October 21, 2011

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

Re: **Regulatory Notice; 11-43 - Proposed Amendments to Rule 5210 Regarding Publication of Indications of Interest**

Dear Ms. Asquith:

The Security Traders Association, "STA" welcomes the opportunity to comment on Regulatory Notice: 11-43 -Proposed Amendment to FINRA Rule 5210 ("Amendment"). The STA is an organization comprised of individuals who are involved in the trading of financial securities. Our members represent many of the business models in the financial services sector, including full and discount service broker dealers, agency only broker dealers, asset managers, exchanges and ATS's. Because of the diversity within our membership we are uniquely qualified to provide insight and comments on the Amendment. The STA uses a Committee structure to vet issues amongst its various constituencies to create bottom-up consensus. With regard to the Amendment, the STA utilized its: (1) Institutional Committee, which is comprised solely of traders from institutional asset managers; (2) Compliance Committee, which is comprised of compliance personnel at various broker dealers; and (3) Trading Issues Committee, which has representatives from different market participants. The opinions expressed in this letter will be those of a broad spectrum of market participants who are both the initiators and receivers of Indications of Interest (IOIs).

Background and Discussion

Indications of Interest are non-firm expressions of trading interest. They are initiated by broker dealers and displayed to the trading desks at institutional asset managers, "buy side firms". IOIs are broadly categorized by "natural" and "non natural" indications of interest. There are different modifiers which can be added to IOIs which include: In Touch With ("ITW"); Limit ("LMT"); and Agent "AGENT." The issue of how these modifiers are used is subject to the service providers and their specific systems. It is standard practice for buy side firms to view IOIs when seeking liquidity.

In May 2009, FINRA released Regulatory Notice 09-28 reminding firms that "their IOI's must be truthful, accurate and not misleading."

STA's Executive Summary Response

Since the May 2009 Regulatory Notice 09-28, the industry has responded. Based on conversations with various compliance departments and the limited number of enforcement notices issued pertaining to the current use of IOIs, we are lead to conclude that member firms (through their compliance departments) have implemented internal policies and procedures to ensure trading departments are aware of their IOI obligations. While our members agree that the definition of "natural" varies across member and non-member firms, this variance is narrow and does not require FINRA to impose a stricter definition.

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The majority of STA membership views the current guidance as balanced and believes it has been widely accepted and complied with as a best industry practice. These members do not see the need for further guidance and view this amendment as unnecessary.

Other members, however, did express dissatisfaction with the use of IOIs in specific scenarios involving natural IOIs in small to midcap securities. It has been their experience that such negative occurrences are sporadic. These members view the amendment as heavy handed and feel it would be disruptive to the broader use of IOIs. These members and STA as an organization strongly advocate that better enforcement of the existing guidance is an effective and less disruptive approach to eradicate the perceived concerns expressed to and by FINRA in Regulatory Notice 11-43.

FINRA, states in the Amendment that it "remains concerned that firms are disseminating misleading information regarding IOIs, including not accurately labeling them to reflect their origination". The extent of FINRA's concerns is not detailed in the Amendment, nor is its basis cited for how these opinions were formed.

If it is the opinion of FINRA that there is deceptive and illegal behavior being conducted by bad actors with the use of IOIs, either on an individual or member firm basis, STA would strongly recommend these market participants be punished.

General Uses and Practices of Indications of Interests

In seeking "block liquidity", buy-side desks must scrutinize all avenues of liquidity to seek the best strategy to complete their order. This would include identifying IOIs in the security as well as making calls and studying historic volume in a stock. At some buy side firms, it is standard practice to speak to more than one broker dealer when seeking liquidity. Often a verbal indication is given to a broker dealer to have them advertise an indication of interest, so the order is not tied up on their desk and the trader can utilize alternative venues to also seek liquidity. With the advent of Alternative Trading Services (ATSs), blotter scraping dark-pools, and liquidity seeking algorithms, buy-side trading desks can execute orders without advertising volume with any specific broker dealer. This creates a dichotomy, leaving more traditional broker dealers held to a different standard than the electronic execution service brokers. To limit the brokers to advertising only with a concrete order would give the electronic venues an advantage over the traditional broker dealers.

Some investment firms, in an attempt to adhere to best execution obligations, find it hard to justify avoiding natural IOIs in illiquid securities, regardless of the historic quality of the issuing broker dealer's IOIs. STA does not feel this best execution practice is an industry standard. If such a standard were in place either as a regulatory requirement or industry standard, the burden would impede the ability of buy side firms to trade large blocks of stock. We feel it is often the case that multiple natural IOIs exist in the same security simultaneously. Today, buy side firms have the flexibility to go to the natural indication they deem is best for their client. If a best execution obligation required buy side firms to explore each indication, this would not only impede a buy side firm's ability to trade large blocks of stock, but would also increase the likelihood of information leakage. These concerns could still exist even in a regime where the new Amendment was present. The way to keep markets fair and orderly is to allow investors, including buy side firms, the maximum amount of liquidity choices to satisfy their best execution obligations to their shareholders.

