OTC Trade Reporting Requirements for Equity Securities")

Dear Ms. Sweeney:

Automated Trading Desk, LLC ("ATD") appreciates this opportunity to comment on FINRA's Regulatory Notice 07-46 ("FINRA Requests Comments on Proposed Amendments to OTC Trade Reporting Requirements for Equity Securities"). ATD strongly believes in the development of trading technology that provides our clients with the highest quality execution services. Since 1994, ATD, through its subsidiaries, has provided execution services to institutional and broker-dealer clients¹. Year-to-date 2007, ATD has accounted for over 4% of all NASDAQ daily trades and approximately 7% of NYSE daily trades, along with a significant share of the daily volume for AMEX, OTC Bulletin Board, and Pink Sheets securities².

The national market system continues to undergo rapid technological advancement resulting in faster execution times and better client execution services. ATD encourages the development of responsive regulatory and market system rules that parallel and compliment the evolving electronic marketplace. ATD welcomes FINRA's outreach to market participants on issues such as trade reporting.

FINRA solicited comment on two trade reporting proposals that intended to create a simpler, more uniform trade reporting structure. We believe that this effort will result in more accurate and timely trade reporting in the marketplace while making the reporting process less cumbersome. Generally, FINRA is seeking comment on whether the responsible party for trade reporting should either be (1) the executing broker in the trade or (2) the selling broker in the trade. For the reasons outlined below, ATD strongly supports the executing broker approach. Market participants would most benefit from the implementation of a reporting structure where the executing broker would have the reporting obligation. This belief is based on ATD's experience and interaction with other

¹ ATD is the owner of Automated Trading Desk Financial Services, LLC ("AUTO") and Automated Trading Desk Brokerage Services, LLC ("ATDB"). In October of 2007, ATD was acquired by Citigroup, Inc.

² ATD's approximate daily volumes for the AMEX, OTC-BB, and Pink Sheets securities are 41.08%, 8.77% and 6.43% respectively. Data applicable YTD for 2007.

market participants in navigating the current reporting structure, a structure that often frustrates the efforts for clear and efficient trade reporting.

Disadvantages of Current Trade Reporting Structure

FINRA requested comment on the advantages and disadvantages of the current trade reporting structure. Although ATD recognizes that the current reporting structure is long established, and therefore has the benefit of being fairly stable, it also comes at the cost of unnecessary complexity. This complexity creates difficulties in accurate trade reporting and adds additional regulatory burdens where they do not properly belong.

The current trade reporting structure focuses on the status of each market participant. For example, if both market participants are market makers, then the seller is the responsible reporting party. If the trade occurs between an order entry firm and a market maker, the market maker is responsible for the trade report regardless of their side of the trade. If the trade is between two order entry firms, the seller is the responsible party. If the trade is between an order entry firm and a customer, the order entry firm is responsible for the trade report regardless of their side of the trade. To make matters even more confusing, if the contra party is an ATS or ECN, another set of rules is invoked³. These entities can choose (1) to always be the responsible reporting party; or (2) for the responsible party to be chosen under the existing priority rules.

Historically, this structure derives from a market where most execution services were provided by market makers. In that environment, making the selling market maker the responsible reporting party was a logical choice. In today's market, the executing firm is as likely to be an ATS or order entry firm as it is to be a market maker. In that case, basing the responsibility for the trade report on the status of the market participant makes little sense. Moreover, there are technical difficulties in establishing the status of market participants.

Market maker status for a particular security is generally determined before the open of trading each day by downloading a static report from a market vendor. This report is then used to determine reporting obligations for that particular day of trading with respect to other market participants. This process, while seemingly an effective way of determining reporting obligations, presents several problems that may be encountered during a typical day of trading.

For example, a market participant may have difficulty in determining market maker status of another participant. While the market maker status report may not be inaccurate as a whole, even a single inaccuracy with respect to an individual stock may cause reporting errors proportionate to that stock's level of trading. In addition, while not

³ See NASD Marketplace Rule 6130

common for NMS stocks⁴, market maker status for Bulletin Board and Pink Sheet securities often changes intraday. When this intraday change occurs, the market maker report is no longer correct. In such circumstances, there is no single efficient or effective method to establish the identity of the responsible reporting party in a two-party trade.

When market participants have incorrect information regarding the market maker status of other market participants with whom they are trading, the result may be “improper” reporting by either one or both of the parties to the trade. It is important to note that this “improper” trade report is only “improper” to the extent that the responsible party for the trade report may be misidentified. The information particular to the trade, which is the information which needs to be disseminated to the public, is accurate in all other aspects. Nonetheless, the improper identification of a responsible reporting party may be considered a technical violation of the current trade reporting rules.

The general practice in the market is for the executing broker to report the trade, regardless of which party is “responsible” for the trade report. This is recognized by the adoption of the Uniform Service Bureau/Executing Broker Agreement (f/k/a Attachment 2, now referred to as a “USBEB”) which allows an executing firm to trade report for another market participant, even if the executing firm is not technically the responsible trade reporting party.

An alternative, more simplified reporting structure would likely increase the efficiency and accuracy of trade reporting, as well as reduce the number of inadvertent reporting errors. Further, a streamlined approach more accurately aligns the responsibility on the parties actually performing the trade reporting.

Discussion of Proposals

ATD supports the proposal designating the executing broker as the responsible reporting party because it is the most effective method of reporting trades.

