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June 23, 2023

Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Via email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

**Re: File No. SR-FINRA-2022-031 – Proposed Rule Change to Adopt FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities)**

Dear Ms. Countryman:

This letter is being submitted by the Financial Industry Regulatory Authority, Inc. (“FINRA”) in further response to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing. The proposed rule change would adopt new FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities) to require members to (i) publish order routing reports for orders in OTC Equity Securities, and (ii) submit their order routing reports for both OTC Equity Securities and NMS Securities to FINRA for publication on the FINRA website.

The Commission published the proposed rule change for public comment in the Federal Register on December 6, 2022.<sup>1</sup> The Commission received four comments on the rule filing.<sup>2</sup> On January 18, 2023, the Commission designated a longer period for action on the proposed rule

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<sup>1</sup> See Securities Exchange Act Release No. 96415 (November 30, 2022), 87 FR 74672 (December 6, 2022) (Notice of Filing of File No. SR-FINRA-2022-031) (“Proposal”). Any capitalized terms not defined herein shall have the meanings assigned to them in the Proposal.

<sup>2</sup> See Letter from G.P., dated November 30, 2022; Letter from Daniel Lambden, dated December 5, 2022; Letter from Howard Meyerson, Managing Director, Financial Information Forum (“FIF”), to Vanessa A. Countryman, Secretary, SEC, dated December 20, 2022 (“First FIF Letter”); Letter from Howard Meyerson, Managing Director, FIF, to Vanessa A. Countryman, Secretary, SEC, dated February 3, 2023 (“Supplemental FIF Letter”).

change.<sup>3</sup> On March 3, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>4</sup> On March 29, 2023, FINRA submitted a response letter to the comments received.<sup>5</sup> On April 13, 2023, FIF submitted another comment letter in response to the FINRA Letter.<sup>6</sup> On May 31, 2023, the Commission designated a longer period for action on proceedings whether to approve or disapprove the proposed rule change.<sup>7</sup> The following are FINRA's responses to the material aspects of the comments provided in the Second FIF Letter.<sup>8</sup>

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The Second FIF Letter raises issues previously addressed by FINRA regarding the requirements for reporting execution venues under the Proposal, which FINRA has aligned with existing requirements for reporting execution venues under SEC Rule 606(a) (FIF refers to the proposed approach as the "look through" approach). As reiterated below, FINRA disagrees with FIF's comments on this aspect of the Proposal and continues to believe that the Proposal strikes an appropriate balance in extending to investors in the OTC Equity Security space beneficial disclosures that exist for listed securities. In formulating the Proposal, FINRA has sought to align the proposed framework for OTC Equity Securities with the Commission's rule and guidance, except where modifications are necessary and appropriate given the differences in market structure for OTC Equity Securities.<sup>9</sup>

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<sup>3</sup> See Securities Exchange Act Release No. 96699 (January 18, 2023), 88 FR 4260 (January 24, 2023) (Notice of Designation of a Longer Period for Commission Action on File No. SR-FINRA-2022-031).

<sup>4</sup> See Securities Exchange Act Release No. 97039 (March 3, 2023), 88 FR 14653 (March 9, 2023) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-031).

<sup>5</sup> See Letter from Robert McNamee, Associate General Counsel, FINRA, to Vanessa A. Countryman, Secretary, SEC, dated March 29, 2023 ("FINRA Letter").

<sup>6</sup> See Letter from Howard Meyerson, Managing Director, FIF, to Vanessa A. Countryman, Secretary, SEC, dated April 13, 2023 ("Second FIF Letter").

<sup>7</sup> See Securities Exchange Act Release No. 97629 (May 31, 2023), 88 FR 37112 (June 6, 2023) (Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2022-031).

<sup>8</sup> In addition, FINRA is providing guidance in Appendix A to this letter regarding application of the proposed order routing reports for orders in OTC Equity Securities to the trading workflows available through OTC Link ATS described in the Supplemental FIF Letter.

