

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2015 - \* 020

Amendment No. (req. for Amendments \*)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant  
 to the Securities Exchange Act of 1934

Section 806(e)(1) \*

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Section 806(e)(2) \*

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Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Expand FINRA's Alternative Trading System ("ATS") Transparency Initiative to Publish OTC Equity Volume Executed Outside ATSS

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Lisa Last Name \* Horrigan  
 Title \* Associate General Counsel  
 E-mail \* lisa.horrigan@finra.org  
 Telephone \* (202) 728-8190 Fax (202) 728-8264

### Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 06/23/2015

By Stephanie Dumont

(Name \*)

Senior Vice President and Director of Capital Markets  
 Policy

Stephanie Dumont,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to expand FINRA’s alternative trading system (“ATS”) transparency initiative to publish the remaining equity volume executed over-the-counter (“OTC”) by FINRA members, including, among other trading activity, non-ATS electronic trading systems and internalized trades.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

At its meeting on September 18, 2014, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA proposes that the effective date of the proposed rule change will be no later than 180 days after Commission approval. Thus, FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2015 or first quarter of 2016 and will announce the specific date in a Regulatory Notice.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

Under FINRA rules, each member that operates an ATS is required to report its weekly volume, by security, to FINRA and also must use a unique market participant identifier ("MPID") for reporting order and trade information to FINRA. As part of these requirements, FINRA makes the reported volume and trade count information for equity securities publicly available on its website.<sup>2</sup> Pursuant to the proposed rule change, FINRA is proposing to amend Rules 6110 and 6610 to expand this transparency initiative by publishing the remaining OTC equity (or "non-ATS") volume by member firm and security.

FINRA is proposing to derive a firm's non-ATS volume information directly from OTC trades reported to FINRA's equity trade reporting facilities.<sup>3</sup> As such, members would not have any new or additional reporting requirements as a result of the proposed rule change. FINRA would base a firm's non-ATS volume on trades reported for dissemination purposes (or "tape reports") on which the firm is identified as the

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<sup>2</sup> FINRA currently does not publish ATS volume information regarding fixed income securities.

<sup>3</sup> FINRA's equity trade reporting facilities (collectively referred to herein as the "FINRA Facilities") are the Alternative Display Facility ("ADF") and the Trade Reporting Facilities ("TRF"), to which members report OTC transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS; and the OTC Reporting Facility ("ORF"), to which members report transactions in "OTC Equity Securities," as defined in FINRA Rule 6420 (i.e., non-NMS stocks such as OTC Bulletin Board and OTC Market securities), as well as transactions in Restricted Equity Securities, as defined in FINRA Rule 6420, effected pursuant to Securities Act Rule 144A.

member with the trade reporting obligation.<sup>4</sup> A firm's published trading volume information would not include trades for which the firm is the reported contra party,<sup>5</sup> nor would it include trades that are reported for regulatory or clearing purposes only (or "non-tape reports").

FINRA is proposing to publish on the FINRA website weekly volume information (number of trades and shares) by firm and security, with limited de minimis exceptions noted below, on a two-week or four-week delayed basis in accordance with the time frames specified for ATS volume publication.<sup>6</sup> Specifically, volume information would be published on a two-week delayed basis for NMS stocks in Tier 1 under the NMS Plan to Address Extraordinary Market Volatility (also referred to as the "Limit

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<sup>4</sup> Under FINRA rules, in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the "executing party," defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade. See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b).

<sup>5</sup> FINRA is proposing to include only volume from the executing party perspective because otherwise, published OTC volume would be overstated (i.e., publishing volume from both the executing party and contra party perspectives would double count that executed volume).

<sup>6</sup> See Rule 4552.

Up/Limit Down Plan”)<sup>7</sup> and a four-week delayed basis for all other NMS stocks and OTC Equity Securities.<sup>8</sup>

Based on feedback FINRA has received from firms, FINRA is also proposing to publish aggregate volume totals across all NMS stocks and aggregate volume totals across all OTC Equity Securities for each calendar month. FINRA proposes to publish monthly aggregate totals on a one month delayed basis, e.g., totals for the month of April would be published on or around June 1.

FINRA is proposing to publish non-ATS volume information at the firm level and not on an MPID-by-MPID basis. FINRA believes that this is appropriate because outside of the ATS context, not all firms have a separate MPID for each unique trading center at the firm, and as such, publishing volume information at the MPID level may not provide meaningful or consistent information to the marketplace. For members that use more than one MPID for their non-ATS trading,<sup>9</sup> FINRA proposes to aggregate and publish the non-ATS trading volume for all non-ATS MPIDs belonging to the firm under a single

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<sup>7</sup> Tier 1 NMS stocks include those NMS stocks in the S&P 500 Index or the Russell 1000 Index and certain ETPs. See NMS Plan to Address Extraordinary Market Volatility. FINRA will make changes to the Tier 1 NMS stocks in accordance with the Indices. Changes to the S&P 500 are made on an as needed basis and are not subject to an annual or semi-annual reconstitution. S&P typically does not add new issues until they have been seasoned for six to twelve months. Russell 1000 rebalancing typically takes place in June.

<sup>8</sup> FINRA notes that non-ATS volume data will be displayed in the same format in which ATS volume data is displayed today, i.e., aggregate volume for each firm across all NMS stocks (Tier 1 and all other NMS stocks) and OTC equity securities; aggregate volume for each security across all firms; and volume for each security by each firm (except with respect to the de minimis volume discussed below).

<sup>9</sup> For example, a firm may use separate MPIDs for its proprietary and agency desks.

“parent” identifier or firm name.<sup>10</sup> FINRA notes that a firm’s ATS volume will continue to be published separately under the unique MPID(s) for each ATS operated by the firm.

FINRA does not believe that publishing volume information for each firm that executed only a small number of trades or shares in any given period would provide meaningful information to the marketplace. Accordingly, as described in more detail below, FINRA is proposing to combine volume from all members that do not meet a specified minimum threshold and publish such “de minimis” volume information for those members on an aggregated basis. For example, if five firms each execute 10 trades in the reporting period in a security, their 50 trades would be aggregated and published as a single line item; the firms and their volume information would not be identified separately. For a firm with more than one non-ATS MPID, the total volume across all of its non-ATS MPIDs would be combined for purposes of determining whether the de minimis threshold has been met.

FINRA is proposing to establish a de minimis threshold of fewer than on average 200 non-ATS transactions per day executed by the firm across all securities or in a specific security during the one-week reporting period. This proposed threshold is based on the level of trading activity used by the SEC to identify “small market makers” for purposes of exemptive relief from the rule requiring market centers that trade NMS securities to make publicly available electronic reports that include uniform statistical

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<sup>10</sup> FINRA is able to identify all MPIDs belonging to a given firm based on currently available information, and as such, members will not have a new reporting obligation as a result of this proposal.

measures of execution quality (SEC Rule 605 of Regulation NMS).<sup>11</sup> In developing its proposal, FINRA reviewed volume statistics for firms across all securities for a one-week period (June 23 – 29, 2014). This review indicated that without applying any threshold, approximately 300 individual firms would have volume attributed by name. Looking at market participants with on average 200 or more trades per day across all securities, approximately 62 firms would have volume attributed by name and would account for 98.99 percent of all trading volume.

Thus, if a firm averages fewer than 200 non-ATS transactions per day across all securities during the reporting period, FINRA would aggregate the firm's volume with that of similarly situated firms. Additionally, because the published volume data would be broken down by security, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA would aggregate the firm's volume in that security with that of similarly situated firms, even if the firm averages more than 200 non-ATS transactions per day across all securities during the reporting period. FINRA notes that all of the OTC volume would be published, but for members that meet the de minimis threshold, their volume would not be attributed by name.

The proposed rule change will provide additional transparency into a significant portion of the OTC market.<sup>12</sup> Accordingly, FINRA believes that the proposed rule

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<sup>11</sup> Specifically, the SEC exempted any market center that reported fewer than 200 transactions per trading day on average over the preceding six-month period in securities that are covered by the rule. See letter from Annette L. Nazareth, Director, Division, to Richard Romano, Chair, and Carl P. Sherr, Co-Chair, NASD Small Firms Advisory Board, dated June 22, 2001.

<sup>12</sup> For example, for the period from March 16 through April 10, 2015, approximately 59 percent of the share volume of OTC trades in NMS stocks was executed outside an ATS.



change will enable the public to better understand a firm's equity trading activity off exchanges by reviewing the proposed non-ATS volume together with the current ATS volume reports. In this regard, FINRA notes that during the rulemaking process on the ATS transparency initiative, some commenters recommended broadening the proposal to include trade information for other OTC execution venues.

FINRA considered whether dividing published volume information into more granular categories, such as by trading capacity (i.e., principal versus agency or riskless principal) or by participant type (e.g., market maker), would be feasible or provide additional meaningful or reliable information to market participants. Segregating the data, e.g., by trading desk, would entail potentially significant development work by firms to sufficiently identify the activity for FINRA (e.g., volume attributable to a market making desk) and may not be consistent across firms, while also leading to some concerns about information leakage. Thus, FINRA is not proposing at this time to publish the non-ATS volume data at more granular levels than by firm and security.

In developing its approach, FINRA staff solicited industry input prior to presenting the proposal to FINRA's Board of Governors in September 2014. In addition to discussing the proposal with a number of FINRA's industry advisory committees, FINRA staff also informally consulted a number of firms, including large and mid-size firms with a variety of business models, as well as two buy-side firms. The committees and all but one of the consulted firms were generally supportive of the proposal. Some of the consulted firms noted that the published volume information would provide market participants with a better sense of flow in a given market segment and would most likely be used for purposes of market share or other longer-term quantitative market analysis.

However, because publication of the data necessarily would be delayed, the consulted firms believe that it would likely not be a valuable tool for such purposes as analyzing execution quality or making day-to-day order routing and trading decisions.

Several of the consulted firms and committee members expressed some concern about the potential for information leakage. The consulted firms agreed on the importance of delaying publication of non-ATS volume information, noting that the closer to real-time the information is published, the greater the risks that would result from disclosing a market participant's trading activity. One of the consulted firms was concerned about publication of non-ATS volume information at the market participant and security level, even on a delayed basis, asserting that other market participants would be able to download data associated with the firm's trading activity, re-engineer it to discern patterns of historical trading and identify similar patterns in future trading that could be used to their advantage (and to the firm's disadvantage). Even the firms that were generally supportive of the proposal to publish non-ATS volume information indicated that they would have concerns if the information were published at a more granular level.<sup>13</sup>

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<sup>13</sup> For example, with respect to publishing data according to trading capacity, several of the consulted firms expressed concern that a market participant's large position holdings could be discerned from the data (e.g., accumulations of proprietary positions in advance of ETF creations or secondary offerings). Similarly, the consulted firms did not believe that there would be value in getting more granular information, e.g., according to desk or department, noting that since the data would be historical and not real-time, it would not change behavior in terms of accessing liquidity. One firm commented that more granular information would not be reliable or consistent across firms, because not every firm has the same business model or desk structure. In addition, several of the firms indicated that they would be less supportive of a proposal that requires them to comply with a new reporting regime or undertake development work to be able to identify, e.g., volume attributable to a market making desk.

FINRA believes it has taken appropriate steps to address firms' concerns by delaying publication and limiting the granularity of the published information to firm and security. The proposed rule change is similar to the approach currently taken with respect to ATS volume information, and firms have not come to FINRA with any complaints regarding information leakage since FINRA began publishing ATS volume information. However, following implementation of the proposed rule change, FINRA will consider whether modifications are appropriate, e.g., to the scope of published information or the delay between trading activity and publication, based on feedback it may receive from interested parties, including firms and users of the data.

One of the consulted firms also indicated that FINRA should not charge for the data, noting that the potential value is diminished if it is another cost center for the industry. FINRA notes that it has determined not to charge a fee for the data that would be published pursuant to the proposed rule change and will make non-ATS OTC volume information available to the public for free in a downloadable format.

In addition to the oral feedback discussed above, FINRA solicited written comments on the proposal in Regulatory Notice 14-48 (November 2014), which are summarized below.

