



FIA Principal Traders Group
2001 Pennsylvania Avenue NW
Suite 600 | Washington, DC 20006

T 202 466 5460
F 202 296 3184

ptg.fia.org

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

Re: FINRA-Regulatory Notice 15-06 “Registration of Associated Persons who Develop Algorithmic Trading Strategies”

Dear Ms. Asquith:

The FIA Principal Traders Group (“FIA PTG”)¹ appreciates the opportunity to comment on the Financial Industry Regulatory Authority, Inc.’s (“FINRA”) proposal to require registration of associated persons who are involved in the design, development or significant modification of algorithmic trading strategies (the “Proposal”). FIA PTG supports the overall objective of the Proposal and offers suggestions, described below, to further clarify the Proposal’s scope.

FIA PTG members engage in manual, fully-automated, and hybrid methods of trading, and include firms registered as SEC broker-dealers² as well as a small number of FINRA member firms. As you undoubtedly know, SEC registered broker-dealers, regardless of membership in FINRA, are required to maintain licensed principals and traders who have passed the requisite FINRA qualification exams, including the Series 24 and other prerequisite exams.³

¹ FIA PTG is an association of more than 20 firms that trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. FIA PTG advocates for open access to markets, transparency, and data-driven policy. Specifically, in concert with FIA, FIA PTG members have contributed to guidance regarding automated trading best practices located online at <https://americas.fia.org/articles/fia-issues-guide-development-and-operation-automated-trading-systems>.

² All US equities and options exchanges have self-regulatory obligations which are almost uniformly fulfilled by contract with FINRA, who perform their financial, operational and field regulatory functions. Because of this, all FIA PTG member firms who trade equities or options directly with these exchanges have SEC registered broker dealers and are examined by FINRA.

³ This includes individuals with the Series 7, Series 42, and Series 56 among other registrations.

Overview: FIA PTG Offers its Support with Some Suggestions for Clarity

FIA PTG supports the overall objective of requiring minimum competency standards in the form of exam-based registrations for individuals who are primarily responsible for the design, development or significant modification of algorithmic trading strategies. FIA PTG agrees that registration of such individuals is appropriate where such activity would require registration if it were conducted in a non-automated (manual) fashion. Not surprisingly, FIA PTG members who maintain broker-dealers currently have individuals who are licensed to engage in and supervise the equities trading activity of the firm—whether the activity is manual, hybrid or fully automated.

We also agree with FINRA that this proposed “registration requirement be narrowly tailored” and be left to the member firms’ discretion to identify those individuals whose responsibilities rise to the level of “primarily responsible” in light of each firm’s structure. Much like the design of a firm’s written supervisory procedures reflects the firm’s business model and organizational structure, among other things, the registration of a person or persons primarily responsible for the design and development of a firm’s algorithmic trading should similarly reflect the firm’s discretion in light of the complexity and structure of each firm.

FIA PTG also suggests, as described more fully below, that the Proposal apply equally to member firms, whether the trading activity is conducted by automated software or by hybrid means (including broker-employed developers).

Development of Automated Trading Software

Design, development and implementation of automated trading software, whether fully or partly automated, is a compilation of different components and processes depending upon firm model. However, there are common patterns to development among proprietary participants which we believe are helpful to understanding the challenges of interpreting and implementing FINRA’s proposal, and which also illustrate the benefits of leaving it to a firm’s discretion which developers must register.

Commonly, a system developed to automate part or all of a trade is made up of numerous “algorithms”⁴, which work together with other “algorithms” to ultimately create a cohesive trading system which is used to interact with the marketplace. Such “algorithms” may include those for processing market data, order management, risk management, or asset valuation.

It is not unusual, therefore, that different aspects of an automated trading system are developed, supported, or managed by more than one person. Depending on an organization’s structure, such responsibility may reside with individuals from various

⁴ According to the Oxford Dictionary, “Algorithm” is defined as: A process or set of rules to be followed in calculations or other problem-solving operations, especially by a computer.

points along the trading system development lifecycle including software engineers, business analysts, traders, or operational staff.