<sup>9</sup> For example, as stated previously, such changes include not breaking out disclosures into sections for market orders, marketable limit orders, non-marketable limit orders, and other

The Second FIF Letter (as did the previous FIF letters on the proposed rule change and the preceding Regulatory Notice 21-35) takes issue with the SEC's current guidance regarding reporting execution venues under Rule 606(a).<sup>10</sup> Specifically, the SEC currently requires for Rule 606(a) disclosures applicable to NMS Securities that firms report the venues to which customer orders were routed for execution (not including routing brokers that do not execute orders). Where a reporting firm routes orders to a routing-only broker-dealer, the reporting firm must disclose information relevant to the execution venues to which the routing broker routes customer orders for execution. Similarly, FINRA proposes that, if a member routes orders for OTC Equity Securities to a routing-only broker-dealer, the member would be required to disclose information relevant to the execution venues to which the routing broker routes such customer orders for execution.

The Second FIF Letter acknowledges FINRA's intention to align the scope of the Rule 606(a) and OTC Equity Security reports; however, it argues that the existing Rule 606(a) report requirements are confusing and misleading<sup>11</sup> and that, therefore, the Proposal would also provide confusing and misleading information to investors and the public because provided data is not comparable across reporting firms.<sup>12</sup> The Second FIF Letter also reiterates FIF's belief that "look-through" information is not relevant for investors because financial arrangements between a routing firm and an execution venue have no effect on the routing decisions of a reporting firm, while arrangements between the reporting firm and the routing firm are relevant to such decisions.<sup>13</sup> FIF also restates other concerns noted in the First FIF Letter, including that the language of the proposed rule is not clear with regard to the application of the "look-through"

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orders, as well as requiring the quantitative disclosures for OTC Equity Securities to be expressed per order (rather than per share). See Proposal at 74674.

<sup>10</sup> See Second FIF Letter at 2.

<sup>11</sup> See id. at 5.

<sup>12</sup> See id. at 2-3. FIF also describes a scenario involving a routing broker sending child orders to multiple execution venues, and asserts that the "look-through" requirement in Rule 606(a) results in important information being excluded from the report. See id. at 4-5. FINRA notes that FIF's description of the outcome of the reporting firm's obligations under Rule 606(a) appears to be inconsistent with SEC guidance. For example, the SEC has stated that if an order is executed after being routed to multiple venues, the venue that executed the order should be considered the venue to which the order was routed for purposes of Rule 606(a) disclosures, and if an order is not executed after being routed to multiple venues, the first venue should be considered the venue to which the order was routed for purposes of Rule 606(a). See Disclosure of Order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75427 n.65 (December 1, 2000). As noted above, FINRA generally intends to remain consistent with the SEC's approach under Rule 606(a) for the proposed new OTC Equity Security reports.

<sup>13</sup> See Second FIF Letter at 3-4.

requirement and concerns regarding reporting on financial arrangements to which the report firm is not a party.<sup>14</sup>

FINRA continues to disagree with FIF's assertions regarding the proposed requirement to report execution venues on the new OTC Equity Security reports, and believes the concerns repeated in the Second FIF Letter were adequately addressed both in the Proposal and the FINRA Letter.<sup>15</sup> Specifically, FINRA continues to believe that it is appropriate to remain consistent with the SEC's approach, including with respect to the types of venues that should be covered by the new reports, so that the information included in the disclosure are aligned for the benefit of investors using both reports.<sup>16</sup> As FINRA has stated previously, firms are responsible for their order handling choices, and the financial arrangements that exist in connection with their order handling decisions are a pertinent part of the mix of information relevant to the reporting firm's customers. FINRA continues to believe it is reasonable to require the reporting firm to obtain and disclose relevant information about relationships with the execution venues to which its customer orders are routed, and that requiring disclosure of execution venues would make the reports more easily comparable across reporting firms, as the reports would all include information about the financial inducements that may influence a member's decision to route to destinations where the order may be executed by the recipient venue. FINRA is concerned that setting different execution venue disclosure standards for the OTC Equity Security reports than exist for the Rule 606(a) reports potentially could introduce confusion since the parallel reports would not provide information about the same types of venues.<sup>17</sup> Further, FINRA continues to believe that the proposed requirements would not exclude relevant information because, as FINRA has also noted previously and consistent with SEC requirements for Rule 606(a) reports, FINRA would expect reporting firms to disclose information in the material aspects section of their reports regarding their arrangements with routing brokers, if applicable.<sup>18</sup>