As noted in Item 2 of this filing, FINRA proposes that the effective date of the proposed rule change will be no later than 180 days after Commission approval. Thus, FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2015 or first quarter of 2016 and will announce the specific date in a Regulatory Notice.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide additional transparency into a significant portion of the OTC market and that the increased transparency will enable market participants and investors to better understand a firm's trading volume and market share in the equity market.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

**Regulatory Need**

FINRA's current rules require each member that operates an ATS to report its weekly trade volume information to FINRA. As part of these requirements, FINRA makes the information for equity securities available to the public, thereby providing market participants and investors useful information about trading activity in the ATS segment of the OTC equity market. The proposed rule change will expand this

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<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

transparency initiative by publishing the remaining OTC equity volume reported to FINRA. The increased transparency will enable the market to better understand a firm's trading volume, its market share in the equity market and the amount of OTC trading in each equity security.

#### Anticipated Benefits

The proposed rule change would expand the benefits of FINRA's ATS transparency initiative by providing additional transparency to the remaining equity volume executed in the non-ATS segment of the OTC equity market. The trading activity in this non-ATS segment represents a significant portion of the overall equity trading in the OTC market.<sup>15</sup> The increased transparency would enable market participants and investors to better understand the overall equity trading in the OTC market as well as the amount of OTC trading in individual equity securities. Furthermore, the expansion of transparency would help the marketplace better understand a firm's overall OTC trading of equities, thereby enhancing their understanding of executing firms' trading volume and market shares in the equity market.

#### Anticipated Costs

The proposed rule change would not impose any additional reporting requirements on firms since FINRA will directly derive the non-ATS volume data from OTC trades reported to FINRA's equity trade reporting facilities. As a result, the proposed rule would have minimal impact on firms from a systems development and reporting perspective.

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<sup>15</sup> See, e.g., Laura Tuttle, "OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks" (March 2014). Tuttle reports that the non-ATS segment of the OTC market in NMS stocks is larger than the ATS segment.

### Other Economic Impacts

In developing this proposal, FINRA considered whether a firm's trading strategy could be discerned from the published data. FINRA believes that the proposed rule change mitigates such information leakage concerns by delaying the publication of trading volumes and by limiting the granularity of the published information. The proposed rule change is a well-calibrated effort to reduce information leakage concerns and to provide market participants access to meaningful information on non-ATS trading activity. FINRA believes that the proposed rule change will not impose differential risks of information leakage on firms. Moreover, by expanding transparency to all OTC equity trading by FINRA members, the proposed rule change would bridge gaps in information published across ATS versus non-ATS segments of the OTC equity market, thereby reducing any competitive distortions that may be associated with such information gaps.

### Alternatives

In considering how to best meet its regulatory objectives, FINRA considered several alternatives to particular features of this proposed rule change. For example, FINRA considered whether publishing volume information at a more granular level (e.g. by trading capacity or by participant type) would provide additional useful information to market participants, and the costs associated with such an alternative. FINRA believes that segregating the data, e.g., by trading desk, would entail significant development work by firms, without commensurate benefit to market participants. In addition, as discussed in more detail above, several commenters raised concerns about information leakage with publishing more granular data. Accordingly, FINRA has determined not to publish data at a more granular level than by firm and security.

FINRA also considered publishing non-ATS volume information at the MPID level, as opposed to the firm level. FINRA believes that publishing information at the firm level is more appropriate because not all firms have a separate MPID for each unique trading center at the firm. Accordingly, publishing volume information at the firm level would likely provide more consistent information to the marketplace.

In developing this proposal, FINRA also considered alternative approaches related to publishing volume information for firms with minimal non-ATS trading activity. As discussed in more detail above, FINRA does not believe that publishing volume information separately for each firm with minimal trading would provide meaningful information to the marketplace. Accordingly, FINRA is proposing to combine volume from all members with trading activity below a de minimis threshold of on average 200 transactions per day. FINRA considered several alternative de minimis thresholds and solicited comment on these alternatives in Regulatory Notice 14-48. FINRA believes that the proposed de minimis threshold is reasonable as it would account for the vast majority<sup>16</sup> of the total non-ATS trading volume and is also consistent with the level of trading activity used by the SEC to identify “small market makers” for SEC Rule 605 of Regulation NMS.

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<sup>16</sup> As discussed above, based on its review of recent trading volume statistics, FINRA estimates that the proposed de minimis threshold would account for approximately 99% of the overall non-ATS trading volume, and as a result the vast majority of the trading volume would be attributed by firm name under the proposed rule change.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

The proposed rule change was published for comment in Regulatory Notice 14-48 (November 2014). Three comments were received in response to the Regulatory Notice.<sup>17</sup> A copy of the Regulatory Notice is attached as Exhibit 2a. Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c. The comments are summarized below.

All three commenters generally supported the proposal. One commenter specifically noted that the data can be used by market participants, regulators and academics to better understand and track trends in OTC trading generally, and can also help investors better evaluate the routing and execution practices of individual firms.<sup>18</sup> This commenter agreed with the proposal to publish non-ATS volume information at the firm (rather than MPID) level, while another commenter disagreed with this aspect of the proposal, stating that the trade publication should identify the matching engine with a unique identifier.<sup>19</sup> FINRA agrees that publication at the MPID level makes sense in the context of ATS executions; however, as noted above, outside of the ATS context, not all firms have a separate MPID for each unique trading center at the firm, and as such,

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<sup>17</sup> See Letter from Stéphane Tyč, Co-founder, Quincy Data, LLC to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 9, 2015 ("QD Letter"); letter from John Ramsay, Chief Market Policy and Regulatory Officer, IEX Services LLC to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 12, 2015 ("IEX Letter"); and letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 20, 2015 ("SIFMA Letter").

<sup>18</sup> See IEX Letter.

<sup>19</sup> See QD Letter.



publishing volume information at the MPID level may not provide meaningful or consistent information to the marketplace.

One commenter agreed with the proposal to aggregate volume information for firms with a de minimis amount of OTC volume, noting that it is a reasonable way to assure that the published information will be meaningful and free of the “noise” that could otherwise arise from a broader publication measure.<sup>20</sup> On the other hand, another commenter disagreed with the proposal to aggregate data for firms with a de minimis amount of trading, noting that they believe in simple rules with no exceptions.<sup>21</sup> However, this commenter did not discuss the potential value of publishing unaggregated volume information for firms with only a small number of trades. As discussed above, FINRA does not believe that publishing volume information below the proposed de minimis threshold would provide meaningful information to the marketplace.

One commenter suggested using an alternate notional volume measure as part of the de minimis threshold so that firms doing relatively few trades but in large notional volume are included.<sup>22</sup> FINRA believes that the potential costs and additional resources, including technology infrastructure, that would be required to implement a second de minimis threshold measure would outweigh any potential benefit. In addition, FINRA is concerned that utilizing two different threshold measures may be confusing to consumers of the data, and believes that a single threshold measure, based on number of trades, would be the simplest and easiest to understand. However, as noted above, following

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<sup>20</sup> See IEX Letter.

<sup>21</sup> See QD Letter.

<sup>22</sup> See IEX Letter.

implementation of the proposed rule change, FINRA will consider whether modifications are appropriate, including whether changes to the de minimis threshold would be appropriate, based on feedback it may receive from interested parties.

Another commenter expressed concern that the proposed two-week publication timeframe for Tier 1 NMS stocks may result in unintended information leakage, and in particular disclosure of large institutional trades, which could enable reverse engineering of those trades if published within two weeks of execution.<sup>23</sup> To address the information leakage concerns, this commenter recommended aggregation on a monthly, not weekly basis, and publishing on a four-week delayed basis. Another commenter stated that a delay of one month is sufficient to enable broker-dealers to manage their risk, but also recommended that FINRA consider the shortest publication time that provides enough time to manage the risk of a position, which could differ by security class (e.g., two weeks for liquid equities and six months for illiquid bonds).<sup>24</sup> This commenter further noted that it supports the publication of complete and fully granular data, without specifying the level of granularity or how to mitigate the attendant risk of information leakage.<sup>25</sup>

As discussed above, FINRA considered the potential for information leakage in developing its proposal and believes that it has taken adequate steps to mitigate that potential by, among other things, proposing to publish non-ATS volume information on

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<sup>23</sup> See SIFMA Letter.

<sup>24</sup> See QD Letter. FINRA notes that the proposed rule change applies only to OTC equity volume; information for fixed income securities would not be published as part of this proposal.

<sup>25</sup> See QD Letter.

the same delayed basis that is used for ATS volume data, as well as at the firm, rather than MPID, level and not further segregating volume information by trading capacity or trading desk.

One commenter opposes FINRA charging for non-ATS volume information.<sup>26</sup> As noted above, FINRA has determined not to charge for the non-ATS volume information that would be published pursuant to the proposed rule change.

Finally, several comments submitted on Regulatory Notice 14-48 are not germane to the proposal. One commenter urged FINRA to eliminate the current requirement for ATSs to report volume information to FINRA.<sup>27</sup> FINRA notes that elimination of the ATS volume reporting requirement will be addressed in a separate proposed rule change by FINRA. Another commenter proposed an alternative to the consolidated audit trail,<sup>28</sup> which is not germane to the proposed rule change and does not warrant a specific response.

**6. Extension of Time Period for Commission Action**

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>29</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

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<sup>26</sup> See SIFMA Letter.

<sup>27</sup> See SIFMA Letter.

<sup>28</sup> See QD Letter.

<sup>29</sup> 15 U.S.C. 78s(b)(2).

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Regulatory Notice 14-48 (November 2014).

Exhibit 2b. List of commenters.

Exhibit 2c. Comments received in response to Regulatory Notice 14-48.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2015-020)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Expand FINRA's Alternative Trading System ("ATS") Transparency Initiative to Publish OTC Equity Volume Executed Outside ATSS

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to expand FINRA's alternative trading system ("ATS") transparency initiative to publish the remaining equity volume executed over-the-counter ("OTC") by FINRA members, including, among other trading activity, non-ATS electronic trading systems and internalized trades.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under FINRA rules, each member that operates an ATS is required to report its weekly volume, by security, to FINRA and also must use a unique market participant identifier ("MPID") for reporting order and trade information to FINRA. As part of these requirements, FINRA makes the reported volume and trade count information for equity securities publicly available on its website.<sup>3</sup> Pursuant to the proposed rule change, FINRA is proposing to amend Rules 6110 and 6610 to expand this transparency initiative by publishing the remaining OTC equity (or "non-ATS") volume by member firm and security.

FINRA is proposing to derive a firm's non-ATS volume information directly from OTC trades reported to FINRA's equity trade reporting facilities.<sup>4</sup> As such,

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<sup>3</sup> FINRA currently does not publish ATS volume information regarding fixed income securities.

<sup>4</sup> FINRA's equity trade reporting facilities (collectively referred to herein as the "FINRA Facilities") are the Alternative Display Facility ("ADF") and the Trade Reporting Facilities ("TRF"), to which members report OTC transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS; and the OTC Reporting Facility ("ORF"), to which members report transactions in "OTC

members would not have any new or additional reporting requirements as a result of the proposed rule change. FINRA would base a firm's non-ATS volume on trades reported for dissemination purposes (or "tape reports") on which the firm is identified as the member with the trade reporting obligation.<sup>5</sup> A firm's published trading volume information would not include trades for which the firm is the reported contra party,<sup>6</sup> nor would it include trades that are reported for regulatory or clearing purposes only (or "non-tape reports").

FINRA is proposing to publish on the FINRA website weekly volume information (number of trades and shares) by firm and security, with limited de minimis exceptions noted below, on a two-week or four-week delayed basis in accordance with the time frames specified for ATS volume publication.<sup>7</sup> Specifically, volume information would be published on a two-week delayed basis for NMS stocks in Tier 1 under the NMS Plan to Address Extraordinary Market Volatility (also referred to as the "Limit

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Equity Securities," as defined in FINRA Rule 6420 (i.e., non-NMS stocks such as OTC Bulletin Board and OTC Market securities), as well as transactions in Restricted Equity Securities, as defined in FINRA Rule 6420, effected pursuant to Securities Act Rule 144A.

<sup>5</sup> Under FINRA rules, in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the "executing party," defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade. See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b).

