FINANCIAL INFORMATION FORUM
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November 8, 2007

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

RE: Financial Information Forum Comments on Proposed Amendments to OTC Trade Reporting Requirements for Equity Securities **(Regulatory Notice 07-46)**

Dear Ms. Sweeney:

The Financial Information Forum (FIF) welcomes the opportunity to comment on the proposed amendments to OTC Trade Reporting Requirements for Equity Securities. FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

Background

FINRA is soliciting comment on two proposals to amend over-the-counter (OTC) trade reporting requirements for equity securities transactions. As per FINRA Regulatory Notice 07-46 (*Notice*), the term “OTC trade reporting requirements” refers to the trade reporting rules relating to:

1. Trades in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS, effected otherwise than on an exchange that are reported to FINRA through the Alternative Display Facility (ADF) or a Trade Reporting Facility (TRF); and

2. Trades in non-exchange-listed securities (*e.g.*, OTCBB and Pink Sheet securities) that are reported to FINRA through the OTC Reporting Facility (ORF)

Specifically, the *Notice* seeks comment on the following:

- **Linking Proposal –** Requiring firms to provide information sufficient to link tape and non-tape reports that are submitted to FINRA for the same overall transaction (*e.g.*, riskless principal or agency where a firm is acting as agent on behalf of another member firm).

- **Trade Reporting Structure Proposal -** Outlining two alternatives aimed at simplifying and updating the current market maker-based trade reporting structure.

FIF Response to FINRA's Linking Proposal

In Regulatory Notice 07-46, FINRA states that the purpose of the Linking Proposal is "to require that firms provide information to link related reports when both a tape and a non-tape report are submitted to FINRA for the same overall transaction."[1]

The members of FIF agree with FINRA that a process for linking both tape and non-tape trade reports would be beneficial. However, implementing such a process would require extensive coordination and communication between members, regulators and the vendor community and we strongly recommend that this proposal be decoupled from the Trade Reporting Structure Proposal. In order to provide the appropriate time and focus warranted by this proposal, we respectfully request an implementation delay to allow for ample industry discussion and collaboration. The proposed changes will have significant impact on member firms' trading, allocation and trade reporting systems.

FIF Response to FINRA's Trade Reporting Structure Proposal

In Regulatory Notice 07-46, FINRA is soliciting comment on a proposal to create a simpler, more uniform trade reporting structure. FINRA's goal is to adopt an approach that will result in more accurate and timely trade reporting and make the trade reporting process less cumbersome for firms.

FINRA has provided member firms two approaches for consideration: a sell-side reporting structure, and an executing broker reporting structure.

The FIF membership is in favor of the executing broker reporting structure and concurs with FINRA's statement that "such an approach better aligns the trade reporting responsibility with the party responsible for compliance with SEC Rule 611 of Regulation NMS (the Order Protection Rule). By aligning these requirements, the firm with the trade reporting obligation will also be the party that is aware of and can properly report whether an exception or exemption from the Order Protection Rule applied to the transaction."[2]

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[1] 07-46 http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p037097.pdf (p.5)
[2] 07-46 http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p037097.pdf (p.4)

The following are FIF's responses to FINRA's specific questions regarding the alternative structures proposed for trade reporting:

1. What are the advantages and disadvantages (if any) of the current reporting structure and the two structures described?

While the current reporting structure works, FIF agrees with FINRA that "this reporting structure can result in confusion, delays and double-reporting, as the parties to a trade attempt to determine which party has the trade reporting obligation. Today, a firm's status as a market maker may not always be apparent to the contra-party to a trade and, increasingly, firms' proprietary desks (other than their market making desks) are handling and executing transactions in equity securities."[3]

Of the two proposals, FIF believes that an executing broker reporting structure would best serve the industry for the following reasons:

- The executing broker has access to the trade information necessary to comply with Rule 611 of Regulation NMS.
- A sell-side reporting process may cause continued problems within the trade reporting process as the sell-side broker does not always have access to pertinent information regarding the reported transaction (e.g., trade-through exemptions).

That having been said, the fact that many trades are often executed verbally does not provide for an all-encompassing solution to the trade reporting structure.

2. Is there another reporting structure or variation on the two structures described above that should be considered?

- FIF believes that the executing broker reporting structure, for the reasons stated above, is the best approach to the current reporting structure process.

3. With respect to the proposed executing broker reporting structure, how would firms define "executing broker"?

- FIF suggests that the member firm receiving an order electronically and agreeing to execute that trade, either as agent or principal, is clearly identifiable as the "executing broker".
- In those situations where the transaction takes place via non-electronic, bilateral agreement or the two parties disagree as to which party has the reporting obligation, we recommend that the firm on the "sell-side" of the trade be required to take on the obligation for trade reporting. If the sell-side broker is not a member firm, the member firm would be responsible for trade reporting.

[3] 07-46 http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p037097.pdf (p.3)

4. What are the technological implications and burdens associated with each of the reporting structures described above?

   - Time and effort would be required to properly implement either the “executing broker” reporting structure or the “sell-side broker” reporting structure. When changing the trade reporting process, significant work would be required to analyze the impact of the changes to the current process and to properly remove existing code in multiple systems.
   - There are significant additional challenges presented by the sell-side model in determining all of the appropriate information required to properly report the trade; specifically, that which is required to comply with SEC-mandated Regulation NMS reporting.

5. How much time would firms need to make the necessary systems changes to implement each of the reporting structures described above?

   - We anticipate a minimum effort of six to nine months for firms to implement this type of change.

In summary, we reiterate our belief that the “executing broker” reporting structure is the best alternative for the member firms. We also hope that you will consider our request to decouple the linking requirements from the current amendments or otherwise allow these changes to be addressed in a future implementation. We believe that the complexities of establishing proper linkages are significant, and will require substantially greater time for industry discussion, business and technical analysis, implementation and testing.

On behalf of the FIF, thank you again for the opportunity to provide our views on the proposed amendments to OTC Trade Reporting Requirements for Equity Securities. We are prepared to participate in any discussions as you consider these proposed amendments

Regards,

Michael A. O’Conor

For Manisha Kimmel
Executive Director, Financial Information Forum