At many, but not all points along this lifecycle, there may be some level of responsibility for the “strategy” either for trading, research, development, testing, compliance, or support purposes. Because of the complexity of the development process and the diversity in firm structures, we fully support FINRA’s intent to avoid being too prescriptive, thereby allowing its members to determine and register those individuals whose functions in a firm, when done manually would require registration, including those who operate or design the *overall activity* of automated trading software. In this sense, ensuring that there is a registered individual that meets “the same minimum competency standards for knowledge of securities regulation as is applicable to individual traders” is an exercise most appropriately reserved for the firm itself.

Apply Proposal to Broadest Spectrum of Participants

Automated trading has diverse elements, as discussed above, and can be used by a wide spectrum of firms to automate a variety of functions. Describing automated strategies as ‘algorithmic trading strategies’ may improperly limit the appropriate scope of the Proposal to firms engaging in fully automated strategies. The risks, however, are frequently the same amongst a broad spectrum of firms and levels of automation.⁵ We believe, therefore, that FINRA should clarify the proposal so that it is clear that the registration principle applies across all FINRA members engaged in the development of automated trading functionality, and at the same time leaves the appropriate discretion within each of those participants to make the determination of which individuals should be registered.

Third-Party Considerations, Footnote #8 & Supervision of Outsourced Services

We recognize and appreciate FINRA’s effort to identify and address scenarios in which firms employ automated trading facilitated by third-party providers. In that context, we certainly understand that a firm cannot outsource its supervisory responsibilities with respect to services performed by third-party providers. However, we would like to point out that as currently designed, the Proposal raises more questions than answers with respect to a firm’s third-party developer registration obligations. We suggest that FINRA consider the registration implications inherent to its observation in Footnote #8 and offer further clarity in any formal proposed rule. FIA PTG looks forward to participating in that discussion, so that the registration requirements impact participants relatively equally regardless of whether the software is ‘off-the-shelf’, developed by unaffiliated third-parties, or developed in-house.

Recognize Current Registrations and Eliminate Potential Duplication

⁵ Currently there are many examples of both professional and retail trading systems which offer innovative automated features for users who trade, which may include automation of order book sensitive pricing, automatic short order locate and marking logic, automation of trade timing based on moving reference prices, and automation of hedging or loss-limit orders among other software features.

The Proposal offers an opportune moment to recognize the sufficiency and applicability of current registrations. In other words, FIA PTG suggests that the proposed registration requirement, and the attendant knowledge competencies, may be satisfied by any one of the following registration types: S7, S55, S56, or the future S57 registration. This would allow for multiple efficiencies, including: (i) registered individuals with any one of these exams shall be deemed to satisfy the registration goal, (ii) the potential burden of duplicative exam or registration requirements is eliminated, and (iii) the primary goal of the proposal is served without the rule itself serving as a game of ‘regulatory gotcha’ where a firm or registered individual is potentially sanctioned for having one registration type while lacking a second yet duplicative one.

We recommend, therefore, that FINRA accept the S7, S55, and S56 as acceptable registration proxies for the Series 57 on a continuous basis. To the extent this proposal is accepted, we suggest long-overdue systemic improvements to the registration system, WebCRD, whereby the system, based on a firm’s business model, recognizes the fulfilled requirements based on any one completed registration without requiring the current manual check-the-box process.

Specific Requests for Comment:

Q1. The proposal would require registration as a Securities Trader by any associated person: (1) primarily responsible for the design, development or significant modification of algorithmic trading strategies; or (2) responsible for supervising or directing such activities. Are these activities/roles the correct ones on which to focus for purposes of a registration requirement, or are there other activities/roles that should be included? If these activities/roles should be changed or further refined, how so?

A: FIA PTG is prepared to support minimum competency standards in the form of exam-based registrations for individuals who are primarily responsible for the design, development or significant modification of algorithmic trading strategies. We see no need for any more prescriptive language than this; see our comments in the section of this letter titled “Development of Automated Trading Software”.

Q2: FINRA believes that only those persons in the algorithm development and supervisory roles described above should be required to register—support personnel would not be within the scope of this requirement. Should support personnel be required to register? Please provide comment on how support personnel should be defined for the purposes of this proposal.