<sup>6</sup> FINRA is proposing to include only volume from the executing party perspective because otherwise, published OTC volume would be overstated (i.e., publishing volume from both the executing party and contra party perspectives would double count that executed volume).

<sup>7</sup> See Rule 4552.

Up/Limit Down Plan”)<sup>8</sup> and a four-week delayed basis for all other NMS stocks and OTC Equity Securities.<sup>9</sup>

Based on feedback FINRA has received from firms, FINRA is also proposing to publish aggregate volume totals across all NMS stocks and aggregate volume totals across all OTC Equity Securities for each calendar month. FINRA proposes to publish monthly aggregate totals on a one month delayed basis, e.g., totals for the month of April would be published on or around June 1.

FINRA is proposing to publish non-ATS volume information at the firm level and not on an MPID-by-MPID basis. FINRA believes that this is appropriate because outside of the ATS context, not all firms have a separate MPID for each unique trading center at the firm, and as such, publishing volume information at the MPID level may not provide meaningful or consistent information to the marketplace. For members that use more than one MPID for their non-ATS trading,<sup>10</sup> FINRA proposes to aggregate and publish the non-ATS trading volume for all non-ATS MPIDs belonging to the firm under a single

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<sup>8</sup> Tier 1 NMS stocks include those NMS stocks in the S&P 500 Index or the Russell 1000 Index and certain ETPs. See NMS Plan to Address Extraordinary Market Volatility. FINRA will make changes to the Tier 1 NMS stocks in accordance with the Indices. Changes to the S&P 500 are made on an as needed basis and are not subject to an annual or semi-annual reconstitution. S&P typically does not add new issues until they have been seasoned for six to twelve months. Russell 1000 rebalancing typically takes place in June.

<sup>9</sup> FINRA notes that non-ATS volume data will be displayed in the same format in which ATS volume data is displayed today, i.e., aggregate volume for each firm across all NMS stocks (Tier 1 and all other NMS stocks) and OTC equity securities; aggregate volume for each security across all firms; and volume for each security by each firm (except with respect to the de minimis volume discussed below).

<sup>10</sup> For example, a firm may use separate MPIDs for its proprietary and agency desks.



“parent” identifier or firm name.<sup>11</sup> FINRA notes that a firm’s ATS volume will continue to be published separately under the unique MPID(s) for each ATS operated by the firm.

FINRA does not believe that publishing volume information for each firm that executed only a small number of trades or shares in any given period would provide meaningful information to the marketplace. Accordingly, as described in more detail below, FINRA is proposing to combine volume from all members that do not meet a specified minimum threshold and publish such “de minimis” volume information for those members on an aggregated basis. For example, if five firms each execute 10 trades in the reporting period in a security, their 50 trades would be aggregated and published as a single line item; the firms and their volume information would not be identified separately. For a firm with more than one non-ATS MPID, the total volume across all of its non-ATS MPIDs would be combined for purposes of determining whether the de minimis threshold has been met.

FINRA is proposing to establish a de minimis threshold of fewer than on average 200 non-ATS transactions per day executed by the firm across all securities or in a specific security during the one-week reporting period. This proposed threshold is based on the level of trading activity used by the SEC to identify “small market makers” for purposes of exemptive relief from the rule requiring market centers that trade NMS securities to make publicly available electronic reports that include uniform statistical measures of execution quality (SEC Rule 605 of Regulation NMS).<sup>12</sup> In developing its

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<sup>11</sup> FINRA is able to identify all MPIDs belonging to a given firm based on currently available information, and as such, members will not have a new reporting obligation as a result of this proposal.

<sup>12</sup> Specifically, the SEC exempted any market center that reported fewer than 200 transactions per trading day on average over the preceding six-month period in

proposal, FINRA reviewed volume statistics for firms across all securities for a one-week period (June 23 – 29, 2014). This review indicated that without applying any threshold, approximately 300 individual firms would have volume attributed by name. Looking at market participants with on average 200 or more trades per day across all securities, approximately 62 firms would have volume attributed by name and would account for 98.99 percent of all trading volume.

Thus, if a firm averages fewer than 200 non-ATS transactions per day across all securities during the reporting period, FINRA would aggregate the firm's volume with that of similarly situated firms. Additionally, because the published volume data would be broken down by security, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA would aggregate the firm's volume in that security with that of similarly situated firms, even if the firm averages more than 200 non-ATS transactions per day across all securities during the reporting period. FINRA notes that all of the OTC volume would be published, but for members that meet the de minimis threshold, their volume would not be attributed by name.

The proposed rule change will provide additional transparency into a significant portion of the OTC market.<sup>13</sup> Accordingly, FINRA believes that the proposed rule change will enable the public to better understand a firm's equity trading activity off exchanges by reviewing the proposed non-ATS volume together with the current ATS

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securities that are covered by the rule. See letter from Annette L. Nazareth, Director, Division, to Richard Romano, Chair, and Carl P. Sherr, Co-Chair, NASD Small Firms Advisory Board, dated June 22, 2001.

<sup>13</sup> For example, for the period from March 16 through April 10, 2015, approximately 59 percent of the share volume of OTC trades in NMS stocks was executed outside an ATS.

volume reports. In this regard, FINRA notes that during the rulemaking process on the ATS transparency initiative, some commenters recommended broadening the proposal to include trade information for other OTC execution venues.

FINRA considered whether dividing published volume information into more granular categories, such as by trading capacity (i.e., principal versus agency or riskless principal) or by participant type (e.g., market maker), would be feasible or provide additional meaningful or reliable information to market participants. Segregating the data, e.g., by trading desk, would entail potentially significant development work by firms to sufficiently identify the activity for FINRA (e.g., volume attributable to a market making desk) and may not be consistent across firms, while also leading to some concerns about information leakage. Thus, FINRA is not proposing at this time to publish the non-ATS volume data at more granular levels than by firm and security.

In developing its approach, FINRA staff solicited industry input prior to presenting the proposal to FINRA's Board of Governors in September 2014. In addition to discussing the proposal with a number of FINRA's industry advisory committees, FINRA staff also informally consulted a number of firms, including large and mid-size firms with a variety of business models, as well as two buy-side firms. The committees and all but one of the consulted firms were generally supportive of the proposal. Some of the consulted firms noted that the published volume information would provide market participants with a better sense of flow in a given market segment and would most likely be used for purposes of market share or other longer-term quantitative market analysis. However, because publication of the data necessarily would be delayed, the consulted

firms believe that it would likely not be a valuable tool for such purposes as analyzing execution quality or making day-to-day order routing and trading decisions.

Several of the consulted firms and committee members expressed some concern about the potential for information leakage. The consulted firms agreed on the importance of delaying publication of non-ATS volume information, noting that the closer to real-time the information is published, the greater the risks that would result from disclosing a market participant's trading activity. One of the consulted firms was concerned about publication of non-ATS volume information at the market participant and security level, even on a delayed basis, asserting that other market participants would be able to download data associated with the firm's trading activity, re-engineer it to discern patterns of historical trading and identify similar patterns in future trading that could be used to their advantage (and to the firm's disadvantage). Even the firms that were generally supportive of the proposal to publish non-ATS volume information indicated that they would have concerns if the information were published at a more granular level.<sup>14</sup>

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<sup>14</sup> For example, with respect to publishing data according to trading capacity, several of the consulted firms expressed concern that a market participant's large position holdings could be discerned from the data (e.g., accumulations of proprietary positions in advance of ETF creations or secondary offerings). Similarly, the consulted firms did not believe that there would be value in getting more granular information, e.g., according to desk or department, noting that since the data would be historical and not real-time, it would not change behavior in terms of accessing liquidity. One firm commented that more granular information would not be reliable or consistent across firms, because not every firm has the same business model or desk structure. In addition, several of the firms indicated that they would be less supportive of a proposal that requires them to comply with a new reporting regime or undertake development work to be able to identify, e.g., volume attributable to a market making desk.

FINRA believes it has taken appropriate steps to address firms' concerns by delaying publication and limiting the granularity of the published information to firm and security. The proposed rule change is similar to the approach currently taken with respect to ATS volume information, and firms have not come to FINRA with any complaints regarding information leakage since FINRA began publishing ATS volume information. However, following implementation of the proposed rule change, FINRA will consider whether modifications are appropriate, e.g., to the scope of published information or the delay between trading activity and publication, based on feedback it may receive from interested parties, including firms and users of the data.

One of the consulted firms also indicated that FINRA should not charge for the data, noting that the potential value is diminished if it is another cost center for the industry. FINRA notes that it has determined not to charge a fee for the data that would be published pursuant to the proposed rule change and will make non-ATS OTC volume information available to the public for free in a downloadable format.

In addition to the oral feedback discussed above, FINRA solicited written comments on the proposal in Regulatory Notice 14-48 (November 2014), which are summarized below.

FINRA proposes that the effective date of the proposed rule change will be no later than 180 days after Commission approval. Thus, FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2015 or first quarter of 2016 and will announce the specific date in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>15</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide additional transparency into a significant portion of the OTC market and that the increased transparency will enable market participants and investors to better understand a firm's trading volume and market share in the equity market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

FINRA's current rules require each member that operates an ATS to report its weekly trade volume information to FINRA. As part of these requirements, FINRA makes the information for equity securities available to the public, thereby providing market participants and investors useful information about trading activity in the ATS segment of the OTC equity market. The proposed rule change will expand this

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<sup>15</sup> 15 U.S.C. 78o-3(b)(6).

transparency initiative by publishing the remaining OTC equity volume reported to FINRA. The increased transparency will enable the market to better understand a firm's trading volume, its market share in the equity market and the amount of OTC trading in each equity security.

#### Anticipated Benefits

The proposed rule change would expand the benefits of FINRA's ATS transparency initiative by providing additional transparency to the remaining equity volume executed in the non-ATS segment of the OTC equity market. The trading activity in this non-ATS segment represents a significant portion of the overall equity trading in the OTC market.<sup>16</sup> The increased transparency would enable market participants and investors to better understand the overall equity trading in the OTC market as well as the amount of OTC trading in individual equity securities. Furthermore, the expansion of transparency would help the marketplace better understand a firm's overall OTC trading of equities, thereby enhancing their understanding of executing firms' trading volume and market shares in the equity market.

#### Anticipated Costs

The proposed rule change would not impose any additional reporting requirements on firms since FINRA will directly derive the non-ATS volume data from OTC trades reported to FINRA's equity trade reporting facilities. As a result, the proposed rule would have minimal impact on firms from a systems development and reporting perspective.

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<sup>16</sup> See, e.g., Laura Tuttle, "OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks" (March 2014). Tuttle reports that the non-ATS segment of the OTC market in NMS stocks is larger than the ATS segment.

### Other Economic Impacts

In developing this proposal, FINRA considered whether a firm's trading strategy could be discerned from the published data. FINRA believes that the proposed rule change mitigates such information leakage concerns by delaying the publication of trading volumes and by limiting the granularity of the published information. The proposed rule change is a well-calibrated effort to reduce information leakage concerns and to provide market participants access to meaningful information on non-ATS trading activity. FINRA believes that the proposed rule change will not impose differential risks of information leakage on firms. Moreover, by expanding transparency to all OTC equity trading by FINRA members, the proposed rule change would bridge gaps in information published across ATS versus non-ATS segments of the OTC equity market, thereby reducing any competitive distortions that may be associated with such information gaps.

### Alternatives

In considering how to best meet its regulatory objectives, FINRA considered several alternatives to particular features of this proposed rule change. For example, FINRA considered whether publishing volume information at a more granular level (e.g. by trading capacity or by participant type) would provide additional useful information to market participants, and the costs associated with such an alternative. FINRA believes that segregating the data, e.g., by trading desk, would entail significant development work by firms, without commensurate benefit to market participants. In addition, as discussed in more detail above, several commenters raised concerns about information leakage with publishing more granular data. Accordingly, FINRA has determined not to publish data at a more granular level than by firm and security.



FINRA also considered publishing non-ATS volume information at the MPID level, as opposed to the firm level. FINRA believes that publishing information at the firm level is more appropriate because not all firms have a separate MPID for each unique trading center at the firm. Accordingly, publishing volume information at the firm level would likely provide more consistent information to the marketplace.