While the STA is opposed to the Amendment for the above stated reasons, we address the specific questions posed by FINRA herein below.

Comment on specific questions from FINRA

1. Should FINRA define "Indication of Interest" (IOI)?

We think the term "indication of interest" is self-defining and does not require any further clarification. We also feel the term is not applicable to the conditions of this proposed amendment, in particular that a broker dealer be required to have a customer order on their books and records prior to sending a natural IOI. Under the current industry best practices, there exist several specific avenues to differentiate indications that enable a buy side desk to understand the nature of these indications. Examples of these different indications are: In Touch With ("ITW"); Limit ("LMT"); and Agent ("AGENT"). The difference in how these identifiers are used can be subject to the service providers and their specific systems.

1a. Does the application of the new labeling requirements to both IOI's and quotations adequately cover the situations in which concerns regarding inaccurate labeling arise?

While it is difficult to predict how market participants will react to any regulatory amendments, we could envision a response that would satisfy the terms of this proposed amendment while not correcting the inaccuracies it is meant to address. In particular, the definition of "client" can be broad. It is plausible for firms who have certain corporate structures to organize an internal department into a separate legal entity which would satisfy the term "client".

Without concrete disciplinary steps laid out to police violations, the room for interpretation may be too broad to be effective. We favor the self-policing concept and the benefits which arise in competitive markets. Simply stated, if a firm is misusing IOIs, a buy side trader has the option of reporting them to the IOI system provider or choosing to not execute trades with that market participant.

2. Is the approach taken in the proposed amendment appropriate or should FINRA define terms such as "natural"? Would specific definitions provide firms with clarity or would they create too narrow an application? Would definitions need regular updating to stay current with industry practice?

We have determined that there is no known need for further regulation regarding the definition of terms. Creating narrow definitions would create too many categories and be harmful to discovery of block liquidity. Buy side trading desks seek block liquidity from multiple sources because of the fragmented nature of today's marketplace. To define "natural" would be to define the many different relationships that exist among market participants. This would force change to existing broker dealer client relationships that have been working.

3. Is the requirement that a firm has received a customer order before labeling an IOI or quotation in a manner that indicates the interest originated with a customer too limiting? Are there instances in which a customer would not want to place an order with a firm, but would want the firm to label an IOI in that manner? Is there an alternative standard that could achieve the same regulatory purpose? If so, what should that standard be?

STA's buy side community views this requirement as too limiting and impeding their ability to probe the marketplace for liquidity. Requiring broker dealers to have customer orders before marking an IOI as a "natural" indication may question or compromise the relationship between a broker dealer and a client. Additionally it is questionable if this places traditional brokers at a disadvantage to electronic venues, especially "blotter scraping trading venues."

Requiring one subset of this marketplace to act in a specific manner while completely ignoring another, ultimately disenfranchises that segment. This proposal would become a regulation that picks winners and losers, which we believe should not be handled through regulation but instead through competition.

4. Some buy-side firms have stated that they prefer not to trade with "non-naturals" because "non-naturals" compete with them after the execution. For example, a buy-side firm selling part of a large block to a counterparty may be concerned that the counterparty might create downward pressure on the stock either if it were to sell the position, or if it already sold shares in anticipation of buying from the buy-side firm. Conversely, when trading with a "natural," the buy-side firm's selling pressure is potentially offset by the buying interest of the "natural" counterparty. Are these valid concerns by the buy side? Is it too restrictive to assume that "natural" interest can only come from customer orders?

Each buy side desk is a sophisticated operation capable of deciding how best to achieve their investment objectives. We suggest that giving buy side desks the greatest latitude in seeking to find liquidity in the most transparent way possible will allow best execution to be achieved for their shareholders. To make the statement that "non-naturals" compete with orders and "naturals" do not, does not represent the majority opinion of our membership. There are many venues that compete for volume. It is not necessarily the "non-naturals" that are competing with the order.

Conclusion

The STA is opposed to this amendment. Rather than cleaning up a perceived issue emanating from a small subset of the marketplace, this amendment would build a wall between market participants. The unintended consequences that would result could be a diminished liquidity discovery process. As we stated in our Executive Summary, we instead support better enforcement of existing guidance to address the concerns of FINRA.

Sincerely,

James Toes

Jim Toes
President & CEO
Security Traders Association