A: Agreed, support personnel should not be required to register. In particular technological or development support personnel who are not “primarily responsible for the design, development or significant modification of [automated trading

functionality] (or from supervising or directing such activities)” should not be included. Additional examples of types of support personnel that should be excluded include users of software, researchers, infrastructure developers, hardware technicians, and operations development staff.

Q3. The proposed registration requirement would, among other things, apply to associated persons primarily responsible for the “design,” “development” or “significant modification” of algorithmic trading strategies (or for supervising or directing such activities). Are these activities equally influential on the regulatory compliance of the trading strategy ultimately employed by the algorithm?

A: This will vary from firm to firm and should efficiently meet FINRA’s goals as long as it avoids overly prescriptive language in its registration requirement. See our comments in the sections of the letter titled “Overview” and “Development of Automated Trading Software”. The three activities in question should all be taken into account by each firm when it applies its discretion to identify the appropriate individuals in light of the complexity and structure of the firm.

Q4. FINRA generally considers an “algorithmic trading strategy” to be any program that generates and routes (or sends for routing) orders or order-related messages in securities into the marketplace on an automated basis without material intervention by any person. The proposal would not capture standard order routers that are not designed to implement a particular strategy. Please provide comment on the scope of this term.

A: A broader scope is warranted. See our comments in the section of this letter titled “Apply Proposal to Broadest Spectrum of Participants”.

Q5: FINRA believes that some firm personnel within the scope of this proposal already are required to register as Securities Traders, but also anticipates that additional associated persons would be required to become registered and to take an exam. Would the proposed registration requirement discourage persons not currently required to register as Securities Traders from associating with a member firm? If so, what steps can be taken to reduce this impact? Please provide estimates of the number of associated persons not currently required to register as Securities Traders who would be covered by the proposal. Is the number different for member firms of different sizes or business models? What is the estimated number of member firms that would be required to have additional associated persons registered under the proposal? Would the exam fees and continuing education fees be paid by the firm or the associated person? What are the estimated costs associated with the firm monitoring for compliance with the proposed requirement?

A: Yes, anytime a registration is not reasonably related to the requirements of the role or expectations of a professional it becomes an impediment to hiring and retention. The impact can be mitigated by avoiding prescriptive definitions, and allowing firms to use discretion, when identifying the individuals who would require registrations. See our comments in the section of the letter titled "Development of Automated Trading Software".

Q6: Is the Securities Trader examination the appropriate exam for the purpose of ensuring that the key parties involved in the design, development, or significant modification of an algorithmic trading strategy (or those supervising or directing such activities) are sufficiently knowledgeable of the regulations applicable to securities trading? Is a different existing FINRA examination preferable, or should a new exam be developed for this purpose?

A: As envisioned, a Securities Trader exam seems like it would be an appropriate exam for an individual who is responsible for the trading activity of a member firm whether the activity is conducted by manual, automated software or by hybrid means. FIA PTG looks forward to participating in any effort to create such exam so that it would be appropriately focused. However, as noted above, we recommend that FINRA accept the S7, S55, and S56 as acceptable registration proxies for the Series 57.

Q7. Are there alternative methods for FINRA to achieve the objectives of the proposed registration requirement? If so, what are these alternatives and why are they better suited than the proposed registration requirement?

A: The objectives of the proposed registration requirement could be met by clarifying the responsibilities of personnel registered under the existing framework to evaluate whether automated trading software is designed to achieve regulatory compliance. This would have the advantage of requiring no new rule text.

FINRA could also consider simply establishing initial and continuing education regulatory element training for the affected persons that would focus on compliance, regulatory and ethical industry standards.

Conclusion

FIA PTG would like to thank FINRA for the opportunity to comment on the Proposal and we look forward to working together going forward. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Mary Ann Burns (maburns@fia.org).

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Respectfully,

FIA Principal Traders Group

A handwritten signature in black ink that reads "Mary Ann Burns". The signature is written in a cursive style with a large, looped initial "M".

Mary Ann Burns
Chief Operating Officer
FIA

cc: Bob Colby, Chief Legal Officer
Racquel Russell, Associate General Counsel