In developing this proposal, FINRA also considered alternative approaches related to publishing volume information for firms with minimal non-ATS trading activity. As discussed in more detail above, FINRA does not believe that publishing volume information separately for each firm with minimal trading would provide meaningful information to the marketplace. Accordingly, FINRA is proposing to combine volume from all members with trading activity below a de minimis threshold of on average 200 transactions per day. FINRA considered several alternative de minimis thresholds and solicited comment on these alternatives in Regulatory Notice 14-48. FINRA believes that the proposed de minimis threshold is reasonable as it would account for the vast majority<sup>17</sup> of the total non-ATS trading volume and is also consistent with the level of trading activity used by the SEC to identify “small market makers” for SEC Rule 605 of Regulation NMS.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in Regulatory Notice 14-48 (November 2014). Three comments were received in response to the Regulatory

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<sup>17</sup> As discussed above, based on its review of recent trading volume statistics, FINRA estimates that the proposed de minimis threshold would account for approximately 99% of the overall non-ATS trading volume, and as a result the vast majority of the trading volume would be attributed by firm name under the proposed rule change.

Notice.<sup>18</sup> A copy of the Regulatory Notice is attached as Exhibit 2a. Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c. The comments are summarized below.

All three commenters generally supported the proposal. One commenter specifically noted that the data can be used by market participants, regulators and academics to better understand and track trends in OTC trading generally, and can also help investors better evaluate the routing and execution practices of individual firms.<sup>19</sup> This commenter agreed with the proposal to publish non-ATS volume information at the firm (rather than MPID) level, while another commenter disagreed with this aspect of the proposal, stating that the trade publication should identify the matching engine with a unique identifier.<sup>20</sup> FINRA agrees that publication at the MPID level makes sense in the context of ATS executions; however, as noted above, outside of the ATS context, not all firms have a separate MPID for each unique trading center at the firm, and as such, publishing volume information at the MPID level may not provide meaningful or consistent information to the marketplace.

One commenter agreed with the proposal to aggregate volume information for firms with a de minimis amount of OTC volume, noting that it is a reasonable way to

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<sup>18</sup> See Letter from Stéphane Tyč, Co-founder, Quincy Data, LLC to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 9, 2015 (“QD Letter”); letter from John Ramsay, Chief Market Policy and Regulatory Officer, IEX Services LLC to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 12, 2015 (“IEX Letter”); and letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 20, 2015 (“SIFMA Letter”).

<sup>19</sup> See IEX Letter.

<sup>20</sup> See QD Letter.

assure that the published information will be meaningful and free of the “noise” that could otherwise arise from a broader publication measure.<sup>21</sup> On the other hand, another commenter disagreed with the proposal to aggregate data for firms with a de minimis amount of trading, noting that they believe in simple rules with no exceptions.<sup>22</sup> However, this commenter did not discuss the potential value of publishing unaggregated volume information for firms with only a small number of trades. As discussed above, FINRA does not believe that publishing volume information below the proposed de minimis threshold would provide meaningful information to the marketplace.

One commenter suggested using an alternate notional volume measure as part of the de minimis threshold so that firms doing relatively few trades but in large notional volume are included.<sup>23</sup> FINRA believes that the potential costs and additional resources, including technology infrastructure, that would be required to implement a second de minimis threshold measure would outweigh any potential benefit. In addition, FINRA is concerned that utilizing two different threshold measures may be confusing to consumers of the data, and believes that a single threshold measure, based on number of trades, would be the simplest and easiest to understand. However, as noted above, following implementation of the proposed rule change, FINRA will consider whether modifications are appropriate, including whether changes to the de minimis threshold would be appropriate, based on feedback it may receive from interested parties.

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<sup>21</sup> See IEX Letter.

<sup>22</sup> See QD Letter.

<sup>23</sup> See IEX Letter.

Another commenter expressed concern that the proposed two-week publication timeframe for Tier 1 NMS stocks may result in unintended information leakage, and in particular disclosure of large institutional trades, which could enable reverse engineering of those trades if published within two weeks of execution.<sup>24</sup> To address the information leakage concerns, this commenter recommended aggregation on a monthly, not weekly basis, and publishing on a four-week delayed basis. Another commenter stated that a delay of one month is sufficient to enable broker-dealers to manage their risk, but also recommended that FINRA consider the shortest publication time that provides enough time to manage the risk of a position, which could differ by security class (e.g., two weeks for liquid equities and six months for illiquid bonds).<sup>25</sup> This commenter further noted that it supports the publication of complete and fully granular data, without specifying the level of granularity or how to mitigate the attendant risk of information leakage.<sup>26</sup>

As discussed above, FINRA considered the potential for information leakage in developing its proposal and believes that it has taken adequate steps to mitigate that potential by, among other things, proposing to publish non-ATS volume information on the same delayed basis that is used for ATS volume data, as well as at the firm, rather than MPID, level and not further segregating volume information by trading capacity or trading desk.

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<sup>24</sup> See SIFMA Letter.

<sup>25</sup> See QD Letter. FINRA notes that the proposed rule change applies only to OTC equity volume; information for fixed income securities would not be published as part of this proposal.

<sup>26</sup> See QD Letter.

One commenter opposes FINRA charging for non-ATS volume information.<sup>27</sup>

As noted above, FINRA has determined not to charge for the non-ATS volume information that would be published pursuant to the proposed rule change.

Finally, several comments submitted on Regulatory Notice 14-48 are not germane to the proposal. One commenter urged FINRA to eliminate the current requirement for ATSs to report volume information to FINRA.<sup>28</sup> FINRA notes that elimination of the ATS volume reporting requirement will be addressed in a separate proposed rule change by FINRA. Another commenter proposed an alternative to the consolidated audit trail,<sup>29</sup> which is not germane to the proposed rule change and does not warrant a specific response.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>27</sup> See SIFMA Letter.

<sup>28</sup> See SIFMA Letter.

<sup>29</sup> See QD Letter.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-020 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street,

NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-020 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

Robert W. Errett  
Deputy Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).

# Regulatory Notice

14-48

## Equity Trading Initiatives: OTC Equity Trading Volume

### FINRA Requests Comment on a Proposal to Publish OTC Equity Volume Executed Outside Alternative Trading Systems

Comment Period Expires: Friday, January 9, 2015

#### Executive Summary

FINRA requests comment on a proposal to expand FINRA's alternative trading system (ATS) transparency initiative to publish the remaining equity volume executed over-the-counter (OTC), including non-ATS electronic trading systems and internalized trades. FINRA believes that the public will be able to better understand a firm's trading of equities off exchanges by reviewing the firm's new OTC equity trading volume information together with its existing ATS volume reports.

The proposed rule text is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Dave Chapman, Director, Market Regulation, at (240) 386-4995;
- ▶ Brendan Loonam, Director, Business Services, at (212) 858-4203; or
- ▶ Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190.

November 2014

#### Notice Type

- ▶ Request for Comment

#### Suggested Routing

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

#### Key Topics

- ▶ Alternative Display Facility
- ▶ NMS Securities
- ▶ OTC Equity Securities
- ▶ OTC Reporting Facility
- ▶ Trade Reporting
- ▶ Trade Reporting Facilities

#### Referenced Rules & Notices

- ▶ FINRA Rule 4552
- ▶ FINRA Rule 4553
- ▶ FINRA Rule 6282
- ▶ FINRA Rule 6380A
- ▶ FINRA Rule 6380B
- ▶ FINRA Rule 6622



## Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by Friday, January 9, 2015.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to [pubcom@finra.org](mailto:pubcom@finra.org); or
- ▶ Mailing comments in hard copy to:  
 Marcia E. Asquith  
 Office of the Corporate Secretary  
 FINRA  
 1735 K Street, NW  
 Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

**Important Notes:** The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.<sup>1</sup>

Before becoming effective, the proposed rule change must be filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the SEA.<sup>2</sup>

## Background & Discussion

The proposal set forth in this *Notice* is one of seven FINRA initiatives relating to equity market structure and automated trading activities including high frequency trading (HFT).<sup>3</sup> These initiatives are designed to increase the scope of trading information FINRA receives, provide more transparency into trading activities to market participants and investors and require firms engaged in electronic trading and their employees to be trained, educated and accountable for their role in equity trading.

Under FINRA rules, each ATS is required to report its weekly volume, by security, to FINRA, and as of February 2, 2015, each ATS must use a unique market participant identifier (MPID) for reporting order and trade information to FINRA. As part of these requirements, FINRA makes the reported volume and trade count information for equity securities publicly available on its website.<sup>4</sup> Pursuant to the proposal, FINRA is considering expanding this transparency initiative by publishing the remaining equity trading volume executed OTC by each firm on a security-by-security basis. The proposal would provide additional transparency into a significant portion of the OTC market<sup>5</sup> by enabling market participants and investors to get a better understanding of each firm's OTC trading.

FINRA would derive a firm's non-ATS volume information directly from OTC trades reported to FINRA's equity trade reporting facilities (*i.e.*, the Alternative Display Facility, a Trade Reporting Facility or the OTC Reporting Facility). As such, firms would not have any new or additional reporting requirements as a result of the proposal. A firm's non-ATS volume would be based on trades reported for dissemination purposes—or "tape reports"—on which the firm is identified as the member firm with the trade reporting obligation—or "Executing Party."<sup>6</sup> A firm's published trading volume information would not include trades for which the firm is the reported contra party,<sup>7</sup> nor would it include trades that are reported for regulatory or clearing purposes only—or "non-tape reports." Volume information for each equity security would be published on the FINRA website on a two-week or four-week delayed basis in accordance with the time frames specified for ATS volume publication.<sup>8</sup>

As noted above, FINRA would publish non-ATS trading volume information at the firm level and not on an MPID-by-MPID basis. FINRA believes that this is appropriate because, outside of the ATS context, not all firms have a separate MPID for each unique trading center at the firm, and as such, publishing volume information at the MPID level may not provide meaningful or consistent information to the marketplace. For firms that use more than one MPID for their non-ATS trading,<sup>9</sup> FINRA would aggregate and publish the non-ATS trading volume for all non-ATS MPIDs belonging to the firm under a single "parent" identifier or firm name.<sup>10</sup>

FINRA does not believe that publishing volume information for each firm that executed only a small number of trades or shares in any given period would provide meaningful information to the marketplace. Accordingly, FINRA would combine volume from all firms that do not meet a specified minimum threshold and publish such *de minimis* volume information for those firms on an aggregated basis. For example, if five firms each execute 10 trades in the reporting period in a security, their 50 trades would be aggregated and published as a single line item; the firms and their volume information would not be identified separately. For a firm with more than one non-ATS MPID, the total volume across all of its non-ATS MPIDs would be combined for purposes of determining whether the *de minimis* threshold has been met. FINRA notes that all of the OTC volume would be published, but for firms that meet the *de minimis* threshold, their volume would not be attributed by name.

FINRA is proposing to establish a threshold of fewer than on average 200 non-ATS transactions per day executed by the firm in the security during the one-week reporting period. This proposed threshold is based on the level of trading activity used by the SEC to identify "small market makers" for purposes of exemptive relief from the rule requiring market centers that trade NMS securities to make publicly available electronic reports that include uniform statistical measures of execution quality (SEC Rule 605 of Regulation NMS).<sup>11</sup> FINRA reviewed volume statistics for firms across all securities for a one-week period (June 23 – 29, 2014). This review indicates that without applying any threshold,

approximately 300 individual firms would have volume attributed by name. Looking at market participants with on average 200 or more trades per day across all securities, approximately 60 firms—which account for over 98 percent of all trading volume—would have volume attributed by name.

Thus, under the proposal, if a firm averages below 200 (non-ATS) transactions per day across all securities during the reporting period, FINRA would aggregate the firm's volume with that of similarly situated firms. Additionally, because the published volume data would be broken down by security, if a firm averages below 200 (non-ATS) transactions per day in a given security during the reporting period, FINRA would aggregate the firm's volume in that security with that of similarly situated firms, even if the firm averages more than 200 (non-ATS) transactions per day across all securities during the reporting period. For example, if, during the reporting period, Firm 1 averages 10,000 trades per day across all securities, but averages only 50 trades per day in ABCD security, Firm 1's volume in ABCD security would be aggregated with other firms' volume in ABCD for that period.

