



Financial Industry Regulatory Authority

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September 28, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: SR-FINRA-2010-043 — Proposed Rule Change to Reinstitute Short Exempt Marking for Trade Reporting and OATS — Response to Comments

Dear Ms. Murphy:

The Financial Industry Regulatory Authority, Inc. ("FINRA") hereby responds to the comment letters received by the Securities and Exchange Commission ("Commission" or "SEC") in response to the publication in the *Federal Register* of Notice of Filing of SR-FINRA-2010-043.¹ The purpose of the proposed rule change is to amend FINRA's trade reporting rules and Order Audit Trail System ("OATS") rules ("OATS Rules") to facilitate surveillance for compliance with recent changes to SEC Regulation SHO. The Commission received two comment letters on SR-FINRA-2010-043.²

FIF raises several issues regarding the proposed amendments to the OATS Rules in the proposed rule change. First, FIF expresses concern regarding the proposed

¹ See Securities Exchange Act Release No. 62748 (Aug. 20, 2010), 75 Fed. Reg. 52,574 (Aug. 26, 2010).

² Letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission (Sept. 17, 2010) ("FIF"); Letter from Mike Wiesenber to the Commission (Sept. 8, 2010). Mr. Wiesenber's comment letter addresses only the addition of a Routed Order Type Indicator in connection with implementing the requirement that firms include the price of an order on Route Reports. As Mr. Wiesenber notes in his letter, the type of order is inherent in whether a member reports a price (i.e., a limit order will have a price while a market order will not); however, FINRA disagrees that the Routed Order Type Indicator "provides no useful information whatsoever," as it helps FINRA to validate whether a price must be included on a Route Report, particularly since the order type of a route may not be the same as the order type of the parent order received by the firm.

implementation date of the proposed rule change, November 10, 2010, and the time FINRA has allowed for testing before implementation.³ As FINRA noted in the filing, the proposed amendments to the OATS Rules are to facilitate FINRA's surveillance efforts regarding member firms' compliance with the SEC's amendments to Regulation SHO, which become effective on November 10, 2010. Because of this, FINRA believes it is necessary that the OATS amendments become effective on the same date as the changes to Regulation SHO.⁴ To address FIF's concern regarding the amount of time allocated for testing, FINRA has arranged to permit firms to test in the OATS environment beginning on October 11, 2010, rather than begin testing on October 20, 2010. This will provide reporting members with one month in which to test systems.

FIF also indicates that there may be confusion regarding the fact that, pending SEC approval, the implementation date of the proposed changes will be November 10, 2010; however, the changes will be available in the OATS production environment on November 8, 2010. Because November 10, 2010 is a Wednesday, FINRA believes a full production change coinciding with the proposed November 10, 2010 effective date is not advisable. Rather, the field format changes will be placed in the production environment on Monday, November 8, 2010. These new fields, however, will not be required to be populated until the proposed effective date of the new rule on Wednesday, November 10, 2010. Therefore, firms must add the new fields related to the rule filing to the relevant OATS reports as of November 8, 2010, but are not required to populate them until November 10, 2010. If firms choose to populate the

³ FIF cites one example of the complexity surrounding the changes regarding certain post trade agency allocations. The new requirement to provide the price of a routed order on Route Reports does not change any of the reporting requirements for orders handled on an agency average price or post trade allocation basis. Those orders should continue to be reported in accordance with the guidance set forth in current relevant Frequently Asked Questions ("FAQs"), OATS Reports, and *OATS Reporting Technical Specifications*. FINRA has published a new FAQ on its OATS web site on this topic.

⁴ FIF also expresses concern regarding the "newly required" ISO Indicator on Route Reports. This change is not part of the proposed rule change and therefore need not affect the Commission's consideration of the proposed rule change. However, FINRA notes that members are already required to indicate on Route Reports whether an order is routed as an Intermarket Sweep Order ("ISO"). See Securities Exchange Act Release No. 56003 (July 2, 2007); 72 Fed. Reg. 37,287 (July 9, 2007). Currently, members must include a value of "I" for the Routing Method Code on a Route Report if the order is routed as an ISO. The recent changes to the *OATS Reporting Technical Specifications* remove "I" as a value for Routing Method Code and replace it with a conditional ISO Indicator (i.e., a firm will fill in a "Y" if the order is an ISO but will leave the indicator blank if it is not).

Ms. Elizabeth M. Murphy
September 28, 2010
Page 3

fields as of November 8, 2010, all field validations will apply. FINRA has published a new FAQ on its OATS web site on this topic for firms' reference.

FINRA believes that the foregoing fully responds to the issues raised by the commenters. Please feel free to contact me at (202) 728-6927 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brant K. Brown", with a stylized flourish at the end.

Brant K. Brown
Associate General Counsel