As FINRA has stated previously, members are free to provide additional explanatory context regarding their OTC Equity Security reports, provided that such information is accurate, not misleading, and otherwise complies with other applicable SEC and FINRA requirements.<sup>19</sup> FINRA does not believe that FIF has provided any new information in the Second FIF Letter that would alter FINRA's views as expressed in the FINRA Letter.

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<sup>14</sup> See id. at 6-7. FINRA previously provided responses to such concerns. See FINRA Letter at 4-5.

<sup>15</sup> The FINRA Letter is hereby incorporated by reference in this letter.

<sup>16</sup> See FINRA Letter at 4; Proposal at 74679.

<sup>17</sup> See FINRA Letter at 4.

<sup>18</sup> See id. at 4-5 n.14.

<sup>19</sup> See id. at 6 n.21.

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If you have any questions, please contact me at (202) 728-8012 or  
[robert.mcnamee@finra.org](mailto:robert.mcnamee@finra.org).

Sincerely,

/s/ Robert McNamee

Robert McNamee  
Vice President & Associate General Counsel  
Office of General Counsel

### **Appendix A: Guidance on OTC Link ATS Trading Workflows**

In the Supplemental FIF Letter, FIF describes six trading workflows that are available through the OTC Link ATS—which is an inter-dealer quotation system (“IDQS”) for OTC Equity Securities—and recommends how the venue for execution should be reported for these workflows in the proposed routing reports for OTC Equity Securities. As described by FIF, all workflows involve a single symbol, with one introducing broker (“IB1”) and up to three market makers (“MM1,” “MM2,” and “MM3,” respectively), in which a customer of IB1 submits a buy order to IB1 and one or more market makers are displaying an offer to sell on the IDQS (which can be a proprietary quote of the market maker or a representation of a customer order).<sup>20</sup> In all six scenarios, FIF recommends that the IDQS be reported as the execution venue under the proposed requirements.

As FINRA has stated previously, consistent with the SEC’s approach to SEC Rule 606(a), FINRA intends that, for purposes of the proposed disclosures for OTC Equity Securities, a “venue” would be defined broadly to cover any market center or any other person or entity to which a member routes for execution, and consequently would exclude an entity that is used merely as a vehicle to route an order to a venue selected by the broker-dealer. Thus, for purposes of proposed Rule 6470, where an ATS offers both automatic order execution and order delivery functionality, the ATS should be identified as the venue only when the ATS provides order execution. FINRA believes identification of the ATS in these circumstances is appropriate because the ATS is the venue where the order was routed “for execution,” consistent with SEC guidance for the predecessor to SEC Rule 606. Conversely, for purposes of proposed Rule 6470, in cases where the ATS instead provides order delivery, the separate market center to which the orders are delivered—*e.g.*, a market maker or other ATS—should be identified as the venue where the order was routed for execution.<sup>21</sup>

In the trading workflows available through OTC Link ATS as described by FIF in the Supplemental FIF Letter, it is FINRA’s understanding that the IDQS provides order delivery functionality for IB1 to execute orders with MM1 or, in some cases, MM1, MM2, and MM3, rather than offering automatic order execution.<sup>22</sup> As such, FINRA disagrees with FIF’s recommendation that IB1 report the IDQS as the venue for execution in these workflows as

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<sup>20</sup> See Supplemental FIF Letter at 1-2.

<sup>21</sup> See Proposal at 74674 n.16 (citing to SEC Division of Market Regulation, Staff Legal Bulletin No. 13A, Question 12); see also Regulatory Notice 21-35 at 13 and 18 n.33.