FINRA seeks comment on the appropriate *de minimis* threshold, and to help inform comments, presents volume statistics at alternative thresholds for the one-week period cited above:

Threshold	Approximate number of market participants that would be identified by name	Percentage of all trading volume attributed to these market participants
On average <b>300</b> or more trades per day across all securities	54	98.78%
On average <b>200</b> or more trades per day across all securities	62	98.99%
On average <b>100</b> or more trades per day across all securities	77	99.30%
On average <b>50</b> or more trades per day across all securities	93	99.51%

FINRA considered whether dividing published volume information into more granular categories, such as by trading capacity (*i.e.*, principal versus agency or riskless principal) or by participant type (*e.g.*, market maker), would be feasible or provide additional meaningful or reliable information to market participants. However, FINRA believes that publishing non-ATS trading volume information at more granular levels may increase the potential impact on firms and may raise concerns about potential information leakage, such as the possibility that a firm's trading activity or strategy could be discerned from the data. Further segregating the data, *e.g.*, by trading desk, would entail potentially significant development work by firms to sufficiently identify the activity for FINRA (*e.g.*, volume attributable to a market making desk) and may not be consistent across firms, while also leading to some of the same concerns about information leakage. Thus, FINRA currently is not proposing to publish the non-ATS volume data at more granular levels than by firm and security. FINRA believes that this approach, coupled with the delayed publication of data, should address any concerns a firm may have regarding potential information leakage.

## Economic Impacts

### Anticipated Benefits

As discussed above, the proposal would expand the benefits of FINRA's ATS transparency program by providing additional transparency on the remaining equity volume executed OTC. The increased transparency would enable market participants and investors to better understand a firm's trading of equities off exchanges, thereby enhancing their understanding of executing firms' trading volume and market shares in the equity market.

### Anticipated Costs

The proposal would not impose any additional reporting requirements on firms, and as a result, would have minimal impact on firms from a systems development perspective. FINRA, however, will incur costs for standardizing and compiling the data, development, testing, quality control, business support, and storage and maintenance of the data. While FINRA currently publishes ATS volume data on its website, the proposal would impose additional costs for Web page development and software changes to present the information as proposed, *e.g.*, for purposes of the *de minimis* threshold and aggregation of volume executed by a single market participant's multiple MPIDs.

For fee purposes, this data may be combined with the ATS data that is currently available and for which subscribers are charged under Rule 4553.

## Request for Comment

FINRA seeks comments on the proposal outlined above. In addition to general comments, FINRA specifically requests comment on the following questions:

- ▶ Would the proposal provide valuable information to the marketplace?
  - ▶ How might firms and other market participants use the published non-ATS OTC volume data?
  - ▶ Is your firm likely to use this data?
- ▶ What (if any) concerns do firms have about publication of their non-ATS OTC volume data?
  - ▶ Are there potential competitive disadvantages to attributing non-ATS volume information by firm name?
  - ▶ Does limiting the granularity of information and publishing it on a two-week or four-week delayed basis mitigate any concerns firms might have about publication of their volume information? Are there other alternative steps FINRA could take to mitigate those concerns, while still disseminating meaningful information to the marketplace?
- ▶ Does the proposal to publish data on a two-week or four-week delayed basis lessen or otherwise change the value of the information?
  - ▶ Would data published on a real-time or next-day basis be more useful or provide additional value, and if so, in what way?
  - ▶ As discussed above, FINRA is proposing to publish non-ATS volume information on the same delayed basis on which ATS volume data is currently published. Should FINRA consider a different schedule? If so, what alternative schedule do commenters suggest and why?
- ▶ Do commenters agree with FINRA's proposal to publish non-ATS volume information at the firm level rather than at the MPID level?
  - ▶ If commenters recommend publishing at the MPID level, what additional value would that provide? Would there be ways to increase the consistency and reliability of information at the MPID level?
- ▶ Should FINRA consider publishing volume information for non-ATS trading at more granular levels, and if so, what levels (e.g., by capacity)? What would be the costs and benefits of such an approach?

- ▶ Do commenters agree with the proposal to aggregate volume information for firms with a *de minimis* amount of trading in any given period?
  - ▶ Is the proposed threshold for purposes of publishing aggregated non-ATS trading volume information (*i.e.*, on average 200 trades per day) appropriate? If not, what alternative threshold should FINRA consider and why?
  - ▶ Should FINRA consider a separate threshold for less frequently traded securities (*e.g.*, a lower threshold for securities that are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility)? If so, what separate threshold do commenters suggest and why?
  - ▶ Would a threshold based on share or dollar volume rather than number of trades be more appropriate? Are there other alternative metrics that FINRA should consider in setting the threshold?
- ▶ What other economic impacts, including costs and benefits, might be associated with this proposal? Who might be affected and how?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.



## Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See NTM 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
2. *See* Section 19 of the Securities Exchange Act of 1934 (SEA) and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. *See* FINRA September 19, 2014, News Release [“FINRA Board Approves Series of Equity Trading and Fixed Income Rulemaking Items”](#).
4. ATS volume information regarding fixed income securities currently is not being disseminated.
5. For example, for the period from May 12 through June 23, 2014, approximately 57 percent of the share volume of OTC trades in NMS stocks was executed outside an ATS.  
  
FINRA notes that its purview extends only to OTC data, and as such, this proposal does not apply to publication of data relating to trades executed on an exchange.
6. Under FINRA rules, in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the “Executing Party,” defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade. *See* Rules 6282, 6380A, 6380B and 6622.
7. FINRA is proposing to include only volume from the executing party perspective because otherwise, published OTC volume would be inflated (*i.e.*, publishing volume from both the executing party and contra party perspectives would double count the executed volume).
8. Under Rule 4552, ATS volume information is published on a two-week delayed basis for NMS stocks in Tier 1 under the NMS Plan to Address Extraordinary Market Volatility (also referred to as the Limit Up/Limit Down Plan) and a four-week delayed basis for all other NMS stocks and OTC equity securities.
9. For example, a firm may use separate MPIDs for its proprietary and agency desks.
10. FINRA reiterates that a firm’s ATS volume will continue to be published separately under the unique MPID(s) for each ATS operated by the firm.
11. Specifically, the SEC exempted any market center that reported fewer than 200 transactions per trading day on average over the preceding six month period in securities that are covered by the rule. *See* letter from Annette L. Nazareth, Director, Division, to Richard Romano, Chair, and Carl P. Sherr, Vice-Chair, NASD Small Firms Advisory Board, dated June 22, 2001.

## ATTACHMENT A

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

### 6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

#### 6100. QUOTING AND TRADING IN NMS STOCKS

##### 6110. Trading Otherwise than on an Exchange

(a) Members are required to report transactions in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, effected otherwise than on or through a national securities exchange to FINRA. For purposes of the Rule 6100 Series, “otherwise than on an exchange” means a trade effected by a FINRA member otherwise than on or through a national securities exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

##### (b) Trading Information for OTC Transactions Executed Outside of Alternative Trading Systems

(1) FINRA will publish on its public web site the Trading Information for NMS stocks for each member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) on the following timeframes:

(A) no earlier than two weeks following the end of the Trading Information week, Trading Information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility; and

(B) no earlier than four weeks following the end of the Trading Information week, Trading Information regarding NMS stocks that are subject to FINRA trade reporting requirements and are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility.

(2) Published Trading Information will be presented on FINRA’s web site as follows:

(A) Trading Information will be aggregated for all Market Participant Identifiers (MPIDs) used by a single member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system).



(B) Trading Information shall be aggregated for members that have executed on average fewer than 200 transactions per day in the NMS stock during the Trading Information week.

(3) "Trading Information" includes:

(A) the number of shares of each NMS stock executed by the member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA; and

(B) the number of trades in a security executed by the member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA.

"Trading Information" for purposes of this Rule shall not include any transactions executed within an alternative trading system, which information is published under Rule 4552.

.....

## **6600. OTC REPORTING FACILITY**

### **6610. General**

(a) Members are required to report transactions (other than transactions executed on or through an exchange) in OTC Equity Securities, including secondary market transactions in non-exchange-listed Direct Participation Program securities, and Restricted Equity Securities to the OTC Reporting Facility in compliance with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

(b) Trading Information for OTC Transactions Executed Outside of Alternative Trading Systems

(1) FINRA will publish on its public web site the Trading Information for OTC Equity Securities for each member with the trade reporting obligation under Rule 6622(b) no earlier than four weeks following the end of the Trading Information week.

(2) Published Trading Information will be presented on FINRA's web site as follows:

(A) Trading Information will be aggregated for all Market Participant Identifiers (MPIDs) used by a single member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system).

(B) Trading Information shall be aggregated for members that have executed on average fewer than 200 transactions per day in the OTC Equity Security during the Trading Information week.

(3) "Trading Information" includes:

(A) the number of shares of each OTC Equity Security executed by the member with the trade reporting obligation under Rule 6622(b) and reported to FINRA; and

(B) the number of trades in a security executed by the member with the trade reporting obligation under Rule 6622(b) and reported to FINRA.

"Trading Information" for purposes of this Rule shall not include any transactions executed within an alternative trading system, which information is published under Rule 4552.

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**EXHIBIT 2b**

**Alphabetical List of Written Comments**

1. Theodore R. Lazo, Securities Industry and Financial Markets Association (February 20, 2015)
2. John Ramsay, IEX Services LLC (February 12, 2015)
3. Stéphane Tyč, Quincy Data, LLC (January 9, 2015)



February 20, 2015

**Via Electronic Mail ([pubcom@finra.org](mailto:pubcom@finra.org))**

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

Re: FINRA Regulatory Notice 14-48: Proposal to Publish OTC Equity Volume Executed Outside Alternative Trading Systems

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to comment on the above-referenced proposal by the Financial Industry Regulatory Authority (“FINRA”). Under the proposal, FINRA would expand its alternative trading system (“ATS”) transparency initiative to publish the remaining equity volume executed over-the-counter (“OTC”), including non-ATS electronic trading systems and internalized trades. SIFMA supports the proposal, with some suggestions to avoid unnecessary operational friction.

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

SIFMA generally supports FINRA’s proposal, consistent with its recommendations on transparency & disclosure. However, some of the specifics of the proposal raise the possibility of

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<sup>1</sup> 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>.

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

Marcia E. Asquith, Financial Industry Regulatory Authority  
SIFMA Comment Letter on FINRA Regulatory Notice 14-48  
February 20, 2015  
Page 2

operational concerns that FINRA should address before this initiative is filed with the Securities and Exchange Commission (“SEC”) as a proposed rule change. Specifically, our comments fall into three areas: (1) the potential for information leakage; (2) FINRA’s fee to access Alternative Trading System (ATS) / Over-The-Counter (OTC) volume information; and (3) the need to sunset the current ATS reporting requirement under FINRA Rule 4552.

### ***Information Leakage and Scope of OTC Information***

Under the proposal, FINRA would publish OTC volume data in the same format and on the same schedule that it uses for ATS volume data, which is to publish weekly aggregated information, on either a two or four week delayed basis depending on the security type.<sup>3</sup> We are concerned that the two-week publication timeframe may result in unintended information leakage. In particular, the current proposal would include disclosure of large institutional trades done OTC, which could enable reverse engineering of those trades if they are published within two weeks. For the OTC volume disclosure, we believe the volume information should be aggregated on a monthly rather than weekly basis, and made available to the public and industry participants following a four-week delayed basis, as currently provided under FINRA Rule 4552(b)(2).<sup>4</sup>

### ***FINRA Fee to Access ATS/OTC Volume Information***

SIFMA has previously expressed opposition to FINRA’s fee structure for access to ATS Volume information, and that opposition applies equally for this proposal. In the proposal, FINRA notes that, “[f]or fee purposes, [the OTC volume] data may be combined with the ATS data that is currently available and for which subscribers are charged under Rule 4553.” SIFMA continues to oppose FINRA charging a fee to access the data and the fact that only a limited scope of information is available for free on the FINRA website.<sup>5</sup> As we have noted before, non-professional, non-subscriber users have access only to four weeks of ATS volume data, and only in a viewable, non-downloadable format. Any person who wants access to more extensive information, or to any downloadable information, whether professional or non-professional, must pay at least \$12,000 for an annual subscription for that data. Moreover, professional users are not permitted even to access the limited website information unless they also are subscribers.