FINRA noted in the release that proponents of the executing broker reporting structure contend that such an approach would better align the trade reporting responsibility with the party responsible for compliance with SEC Rule 611 of Regulation NMS (“the Order Protection Rule”). ATD agrees. Not only will the executing broker be the only party in a position to properly report an exception or exemption from the Order Protection Rule, but the executing broker will also be the party which knows the terms of the trade. Further, it is inherent in the current trading environment that the executing broker will be in the best position to correct reporting errors. Upon receiving an incoming order, the executing broker will assess the current market conditions to ensure compliance with the Order Protection Rule. The executing broker will be aware of any exemptions or exceptions to the Order Protection Rule as outlined in Regulation NMS, including but not limited to,

⁴ NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS. While market maker status for NMS securities generally does not change intraday, this does not eliminate the problems encountered as a result of late or inaccurate reports regarding market participant market maker status.

the declaration of self-help against a non-responsive market center, the existence of a crossed market in the security, or a flickering quotation in that security. The order-entry firm would only be made aware of the time of execution and price of the execution upon notification from the executing broker.

As noted above, industry practice is for the executing broker to submit the trade report. Under current rules (and under the proposal to make the seller always responsible for the trade report), the executing broker is often not the party with the regulatory responsibility for the trade report. If the non-executing broker has the obligation to perform the trade report, there are several obvious issues. As discussed above, the executing broker is the party with the responsibility to meet Reg NMS obligations. Further, some ATS/ECNs do not assume the responsibility for trade reporting, even where they are the executing broker. However, such ATS/ECNs almost universally require the ability to report trades pursuant to a USBEBA. Requiring the non-executing broker to be responsible for the trade report, even where they are not actually submitting the trade report, is a non-tenable situation.

Because the executing broker has superior knowledge of market conditions existing at the exact moment of execution, knowledge the order-entry broker would not be aware of⁵, implementation of the executing broker proposal would facilitate and accommodate the most effective and efficient reporting structure.

Defining “Executing Broker”

In today’s electronic trading environment, the identity of the order-entry broker will generally be readily apparent based on which party is initiating or seeking an execution. The executing broker’s identity will be equally apparent based on which party is receiving the order for execution. To illustrate this concept, assume Market Participant A is displaying a limit order at the inside to sell 100 shares at \$10.00. Market Participant B routes an order to buy 100 shares against Market Participant A’s displayed order. From this example, it is clear Market Participant A is the executing broker, and Market Participant B is the order entry broker. Market Participant B initiated, and thus sought out, an execution against Market Participant A’s limit order. Designating the executing broker, the party with the most knowledge of the trading terms and the greatest ability to effectuate error corrections, as the responsible party in a two-party trade results in the most efficient and accurate trade reporting structure.

⁵ Under the sell-side proposal, the order-entry broker could be, and often would be, the order-entry broker. The order-entry broker would not have the advantage of “real time” evaluation of market conditions during the execution. In the unlikely scenario where the non-executing sell-side broker attempted to submit the trade report, the sell-side broker (order-entry broker) would be required to conduct an ex-post facto review of market conditions. Alternatively, the sell-side broker would be required to review the trade reporting done by the executing broker even if the sell-side broker cannot know the state of the executing broker’s market data. This highlights how impractical it is to require the non-executing broker to be responsible for trade reporting.

While the identity of the executing broker is evident in today's electronic marketplace, there may be greater difficulty in determining who the executing broker is in a trade that occurs over the telephone. ATD proposes that FINRA implement an executing broker designation for trades occurring over the phone that would parallel the designations occurring in the electronic marketplace. Any broker seeking an execution by initiating a call to another broker would be designated as the "order-entry" broker. The broker who answers the call from the initiating broker would be designated as the "execution" broker. The answering broker would thus be the responsible reporting party to the trade executed over the phone, unless the two trading parties came to an agreement that specified otherwise. In effect, the broker answering the phone would be the "default" executing broker. This method of defining the executing broker offers a commonsensical and straightforward approach for trades executed over the telephone.

Technological Burdens and Implementation Horizon

ATD's technology team believes there are significantly fewer technological burdens associated with the implementation of the executing broker proposal as compared to the sell side broker proposal. The changes associated with the implementation of the executing broker proposal, while not trivial, require fewer changes to existing reporting structure code for an automated market maker. Not only is the executing broker proposal technologically more simplistic, but also, under the sell-side proposal, ATD believes the drawbacks of the current trade reporting structure is only exacerbated. Adoption of the executing broker proposal eliminates the need for the technology teams of market participants to review the reporting done by other parties.

ATD believes a three to six month implementation horizon is reasonable for the executing broker proposal. Due to the increased complexity and intrusive effect the sell-side broker proposal would have on existing automated reporting infrastructures, the time period for implementation of this proposal is much harder to estimate. ATD notes that these estimates are based on our firm's technical capabilities. Market participants and other firms may need additional time to implement these changes due to their respective technological resources and abilities. ATD further stresses that effective implementation of an alternative trade reporting method should occur on a single date as determined by FINRA. Any effort by FINRA to effectuate a phase-in process would be likely to result in substantial trade reporting errors experienced by firms across the marketplace. ATD believes the only way to implement an effective change, without causing trade reporting chaos, would be to set a definite date by which all firms must be compliant with the new rules.

Conclusion

Once again, ATD would like to commend FINRA for its outreach to market participants in seeking input on the two trade reporting proposals. ATD encourages FINRA to

continue their collaboration and cooperation with market participants in developing rules that most effectively govern the current trading environment. ATD strongly believes adoption of the executing broker proposal is a simple and commonsensical way to allocate trade reporting responsibilities in the marketplace.

ATD appreciates the chance to submit its views and welcomes any opportunity to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read 'S.E.S.', with a long horizontal flourish extending to the right.

Shane E. Swanson
Director of Compliance

Encl. (as stated)

cc: Jeff Martin, President (w/out encl.)
Deborah Howard, General Counsel (w/out encl.)