



February 24, 2015

Via Electronic Mail (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 14-51: Proposal Requiring the Identification of Non-Member Broker-Dealers in Order Audit Trail System Reports and the Reporting of Additional Order Information by Alternative Trading Systems

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to comment on the above-referenced Regulatory Notice published by the Financial Industry Regulatory Authority (“FINRA”). In the Regulatory Notice, FINRA requests comment on a proposal to amend the Order Audit Trail System (“OATS”) rules to require members to identify non-member broker-dealers when reporting orders received from those entities. FINRA is also proposing to require Alternative Trading Systems (“ATs”) to provide FINRA with additional order book information using existing OATS interfaces. The proposal is one of seven FINRA initiatives relating to equity market structure and automated trading activities.

For many years, SIFMA and its members have been vocal advocates and thought leaders on equity market structure issues. The U.S. equity markets are the deepest, most liquid and most efficient in the world, with investors enjoying extraordinarily low transaction costs, narrow spreads, and fast execution speeds. Nevertheless, SIFMA believes there are aspects of market structure that could be enhanced through steps designed to decrease unnecessary market complexity, increase transparency of market information, and promote fairness in access. To sharpen the focus on these important issues, SIFMA’s Board of Directors convened a broad-based task force in 2014 of members from across the country and across the industry, including retail and institutional dealers and asset managers, to develop a series of tangible and actionable

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

market structure reforms. Through this task force, SIFMA has developed more than a dozen specific recommendations for addressing equity market structure.²

SIFMA supports FINRA's goal of enhancing its ability to conduct automated surveillance and monitoring of trading activity on ATSS. However, we believe the data collection requirements of the proposal would not serve FINRA's goal because the requirements do not sufficiently account for the unique and customized trading functionalities that each ATS provides. In their current form, the proposed data collection requirements would impose unworkable operational burdens and FINRA has not sufficiently explained how this additional information would enhance its surveillance efforts. Before FINRA files the initiative with the Securities and Exchange Commission ("SEC") as a proposed rule change, we urge FINRA to work directly with SIFMA and its members to refine the proposal, with a goal of providing FINRA with workable data elements that would not impose unnecessarily excessive costs or risks to implement.

I. Reporting of Additional Order Information by ATSS

The Regulatory Notice states that the goal of the proposal is to enhance FINRA's ability to surveil activity occurring within an ATS, and by extension electronic and algorithmic trading more generally across markets. Under FINRA's proposal, ATSS exceeding a volume requirement would be required to report all events and order attributes that would change the ATS's system quantity (the number of shares of an order, whether displayed or undisplayed, that can currently execute within the ATS), the displayed quantity, the highest (buy orders) or lowest (sell orders) price at which the order can currently execute within the ATS, and the displayed price for an order. In addition, ATSS would be required to provide, for every order, the ATS book sequence identifier and the associated OATS identifier, which would link information about that order to the related information and full lifecycle reported to OATS. At the heart of the proposal is a goal of allowing FINRA to use OATS data to fully reconstruct an ATS order book for surveillance purposes.

In addition to the overall concern that the proposal would impose a significant operational burden without furthering FINRA's goal of enhanced surveillance, SIFMA members have a number of concerns with the specific aspects of the proposal. First, the proposal's one-size-fits-all reporting requirement does not take into account the variation of business models and trading functionalities across ATSS. For example, ATSS differentiate among themselves through sophisticated and individualized trading functionalities, which do not line up with standardized reporting models the way that traditional exchange trading models do. In addition, compliance with the proposal would require ATSS to carry out extremely significant systems changes, which would introduce unnecessary operational and systemic risk to the market.

² See SIFMA Equity Market Structure Recommendations (July 10, 2014), available at <http://www.sifma.org/workarea/downloadasset.aspx?id=8589949840>.

More specifically, the set of data elements that FINRA would require ATSs to collect and report reflect an incorrect assumption that every ATS's business model and matching protocol is the same, and that all ATSs function the same as an exchange. In fact, the business models of ATSs vary significantly because, by their very nature, each ATS seeks to provide a unique, "alternative" order handling and execution methodology. Not all ATSs follow a price/time priority methodology and rather differentiate themselves to meet the specific trading needs of a subset of market participants, for example by placing importance on size of transaction or investor type. Further, an ATS may provide its subscribers with the ability to place various restrictions (*e.g.* counterparty, size) on their orders which may result, by the subscriber's choice, in an otherwise available contra-side order being bypassed.

Several data elements stand out as examples of information that some ATSs do not maintain and would have to begin collecting solely for these requirements. In these cases, ATSs would have to capture, store and report brand new fields that are not otherwise required to be recorded and may have no relation to the ATS's business model, with no corresponding explanation of how the information would enhance FINRA's surveillance efforts.