FINRA’s fee structure for access to this information calls into question how the benefits of market transparency are furthered by providing members of the public with only a limited snapshot of ATS Data unless they pay a significant fee to FINRA. FINRA should make available to the public all ATS and OTC volume data for free in a downloadable format. Such

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<sup>3</sup> See FINRA Rule 4552(b).

<sup>4</sup> In this regard, we note that order execution reports published pursuant to SEC Rule 605 provide standardized, monthly reports of statistical information concerning order executions, and such reports are made available within one month after the end of the month addressed in the report.

<sup>5</sup> See e.g. Letter from Theodore R. Lazo, Managing Direct and Associate General Counsel, SIFMA to Securities and Exchange Commission dated May 29, 2014.

Marcia E. Asquith, Financial Industry Regulatory Authority  
SIFMA Comment Letter on FINRA Regulatory Notice 14-48  
February 20, 2015  
Page 3

an approach would be analogous to the SEC's Market Structure website, which provides all individuals with the opportunity to view and download key metrics and certain market data produced from the Market Information Data and Analytics System. This approach also is consistent with public access to information that is provided by market centers pursuant to Rule 605 of Regulation NMS. SIFMA continues to believe that increased transparency will benefit all market participants, and we can see no reason why FINRA would not make all of the ATS Data available to the public at large for free in a downloadable format.

***Sunset of ATS Reporting Requirement***

As we noted previously, FINRA should eliminate the current requirement for ATSs to report volume information to FINRA. Under FINRA rules, each ATS is currently required to report its weekly trading volume, by security, to FINRA. As of February 2, 2015, each ATS must use a unique market participant identifier ("MPID") for reporting order and trade information to FINRA.<sup>6</sup> Accordingly, FINRA now has access through its own systems to all of the ATS volume information without the need for a separate reporting requirement. Now that the MPID requirement is effective and functioning, the regulatory need for the self-reporting has been fully obviated, which is further reflected in the fact that the current proposal would not require broker-dealers to separately report their OTC volumes to FINRA.

\* \* \*

SIFMA would be pleased to discuss these comments in greater detail. If you have any questions, please contact either me (at 202-962-7383 or [tlazo@sifma.org](mailto:tlazo@sifma.org)) or Timothy Cummings (at 212-313-1239 or [tcummings@sifma.org](mailto:tcummings@sifma.org)).

Sincerely,



Theodore R. Lazo  
Managing Director and  
Associate General Counsel

cc: Stephanie Dumont/FINRA

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<sup>6</sup> See Securities Exchange Act Release No. 73340 (October 10, 2014), 79 FR 62500 (October 17, 2014)

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February 12, 2015

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, N.W.  
Washington, D.C. 20006-1506

Re: Regulatory Notices 14-47 and 14-48

Dear Ms. Asquith:

IEX Services LLC ("IEX") appreciates the opportunity to comment on two recent rule proposals by FINRA, which are among various FINRA initiatives relating to equity market structure and automated trading activities. In particular, IEX is commenting on: (i) the proposal to tighten business clock synchronization requirements (Regulatory Notice 14-47); and (ii) the proposal to publish OTC equity volume executed outside alternative trading systems ("ATSs") (Regulatory Notice 14-48). In general, IEX supports both of these proposals and believes that together they will usefully enhance FINRA's ability to conduct surveillance of equity trading on a cross-market basis and also provide additional transparency of off-exchange trading activity that will provide important additional information to aid investors and broker-dealers in evaluating trading in "dark" venues.

IEX presently operates a non-displayed ATS for U.S. equities. IEX offers a simplified and transparent model designed to eliminate many of the conflicts that are currently present in the financial markets. Also, with investor-centric order types and advance technology and architecture, IEX has sought to neutralize on its trading platform certain negative effects of structural inefficiencies in the national market system. IEX intends to apply for registration as a national securities exchange in the near term and, in advance of exchange operation, plans to introduce a non-protected "lit" quote that is accessible to its subscribers during the first quarter of 2015.

#### Clock Synchronization

FINRA is proposing to require that member firms synchronize their computer business clocks used to record the time of events pursuant to various FINRA rules to within 50 milliseconds of the NIST atomic clock. Under current rules, firms must synchronize their business clocks that are



used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA Bylaws or other FINRA rules with respect to a time source as designated by FINRA. Further, the OATS technical specifications require that all computer system clocks must be synchronized to within one second of the NIST atomic clock.

IEX supports the proposal, although we believe that the permitted variance could be further reduced consistent with the systems capabilities of most member firms. The required synchronization of business clocks has far-reaching consequences for various regulatory reporting obligations and the ability of market regulators to conduct cross-market surveillance, as well as the ability of market participants to evaluate the performance of broker-dealers and market centers in satisfying best execution and other responsibilities. As FINRA notes in its Regulatory Notice, the evolution of automated trading systems since the one-second standard was first adopted has advanced such that routing and trading decisions are typically driven by timing differences of less than one millisecond. Also, the 50 millisecond standard is consistent with that recently proposed by the self-regulatory organizations in connection with the plan governing the consolidated audit trail. IEX in practice generally maintains synchronization of its business clocks to within approximately one millisecond based on our receipt of GPS signals that are processed by a local master clock and then passed on to our systems in Secaucus, New Jersey and Weehawken, New Jersey, as well as our disaster recovery systems in Chicago, to ensure that their individual systems are synchronized. Accordingly, we believe that the proposal represents an important and beneficial advance over the current standard. We also, believe, however, that FINRA, after acquiring experience in examining for compliance with and enforcing the 50 millisecond requirement, along with monitoring the evolution of industry capabilities, should consider a further reduction that would better narrow the gap between the time increments in which order and trade events are recorded and the allowable deviation from a standard time source.

#### Publication of OTC Equity Trading Volume

FINRA is proposing to publish the equity volume executed OTC by each member firm on a security-by-security basis. This proposal would complement the existing FINRA program, under which volume of each ATS by security is published. IEX supports the proposal. As FINRA noted in its Regulatory Notice, most of the off-exchange volume in NMS securities is executed away from ATSs. Accordingly, the effort to bring additional transparency to "dark" trading would be woefully deficient if it did not include data on trading that is internalized other than on an ATS. Such data can be used by market participants (including broker-dealers), regulators, and academics to better understand and track trends in off-exchange trading generally. It also will help investors to better evaluate the routing and execution practices of individual member firms





and thereby promote useful dialogue on these practices between broker-dealers and their buy-side customers.

With respect to certain other specific requests for comment contained in the Regulatory Notice, IEX agrees with the proposal to publish non-ATS volume information at the firm, rather than MPID, level. Firms execute trades through separate MPIDs for various business purposes which generally are not relevant to understanding the volume of trading internalized in particular securities. A firm-by-firm measure will therefore better serve the public informational value of publishing the data. IEX also believes that the proposal to aggregate volume information for firms that conduct a de minimis amount of OTC volume is a reasonable way to assure that the published information will be meaningful and free of the "noise" that could otherwise arise from a broader publication measure. We would suggest, however, that an alternate notional volume measure might also be helpful as part of this threshold so that firms doing relatively few trades but in large notional volume are included.

Sincerely,

John Ramsay

Chief Market Policy and Regulatory Officer

cc: Richard Ketchum, Chairman and Chief Executive Officer  
Robert Colby, Chief Legal Officer  
Steven Joachim, Executive Vice President, Transparency Services

January 9, 2015

Submitted electronically to [pubcom@finra.org](mailto:pubcom@finra.org)

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

**Re: Comments in Response to Regulatory Notice 14-48**

Dear Ms. Asquith:

Quincy Data, LLC<sup>1</sup>, appreciates the opportunity to offer comments regarding the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 14-48, a proposal to publish OTC equity volume executed outside alternative trading systems. We believe FINRA has a unique opportunity to provide an efficient transparency mechanism that will enhance competition and fairness and ensure the public trust in the markets that has recently been undermined. This mechanism can meet important goals sought by CAT without imposing significant costs on the industry.

The Consolidated Audit Trail as envisioned by SEC rule 613 aims at recording all the life cycle of all orders handled by SROs. The goal is to enable SROs and the SEC to monitor the trading on US markets. CAT is expected to be a massive undertaking and will be the "world's largest data repository" according to FINRA (Summary of the Consolidated Audit Trail Initiative, August 6, 2014<sup>2</sup>).

CAT's objective of enabling the monitoring of all securities trading will come at a very large cost. The estimation of 58 billion of records on a daily basis is extremely large compared to the number of actual transactions taking place in the US securities. There are approximately 20m equity trades and 20m equity option trades per day. The total number of trade records is therefore approximately 1000 times smaller than the number of records necessary to form a full audit trail. Furthermore, CAT will need to require the identification of all the "clients" in order to make the auditing possible. The security requirements and the security concerns that any leakage of information would create will be very demanding. Those very security concerns will, very likely, ensure that the data collected in CAT will not be accessible in any efficient way to the public.

We would like to respond to FINRA's request for comments in the hope that an alternative mechanism for restoring the public trust in the markets can be considered. This mechanism is described in the attached white paper on best execution. This mechanism could provide most of the benefits of CAT in a more efficient, cheaper and more public way. Restoring public trust will be better served by publicly accessible open data and simple yet robust standards than by a large data repository whose access is very limited and whose complexity and cost will defeat its very purpose.

Regulators are working to level the playing field and enhance completion. A significant challenge is to avoid issuing rules and regulations that are so complex, long and full of exceptions that they defeat the very purpose sought by the regulators. There is widespread

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<sup>1</sup> Quincy Data, LLC is the leading provider of extremely low latency financial market data distributed via microwave. The Quincy Extreme Data service offers an integrated and normalized feed of select financial market data sourced from multiple financial exchanges in the US and Europe. Quincy Data's service is offered in exchange colocation centers in Illinois, New Jersey, the UK and Frankfurt. Quincy Data is dedicated to leveling the playing field for low latency financial market data.

<sup>2</sup> <http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p571933.pdf>

acknowledgment that regulatory costs raise the barrier to entry in securities trading, resulting in fewer entrants and reduced competition. .

We respectfully submit a proposal which is simpler and more robust than the existing framework and which FINRA and market participants could adopt very simply.

#### Request for Comment

FINRA seeks comments on the proposal outlined above. In addition to general comments, FINRA specifically requests comment on the following questions:

Would the proposal provide valuable information to the marketplace?

How might firms and other market participants use the published non-ATS OTC volume data?

*Transaction cost analysis could be provided by any firm with a sufficiently granular set of data as proposed in the attached white paper. This would transform the TCA landscape and focus the energy and efforts on true research rather than focusing on data of varying quality.*

Is your firm likely to use this data?

*This is not one of our current product offers but we might want to launch a TCA service.*

Should FINRA consider publishing volume information for non-ATS trading at more granular levels, and if so, what levels (e.g., by capacity)? What would be the costs and benefits of such an approach?

*FINRA should define a standard for trade publication which should apply to all trades irrespective of the trading center, trading mechanism, or of the security being traded.*

*The costs would be very small because every firm already keeps the records of all the trades it is effecting. The only extra burden would be to format those trades in a standard way and to send the files to a centralized repository.*

*The benefits would be gigantic because it could replace the CAT and would save the cost of its implementation. This could also replace TRACE and would enable an educated dialogue between sell side dealers and buy side managers.*

#### Regulatory Notice

What (if any) concerns do firms have about publication of their non-ATS OTC volume data?

Are there potential competitive disadvantages to attributing non-ATS volume information by firm name?

*We believe that there is no issue with providing granular trade data as long as the publication is delayed sufficiently. We further believe that a delay of one month is sufficiently large to enable dealers to manage their risk. A delay of one month is also not an impediment to the analysis of the quality of the execution provided. TCA is a statistical measure and needs to be done over many trades and over different market conditions. The decision to allocate execution to a broker or to another one is likely reviewed annually and there is no issue with a month of delay in the publication of trade data.*

Does limiting the granularity of information and publishing it on a two-week or four-week delayed basis mitigate any concerns firms might have about publication of their volume information? Are there other alternative steps FINRA could take to mitigate those concerns, while still disseminating meaningful information to the marketplace?