<sup>22</sup> For example, the workflows describe how trade messages are “delivered” to the market maker and describe the market maker as the entity that “executes the order.” Further, the workflows contemplate the ability of the market maker to send a counter-offer to IB1, which would not be compatible with automatic order execution on the IDQS.

described.<sup>23</sup> Rather, because in each case the market maker(s) is the market center to which orders are delivered via the IDQS, MM1 (or multiple market makers, as applicable) should be reported as the venue on IB1's order routing disclosures under proposed Rule 6470.<sup>24</sup> FINRA addresses each of the workflows described in the FIF Supplemental Letter below:

Workflow 1: *MM1 posts a proprietary quote in the IDQS. IB1 sends a trade message for its customer order that is delivered via the IDQS to MM1, which MM1 then executes. MM1 is the venue to which the order was routed "for execution" and should be disclosed on IB1's Rule 6470 report.*

Workflow 2: *MM1 posts a proprietary quote in the IDQS. IB1 sends a trade message for its customer order that is delivered via the IDQS to MM1. MM1 directs a counter-offer trade message to IB1, which is delivered via the IDQS. IB1 agrees to the counter-offer, resulting in a trade execution. MM1 is the venue to which the order was routed for execution and should be disclosed on IB1's Rule 6470 report.*

Workflow 3: *MM1, MM2, and MM3 post proprietary quotes in the IDQS. IB1 sends three separate trade messages for its customer order that are delivered via the IDQS to MM1, MM2, and MM3. Each market maker then executes against the customer order. MM1, MM2, and MM3 are the three venues to which the order was routed for execution and should each be disclosed on IB1's Rule 6470 report.*

Workflow 4: *MM1, MM2, and MM3 post proprietary quotes in the IDQS, each with an offer-side quantity of 200 shares. IB1 receives a buy order from its customer and directs a MAX order for 400 shares to MM1, MM2, and MM3, pursuant to which IB1 is willing to execute against any of the three market maker quotes, but the maximum total that IB1 can execute is 400 shares. The IDQS delivers the MAX order trade message to each market maker. MM1 executes for 200 shares and MM2 executes for 200 shares. MM1 and MM2 are the venues to which the customer's order was routed for execution and should be disclosed on IB1's Rule 6470 report.*

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<sup>23</sup> However, similar to the routing broker scenario addressed above, FINRA would expect reporting firms to disclose information in the material aspects section of their reports regarding their arrangements with the IDQS used to route orders to the market maker(s), if applicable. See *supra* note 18 and accompanying text.

<sup>24</sup> As FIF notes, FINRA members are required to report order routing activity to the Consolidated Audit Trail ("CAT"). The CAT reporting requirements are distinct from the order routing disclosure requirements proposed here. Specifically, the purpose of the proposed order routing disclosures is to provide investors and other interested parties with information about the reporting firm's relationships with execution venues, whereas CAT, among other things, collects audit trail information regarding the activity of industry members for regulatory oversight purposes.

Workflow 5: *MM1 receives a sell order from its customer and represents the customer order as an offer-side quote in the IDQS. IB1 sends a trade message for its customer order that is delivered via the IDQS to MM1, which MM1 then executes. Similar to Workflow 1, MM1 is the venue to which IB1's order was routed for execution and should be disclosed on IB1's Rule 6470 report. MM1 also routed its own customer order to itself for execution, and so MM1 should disclose itself as the venue on its Rule 6470 report.*

Workflow 6: *MM1 receives a sell order from its customer and represents the customer order as an offer-side quote in the IDQS. IB1 sends a trade message for its customer order that is delivered via the IDQS to MM1. MM1 directs a counter-offer trade message to IB1, which is delivered via the IDQS. IB1 agrees to the counter-offer, resulting in a trade execution. Similar to Workflow 2, MM1 is the venue to which IB1's order was routed for execution and should be disclosed on IB1's Rule 6470 report. Similar to Workflow 5, MM1 also routed its own customer order to itself for execution, and so MM1 should disclose itself as the venue on its Rule 6470 report.*