- The proposal would require each ATS to record whether each order "was marketable on arrival" and whether the order "was not marketable and was placed on the book." However, some ATSs do not record whether or not incoming orders are marketable. In addition, depending on the subscriber's instructions a marketable order might not be executed right away and a non-marketable order might not be placed on an order book.
- The proposal would require ATSs to track the highest (for buy orders) or lowest (for sell orders) price at which an order can currently execute. However, some ATSs do not track this information for every incoming order because it may not be relevant to the matching logic of the trading system.

In addition, the complexity of the proposed data elements would unnecessarily increase operational risk to the market. Each ATS in scope would need to change multiple systems in order to operate in compliance with the proposed requirements, resulting in multiple ATSs making multiple systems changes at the same time. Any systems change, no matter how thoroughly prepared and tested, creates a risk of error and negative impact to the market. The proposed data collection requirements would result in a significant number of systems changes by ATSs with substantial market presence. Any mistake resulting from all of those systems changes could cause systemic problems.

Moreover, the proposal would result in ATSs being required to collect and transmit massive amounts of data. As an example, the proposal would require ATSs to track, record, and transmit extensive data for all price and size changes of each order. Taking aside the fact that some ATSs do not track this information to begin with, for each order that an ATS receives – which can be millions per day given millisecond trading speeds – ATSs would have to collect and record a multiple of those millions to track each theoretical price or size change and the

reason for each price and size change, among many other factors. Implementing these aspects of the proposal would require a significant amount of resources to accommodate the enormous increase in data required to be collected, transmitted, and retained.

In addition, FINRA's justification for the proposal is based in part on the incorrect predicate that ATSS should provide the same type of surveillance activity as exchanges. In this regard, FINRA states that it already receives these data elements in the order book information provided to FINRA by its exchange clients under Regulatory Services Agreements ("RSAs"), and this additional information would allow FINRA to have comparable information for both ATSS and exchanges. However, as SIFMA has noted before,³ exchanges serve a specific statutory role as self-regulatory organizations, under which they are responsible for regulating their member firms and enforcing compliance with the federal securities laws. In this regard, it is important to point out that FINRA's exchange clients provide order book information to FINRA *voluntarily*, under RSAs that they elect to negotiate and enter into pursuant to their own choice to outsource their regulatory functions to FINRA. If an exchange experiences issues with transmitting information to FINRA, the two parties resolve the matter as part of their business arrangement. Under the proposed rule, ATSS would be *required* to collect and provide data to a primary regulator as part of a regulatory requirement. If an ATSS were to experience issues with transmitting information required by the proposed rule to FINRA, it would then be subject to enforcement penalties and fines, even after the ATSS resolves the issue.

Taking all of these factors together, we believe FINRA can accomplish its goal of enhanced surveillance in a much less burdensome manner by narrowing the scope of the required data elements. SIFMA and its members stand ready to work with FINRA to find a workable solution.

II. Identification of Non-Member Broker-Dealers to OATS

SIFMA supports FINRA's proposal to require a reporting member that is reporting an order received from a broker-dealer that is not a FINRA member (non-member broker-dealer) to identify the non-member broker-dealer as part of their OATS reports. FINRA notes in the proposal that members would identify the non-member broker-dealer by including a unique non-member identifier on the OATS report that will allow FINRA to obtain the identity of the non-member broker-dealer. Specifically, this identifier would either be an existing Self-Regulatory Organization (SRO)-assigned identifier, such as a market participant identifier (MPID), or if a non-member broker-dealer does not have an SRO-assigned identifier that is available to FINRA, the Central Registration Depository (CRD) number of the non-member broker-dealer.⁴ However, FINRA does not address how member firms should identify non-U.S. broker-dealers, which do not have CRD numbers or MPIDs. For those cases, FINRA should clarify how non-

³ See Letter from Theodore R. Lazo, Managing Direct and Associate General Counsel, SIFMA to Mary Jo White, Chair, Securities and Exchange Commission dated July 31, 2013.

⁴ See FINRA Regulatory Notice 14-51.

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U.S. broker-dealers should be identified and what specific identifier should be used in the OATS report.

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SIFMA looks forward to discussing the proposal further with FINRA in order to refine the scope of the requirements. We will be in touch shortly to arrange a meeting. In the meantime, if you have any questions, please contact either me (at 202-962-7383 or tlazo@sifma.org) or Timothy Cummings (at 212-313-1239 or tcummings@sifma.org).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: Stephanie Dumont/FINRA