Does the proposal to publish data on a two-week or four-week delayed basis lessen or otherwise change the value of the information?

*The publication of the data can be delayed in order to provide the necessary time for the execution of large orders. The goal of the data publication would be to enable a scientifically grounded TCA. The basis of scientific debate is the sharing of data and assumptions. There can be no real debate about what TCA really is without a publication of the data on which the analyses are based.*

Would data published on a real-time or next-day basis be more useful or provide additional value, and if so, in what way?

*We believe that there is very little incremental gain to near real time data. There is actually a trade off between low quality data published quickly and high quality data published with a long delay. It is preferable to have complete and fully granular data published with a large delay.*

As discussed above, FINRA is proposing to publish non-ATS volume information on the same delayed basis on which ATS volume data is currently published. Should FINRA consider a different schedule? If so, what alternative schedule do commenters suggest and why?

*FINRA should consider the shortest publication time that provides enough time to manage the risk of a position. This publication time could be different by security class. Liquid equities could be published after two weeks and illiquid bonds could be afforded a six-month delay in publication. The important point is to ensure that the granular data is published in its entirety at some point.*

Do commenters agree with FINRA's proposal to publish non-ATS volume information at the firm level rather than at the MPID level?

*No, we disagree with this proposal. The trade publication should identify the matching engine with a unique identifier. The matching engine must be referenced because it provides important information on how the trade was conducted.*

If commenters recommend publishing at the MPID level, what additional value would that provide? Would there be ways to increase the consistency and reliability of information at the MPID level?

Do commenters agree with the proposal to aggregate volume information for firms with a de minimis amount of trading in any given period?

*No we believe in simple rules with no exceptions.*

Is the proposed threshold for purposes of publishing aggregated non-ATS trading volume information (i.e., on average 200 trades per day) appropriate? If not, what alternative threshold should FINRA consider and why?

*No we believe in simple rules with no exceptions.*

Should FINRA consider a separate threshold for less frequently traded securities (e.g., a lower threshold for securities that are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility)? If so, what separate threshold do commenters suggest and why?

*No we believe in simple rules with no exceptions.*

Would a threshold based on share or dollar volume rather than number of trades be more appropriate? Are there other alternative metrics that FINRA should consider in setting the threshold?

*No we believe in simple rules with no exceptions.*

What other economic impacts, including costs and benefits, might be associated with this proposal? Who might be affected and how?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stéphane Tyč', with a stylized flourish at the end.

Stéphane Tyč

Co-founder, Quincy Data, LLC

## **A technological solution to best execution and excessive market complexity**

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Quincy Data, LLC

September 18th, 2014  
Version 1

### **Introduction**

The Flash Crash of May 2010, the software bug of Knight Capital, NASDAQ's glitch on the first day of trading of Facebook and the publication of *Flash Boys* all motivate the calls to improve regulation. Both the SEC and FINRA are examining ways to improve market structure and regulations to prevent any players from having an unfair advantage. Many of the proposed improvements involve reducing the number of trading venues and regulating how an order must be routed. There are additional calls for creating more comprehensive data gathering and identification of orders and executions across all trading venues. These changes would create an additional burden on brokers and traders who are already suffering from vastly increased compliance and data gathering costs due to the regulations created by Dodd-Frank.

We believe there is a way for regulation to be simplified and made more powerful at the same time. Trade publication standards can be created to support improved customer choice and to simplify and strengthen the market place. This would replace the need for more complex and costly regulation. Our suggestions apply to both the USA and to Europe but this paper will concentrate on the unique market structure of the U.S. equity markets after Regulation NMS (Reg NMS).

Our proposal would enable market participants to make rational choices on complete information about the quality of their execution. It would remove instability and complexity in the markets. It would also increase transparency for less liquid securities and keep the competition between trading venues fair and vigorous.

### **Best Execution and the organization of fair competition**

In order to motivate our proposal, let's first revisit the two goals of Best Execution and Competition. In his 1996 paper, Lawrence Harris, discusses Best Execution: (Harris, 1996):

“When brokers take customer orders, they assume an agency responsibility to obtain ``best execution". Unfortunately, best execution is not well defined.

Best execution means different things to different people. To unsophisticated customers, best execution may mean ``get the best price possible" for a market order and ``trade as quickly as possible" for a limit order.

(...) The most sophisticated customers (...) only pay for the level of execution quality that they can audit. For them, best execution means ``get me the execution that I expect you to provide given what I pay you and the limitations of my ability to audit your performance." These traders define best execution relative to the costs of auditing it."

The key to best execution is to empower consumers to analyze the quality of the execution they are getting. This way they can make the right decision and buy the level of service they need from the brokers. We have a proposal that would make this analysis simple, cheap and efficient.

The first stated goals of Reg NMS was to address competition, as a mechanism essential for markets (SECpg12):

#### NMS Principles and Objectives

##### Competition Among Markets and Competition Among Orders

The NMS is premised on promoting fair competition among individual markets, while at the same time assuring that all of these markets are linked together, through facilities and rules, in a unified system that promotes interaction among the orders of buyers and sellers in a particular NMS stock. The NMS thereby incorporates two distinct types of competition -- competition among individual markets and competition among individual orders -- that together contribute to efficient markets.

This goal was addressed by introducing order protection which links some of the markets and insures that, to a large extent, a market order sent to one of the protected markets will meet the best resting order of all protected markets. This goal is only partially achieved by the rule because it is simply impossible to achieve perfectly. Markets are physically separate and when the operator of a market identifies an order in a different place and sends a matching order, there is no guarantee that the order will be matched because it takes time to reach the away market.

Harris' comments on best execution were made before decimalization and before Reg NMS. They are still valid but the situation has changed as the vast majority of the trading is computerized and auditable.

Prior to the changes, order execution was primarily done by humans either in pits or "upstairs" on the phone at the desks of dealers. This presented several problems.

Trade auditing was a challenge: brokers were faced with a difficult task if they wanted to document best execution for clients. The trade information was recorded poorly and the time

stamps of the trades were approximate, the quotes were not formalized and could not be analyzed efficiently. Order handling was a lucrative business and brokers were directing their order flow to dealers on the basis of factors other than the quality of particular executions. In return dealers would offer various inducements to brokers including direct "payment for order flow". So, not only was the task difficult, but also the incentive of brokers to measure the quality of the executions provided by dealers was not very high.

The quality of the service offered by exchanges, mostly open outcry markets was also hard to assess. Pits are both inefficient and difficult to police. The famous article by Christies and Schultz that statistically demonstrated collusion between market makers led to a first swath of rule changes. Even with those changes, as long as the trading remained at the hands of humans, price and time priority were not fully enforceable and order-handling rules, in general, could not be "programmatically" defined.

In this context the average bid ask spread was large and the cost to end users was high.

Decimalization and then Reg NMS %changed this forever. It introduced competition between exchanges and made collusion between different market makers almost impossible in liquid stocks. It reduced the scope for dealers to execute outside the current bid/ask and disadvantage their clients. In addition, the introduction of the automated Small Order Execution System was first met with resistance but it is now the norm for equity trading.

The ultimate effect was to lower effective bid/ask spreads and to render markets more efficient and more traceable. But best execution is still not well defined and still not easy to assess for customers.

Despite the intention of insuring fair competition in the markets, there were unintended consequences. First the linkage between electronic order books introduced by the quote protection rule of Reg NMS has created a complex dynamic which is extremely hard to analyze and whose behavior is unpredictable. Second, most markets have introduced, and regulators have approved, many new complex order types mainly used by professionals. Those new orders have often been introduced to circumvent the difficulties introduced by quote protection and by routing between protected exchanges. There is complexity globally in the linkage and there is complexity locally in the order type. It is little wonder that there is broad agreement that the markets should be simplified.

## **Our Proposal**

We are putting forward a very simple proposal that, in our opinion, would greatly improve market dynamics by changing the elements of Reg NMS that led to the increased complexity and would create more transparency.

The proposal has two legs. First, make data available in a format that will foster analysis and therefore enable rational choice. Second, remove the order protection rule which is the source of most of the complexity in current markets.



First, in order to make markets more efficient for market participants, they must have access to real numbers and real reporting on the quality of their executions. Mandating a particular form of data analysis is problematic. Access to the raw data should generally be preferred unless it imposes undue burden. The analyses are hard to define in a way that is sufficiently detailed to be completely trustworthy. The real test is simple. If two brokers with exactly the same executions data were to produce 605 reports it is unlikely that the reports would be identical. Defining the way to process the data is not as efficient as providing the data itself. What needs to be done is to provide access to the data free of charge to anyone who wants to do research and provide analyses.

%Second, to make markets easier to operate and more robust, the linkage imposed by order protection should be removed and arbitrage should be relied upon as a tested, trusted and visible market mechanism to keep the system in synch.

1. **Trade Data Publication:** standardize the publication of trades on all venues and make the data widely and publicly available.
2. **Linkage Removal:** rescind the order protection rules of Reg NMS (only if the first proposal is implemented)

*Trade Publication* can be implemented without Linkage Removal, but order protection cannot be rescinded without the availability of comprehensive trade execution data. The publication of trade data should have the following requirements:

- Apply to any trading of securities.
- Apply to all venues, including exchanges and dark pools and other forms of trading.
- Reported in a standardized way.
- Report only trades not quotes or other order messages, thereby greatly simplifying the implementation and empowering true independent analysis. This point of the proposal is key and will be discussed later.

*Linkage Removal* is simple to implement. It is sufficient to remove the rule making it compulsory, and exchanges and smart order routers can evolve at their own pace to stop following it.

The new regulation would require that:

1. All matching engines or individual traders effecting manual trades be registered with a unique number identifying them.
2. All matching engines be time synchronized to an accuracy that is within 10 $\mu$ s of the global time standard UTC and manual trades be time stamped within an accuracy of 1 minute.
3. All trade data be published, price, quantity, symbol, buy versus sell, etc, with the matching engine ID, the trade ID and with the time stamp of occurrence and time stamp of publication to a publicly accessible data stream
4. All the above trade data be made accessible free of charge and free of copyright in a common format at the end of the day with an open data license.

5. Brokers be legally required to communicate to clients, upon request, the list of all the trade IDs and matching engine IDs that constitute the execution of a given order. This report would be a simple .csv file with at least five columns including: Security identifier; matching engine identifier; date; trade identifier; fraction of the trade allocated.

## **Implementation issues and expected impact**

### *How would it work?*

#### **Who produces the data, who aggregates it and how is it consumed?**

The owners of matching engines or the employers of human traders produce the data. It is formatted according to a precise specification and it is sent to an organization that has a SIP-like mandate. This NMS organization makes the data available and is responsible for auditing it and reporting to regulators on the quality of the data per source. The data is then available for download free of charge and free of copyright.

#### **How is this different from the TAQ data already available?**

This only concerns the trade portion of the TAQ data, making it much smaller and easier to use. But it incorporates more information to help identify where trades occurred and the precise time stamps. It also removes any exception that may be present in the TAQ data, such as off hour trades. Perhaps it would be easy to generalize the TAQ data to include the new information. We are arguing that producing this data should be simple and that there is no good reason to delay implementation.

#### **Why do you need two time stamps?**

The time stamp of occurrence of the trade is the most important one. It is also interesting to study this impact of the dissemination of information in the trading system. If a very large block trade is done manually and reported only after some time it is interesting to know both time stamps to understand information transmission.

#### **Who would create the matching engine ids and human ids.**

In principle there are already trader ids available, so this would not need to be created. The matching engine ids would need to be registered with a regulatory body. The definition is that those ids should be sufficient to find the particular program that effected trades on a particular day. It should also include the location of the servers where the program would run. For instance, if a trade was done on the disaster recovery site of a dark pool it would need to carry a different matching engine id.

#### **How is this new unique identifier different from the MIC?**

The Market Identifier Code, defined by ISO 10383 is not precise enough. It cannot identify the actual matching engine that performed a trade. It does not have the precise location of the

matching engine. A given MIC code could correspond to matching engines which are 8000km apart. It would be useless to have a time stamping precise to better than  $10^{-6}$ s without knowing where the matching engine is located.

### **How long would it take to implement?**

The size of the data is very small. All the orders executed on any given day in a terse format would fit on a small thumb drive. Building applications to analyze executions would be possible at a small cost and effort. It would be open to anyone with some computer skills. The key to making this simple to use is to have a very precise specification of the data and to keep the data as simple as possible.

### **When should the Transaction Reporting be made accessible?**

End of day reporting is adequate because this data is not supposed to be used in real time by brokers and proprietary traders. This is about enabling consumers to analyze the quality of their executions. The time scale involved in deciding to change an executing broker is closer to one year than to one day. Also, when studying the execution of illiquid securities it may be good to look at trades over many days.

### **Why is it cheap?**

All electronic matching engines already have the necessary data on all trades. All it would take is to synchronize the data with the Institute of Electrical and Electronic Engineers Precision Time Protocol and provide the data with unique identifiers.

### **Why only publish trades, are quotes not also relevant?**

Of course quotes are relevant. The market surveillance and abuse monitoring by regulators will still need access to quotes in some form. However, the key to empowering customers and to creating an independent cottage industry of individual trade analysis is to provide a simple system. Quotes come in a wide variety of guises. It will prove very difficult to document all quote types, including those provided by dark pools, in a single open data regime. Other data that is required to do the analysis is already available for lit exchanges and should also be available from dark pools and voice trading venues. The key insight is that trades are "sufficient" to empower customers to choose the best way to execute their trades.

### **Is this supposed to replace SEC Rule 605 and the publication of execution statistics?**

This is not a replacement for Rule 605. It is meant to complement this rule. Current execution quality reports are centered on statistics per equity over all the executions in any given month. They provide no transparency on individual executions. The data used to compute the reports are not fully standardized and there are many exemptions. Providing open data on actual executions will help other and possibly more insightful analyses.

Why is it better than the current "best execution" reports required by Rule 605?

Some aspects of the reports could be gamed; in particular the number of shares that received price improvement can be gamed by providing an insignificant improvement to many shares in order to publish advantageous numbers. Providing the data will help better and more insightful analyses. For instance, nobody reports the quality of trade execution on "correlated assets". What about a broker who buys an ETF at the offer price on the leading cash market, in compliance with the quote protection rule, but ignores that there is a future on the same financial asset whose price was significantly below? It is impossible to define all the rules that should be applied by very good executing brokers. It is very simple to leave this to the investigation of a curious, competent and empowered public.

#### **Why pick 10µs as the time precision?**

There are two reasons: it is now routinely possible to synchronize to about one microsecond; and, the maximum error should be much less than the time information takes to go from one matching engine to another one. Ten microseconds seems to be a good compromise but 5µs or 20µs would probably be equally acceptable.

#### **Can you introduce waivers for reporting?**

Absolutely and categorically not. The whole point of the system is to provide a complete transparency and remove all the suspicion clouding the trading process. Waivers are often argued for in the case of large trades or illiquid securities. There is no reason to exclude large trades and illiquid securities as long as the reporting is done at the end of the day and not in real time.

#### **How is this different from the consolidated tape proposals?**

Consolidated tape proposals aim at improving the price formation process by providing rapid feedback on trades. Consolidated tape may be useful for market makers, professional traders and brokers. Our proposal is aimed at providing transparency for the end users, the money managers or individuals. Some money managers or individuals do not have the means or the interest to perform real-time analysis of trades and alter their real-time trading patterns even with the existence of a consolidated tape.

#### **Do we need to trace orders through the various internalization, give-ups and other life cycle events?**

Tracing orders can be useful but it is very difficult to put in place and probably impossible to make available publicly. Publicly available trade data are sufficient to study best execution. The end result of complex order routing strategies must be made available on a private basis. Executing brokers have internal mechanisms to allocate trades to particular clients. Those allocations must be made available for their clients upon request, so that the client can see the original execution of the trade. Armed with this data clients can see which split they received from executions and have the data at hand to request explanations from brokers if needed. This should be traceable down to the subaccounts.

### **How can this work with internal matching of trades by brokers?**

It works with any normal allocation mechanism. Let's take examples:

1) Client A sends an order to buy 10 shares of IBM and Client B sends at the same time an order to sell 7 shares of IBM. The broker will match 7 shares internally at a price of \$191.74 and will buy an extra 3 shares on the NYSE-Arca for \$191.77. Client A would get an execution report with 100% of the first trade and 100% of the second trade, both trades would be on different matching engines, at different prices and different times. Client B would have 100% of the first trade.

2) Client A sends an order to buy 10 shares of IBM and client B sends an order to buy 30 shares of IBM. The broker executes a buy order for 15 shares at \$191.05 and another buy order for 25 shares at \$191.02. Both orders are allocated pro rata of the sizes to execute to the clients. Client A would get an execution report of 1/4th (10/10+30) of 15 shares at \$191.05 and 1/4th of 25 shares at \$191.02.

The important point to understand is that brokers have mechanisms to determine the share allocation and to compute the execution prices before margin for their clients. The point of the reporting standard is to make these mechanisms transparent for their clients.

### **What securities should this apply to?**

Every security. There is no reason to single out equities and leave convertible bonds, treasury bonds, municipal bonds and the whole gamut of tradable things out of this.

### **What about OTC trades done by humans?**

This is simply a case where the "matching engine" happens to be a human. It should already have a unique ID provided by the regulator. Of course, this particular "matching engine" would not have to be synchronized to better than 10 $\mu$ s. Time stamping to one minute accuracy for human trades is perfectly acceptable.

### ***What are the expected impacts of our proposal?***

#### **What impact would it have on the competition between dark pools and exchanges?**

It would narrow the regulation gap between exchanges and dark pools and help lit venues compete with dark pools more fairly.

#### **Would this change market surveillance?**

Today, only regulators have access to all the data necessary to police the markets. They have access to information identifying the parties to a trade and they also have quote information. This is powerful but hard to use. With our proposal, regulators could act upon request of parties who have done a first level of analysis and can identify particular trades on particular matching engines that are the cause of their supposed problem. Regulators would then be able to drill down and judge the claims on their merit. It would be very useful if regulators could actually document and publish the cases that they have investigated, both when they impose sanctions and when they decide that a particular pattern is not problematic. The creation of case law and the documentation of the reasoning of regulators would be very useful in building a consensus on what exactly is market manipulation and what is not.

### **How would it work to tame the bestiary of complex order types?**

Many of those orders would become useless. The well-known ISO order type was created to circumvent a difficulty introduced by Reg NMS and mandatory routing. The routing algorithms can, in theory, produce infinite loops and be very costly. ISO orders were a natural response to this. Another famous order type, "hide not slide" which is used to gain priority in the case of locked markets, would disappear because the very concept of locked markets would disappear.

### **How would it help end users?**

Armed with the Transaction Data, clients could take their trade IDs and matching engine IDs and have a company perform analysis to see if their broker was good at executing the orders. This would have the important effect of enabling rational choice and removing suspicion in the system. This would expose the potential problems and help the good brokers shine. Only access to the raw data can give real confidence in the system.

### **How would it help the analysis of best execution?**

Customers who want to study their executions would request from their brokers an execution report.

Armed with this report, the customer would either compare trades in the same time period or send it to an external third party who would provide independent analysis. We actually expect that there would be many companies providing independent analysis because there would be a much lower barrier to entry.

### **What would this have changed for *Flash Boys*?**

The plot of *Flash Boys* revolves around the discovery of order routing to several exchanges and the reaction this triggers. Two things would have been essentially different. The mechanism which is described in the book whereby an order hits a markets and triggers trades on other markets would have been simple to read in the data. Royal Bank of Canada would have understood much earlier that it was not executing its client trades optimally by providing signals in the markets. Even if RBC had not understood the phenomenon, the clients of RBC could have sent their execution data for analysis to many different analysis companies and would have been warned to direct their flow to a more sophisticated broker.

This analysis is made possible because of the precise time stamping. Without it, the causality of the trigger mechanisms would have been obscured.

**If we remove quote protection, the system becomes simpler, but will the markets stay synchronized?**

Today the price synchronization of markets is excellent for liquid securities in Europe where there is no quote protection. Arbitrageurs compete to synchronize prices across markets and also across asset classes. This is the most efficient mechanism for liquid securities. For illiquid securities we believe that the trade publication mechanism is also adequate. The TRACE program in the US is the right model and would benefit from a generalisation and the removal of all the exceptions.

**What is the likely impact for illiquid securities?**

The introduction of Trace is credited with reducing the cost of trading corporate bonds. It is generally agreed that more publicly available data will drive trading costs to a natural level imposed by the risk and cost of holding inventory. The same will probably hold for illiquid securities.

***Is the proposal specific to the U.S. market structure?***

There is nothing specific to the U.S. in this proposal. What is different is the current regulation and the future regulatory process. Europe does not suffer from the high costs imposed by Reg NMS. There is no order protection rule and each market functions independently. The prices for liquid securities are kept aligned by the natural arbitrage provided by participants. Expected regulatory changes are unlikely to introduce order protection. However, brokers may be required, in the new regulatory regime, to publish in a much more detailed way their best execution policies. However, Europe is currently discussing changes and could make the functioning of the markets much more onerous for little if any benefit. The same proposal would suit the same purpose in Europe.

**Works Cited**

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## **EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined.

\* \* \* \* \*

### **6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

#### **6100. QUOTING AND TRADING IN NMS STOCKS**

##### **6110. Trading Otherwise than on an Exchange**

(a) Members are required to report transactions in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, effected otherwise than on or through a national securities exchange to FINRA. For purposes of the Rule 6100 Series, “otherwise than on an exchange” means a trade effected by a FINRA member otherwise than on or through a national securities exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

##### (b) Trading Information for OTC Transactions in NMS Stocks Executed Outside of Alternative Trading Systems

(1) FINRA will publish on its public web site the Trading Information for each member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) on the following timeframes:

(A) no earlier than two weeks following the end of the Trading Information week, Trading Information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility;

(B) no earlier than four weeks following the end of the Trading Information week, Trading Information regarding NMS stocks that are



subject to FINRA trade reporting requirements and are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility; and

(C) no earlier than one month following the end of the Trading Information month, aggregate volume totals across all NMS stocks.

(2) Published Trading Information will be presented on FINRA's web site as follows:

(A) Trading Information will be aggregated for all Market Participant Identifiers (MPIDs) used by a single member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system).

(B) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day across all NMS stocks during the Trading Information week.

(C) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day in an NMS stock during the Trading Information week.

(3) "Trading Information" includes:

(A) the number of shares of an NMS stock executed by the member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA; and

(B) the number of trades in an NMS stock executed by the member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA.

“Trading Information” for purposes of this Rule shall not include any transactions executed within an alternative trading system, which information is published under Rule 4552.

\* \* \* \* \*

## **6600. OTC REPORTING FACILITY**

### **6610. General**

(a) Members are required to report transactions (other than transactions executed on or through an exchange) in OTC Equity Securities, including secondary market transactions in non-exchange-listed Direct Participation Program securities, and Restricted Equity Securities to the OTC Reporting Facility in compliance with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

(b) Trading Information for OTC Transactions in OTC Equity Securities Executed Outside of Alternative Trading Systems

(1) FINRA will publish on its public web site the Trading Information for each member with the trade reporting obligation under Rule 6622(b) on the following timeframes:

(A) no earlier than four weeks following the end of the Trading Information week, Trading Information for OTC Equity Securities; and  
(B) no earlier than one month following the end of the Trading Information month, aggregate volume totals across all OTC Equity Securities.

(2) Published Trading Information will be presented on FINRA’s web site as follows:

(A) Trading Information will be aggregated for all Market Participant Identifiers (MPIDs) used by a single member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system).

(B) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day across all OTC Equity Securities during the Trading Information week.

(C) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day in an OTC Equity Security during the Trading Information week.

(3) “Trading Information” includes:

(A) the number of shares of an OTC Equity Security executed by the member with the trade reporting obligation under Rule 6622(b) and reported to FINRA;

(B) the number of trades in an OTC Equity Security executed by the member with the trade reporting obligation under Rule 6622(b) and reported to FINRA.

“Trading Information” for purposes of this Rule shall not include any transactions executed within an alternative trading system, which information is published under Rule 4552.

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