

OMB APPROVAL

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| Page 1 of * 49 | SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4 | File No.* SR - 2015 - * 023 Amendment No. (req. for Amendments *) |
| Filing by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 | | |
| Initial * <input checked="" type="checkbox"/> Amendment * <input type="checkbox"/> Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> Section 19(b)(3)(A) * <input checked="" type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/> | Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6) |
| Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * | | |
| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/> | | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/> |
| Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/> Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/> | | |
| Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> Proposed Rule Change Relating to Rule 4553 and Fees for Access to Alternative Trading System Volume Information Published on FINRA's Website </div> | | |
| Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. | | |
| First Name * Brant Last Name * Brown Title * Associate General Counsel E-mail * brant.brown@finra.org Telephone * (202) 728-6927 Fax (202) 728-8264 | | |
| Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. <div style="text-align: right;">(Title *)</div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> Date 06/29/2015 By Stephanie Dumont (Name *) </div> <div style="border: 1px solid black; padding: 5px; width: 60%;"> Senior Vice President and Director of Capital Markets Policy </div> </div> <div style="text-align: center; margin-top: 10px;"> <div style="border: 1px solid black; padding: 2px 10px; background-color: #cccccc;">Stephanie Dumont,</div> </div> | | |
| NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. | | |

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to remove Rule 4553 (Fees for ATS Data) from the FINRA rulebook.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

* * * * *

4500. BOOKS, RECORDS AND REPORTS

* * * * *

4550. ATS Reporting

* * * * *

[4553. Fees for ATS Data]

[(a) General]

[Fees are charged for ATS Data as set forth in this Rule. Professionals and Vendors must pay the subscription fee to receive ATS Data in accordance with this Rule and execute appropriate agreements with FINRA.]

¹ 15 U.S.C. 78s(b)(1).

[(b) Professionals]

[(1) Professionals may subscribe for the most currently published ATS Data and up to five years of historical ATS Data in a downloadable, pipe delimited format for a twelve-month subscription fee of \$12,000. Such fee is not refundable or transferable.]

[(2) Payment of the Professional subscription fee described in this paragraph (b) provides the Professional with use of such ATS Data to generate Derived Data.]

[(3) Professionals may distribute ATS Data or Derived Data to their employees, affiliates, or employees of affiliates but are prohibited from providing ATS Data or Derived Data to any third party.]

[(c) Vendors]

[(1) Vendors may subscribe for access to the most currently published ATS Data and up to five years of historical ATS Data in a downloadable, pipe delimited format for a twelve-month subscription fee of \$18,000. Such fee is not refundable or transferable.]

[(2) Payment of the Vendor subscription fee described in this paragraph (c) provides the Vendor with use of such ATS Data to generate Derived Data.]

[(3) Vendors are prohibited from providing ATS Data to any third party unless a Professional subscription has been purchased for each such third party in accordance with paragraph (b) above.]

[(d) Non-Professionals]

[(1) There shall be no charge paid by a Non-Professional for access to the most recently published four weeks of ATS Data; however, such ATS Data will not be available in a downloadable format.]

[(2) A Non-Professional must agree to terms of use before accessing the ATS Data, including that he or she receives and uses the ATS Data solely for his or her personal, non-commercial use and will not otherwise distribute the ATS Data or Derived Data to other parties. The terms of use for Non-Professionals will be clearly posted on the FINRA.org website, and access to the non-fee liable ATS Data content will require a user to acknowledge the terms of use.]

[(e) Definitions]

[For purposes of this rule, the following terms have the meaning set forth:]

[(1) “ATS Data” means Trading Information published by FINRA on its website.]

[(2) “Derived Data” means data that is derived from ATS Data and that is not able to be (A) reverse engineered by a reasonably skilled user into ATS Data or (B) used as a surrogate for ATS Data.]

[(3) “Non-Professional” means a natural person who uses the ATS Data solely for his or her personal, non-commercial use. A “Non-Professional” is not:]

[(A) registered nor qualified in any capacity with the SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, nor an employee of the above and, with respect to

any person identified in this subparagraph (A), uses ATS Data for other than personal, non-commercial use;]

[(B) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act (whether or not registered or qualified under that Act), nor an employee of the above and, with respect to any person identified in this subparagraph (B), uses ATS Data for other than personal, non-commercial use;]

[(C) employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt, nor any other employee of a bank, insurance company or such other organization referenced above and, with respect to any person identified in this subparagraph (C), uses ATS Data for other than personal, non-commercial use; nor]

[(D) engaged in, nor has the intention to engage in, any commercial redistribution of all or any portion of the ATS Data or Derived Data.]

[(4) “Professional” means any non-natural person or any natural person that does not meet the definition of “Non-Professional” in subparagraph (3).]

[(5) “Trading Information” has the same meaning as set forth in Rule 4552.]

[(6) “Vendor” means a Professional who distributes ATS Data or Derived Data to any third party.]

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 19, 2013, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 13, 2015.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On January 17, 2014, the SEC approved a proposed rule change to (i) adopt Rule 4552 (Alternative Trading Systems – Trading Information for Securities Executed Within the Alternative Trading System) to require alternative trading systems (“ATSs”)² to

² Regulation ATS defines an “alternative trading system” as “any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading.” 17 CFR 242.300(a). Rule 4552 applies to any alternative trading system, as that term is defined in Regulation ATS, that has filed a Form ATS with the Commission. See Rule 4552(a).

report to FINRA weekly volume information and number of trades regarding securities transactions within the ATS (“ATS Data”) and to publish the ATS Data on a delayed basis on FINRA’s website;³ and (ii) amend FINRA Rules 6160, 6170, 6480, and 6720 to require each ATS to acquire and use a single, unique market participant identifier (“MPID”) when reporting information to FINRA (“MPID Requirement”).⁴ The implementation date for the reporting requirements under Rule 4552 was May 12, 2014, and FINRA began publishing the ATS Data for equity securities on its website on June 2, 2014.⁵ On May 29, 2014, the SEC approved Rule 4553, which established a fee schedule for access to the ATS Data.⁶ The proposed rule change deletes Rule 4553.

Under Rule 4552, individual ATSs are required to submit weekly reports to FINRA regarding equity security volume information within the ATS, including share

³ FINRA subsequently filed a proposed rule change to limit the reporting requirements in Rule 4552 to equity securities and exclude TRACE-Reportable Securities. See Securities Exchange Act Release No. 71911 (April 9, 2014), 79 FR 21316 (April 15, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-017).

⁴ See Securities Exchange Act Release No. 71341 (January 17, 2014), 79 FR 4213 (January 24, 2014) (Order Approving File No. SR-FINRA-2013-042). The MPID Requirement was subsequently amended to permit the use of two MPIDs by a single ATS provided each MPID is used only to report to either the Trade Reporting and Compliance Engine (“TRACE”) or one or more of FINRA’s equity reporting facilities. See Securities Exchange Act Release No. 71911 (April 9, 2014), 79 FR 21316 (April 15, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-017).

⁵ The MPID Requirement was implemented on February 2, 2015. See Securities Exchange Act Release No. 73340 (October 10, 2014), 79 FR 62500 (October 17, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-042).

⁶ See Securities Exchange Act Release No. 72280 (May 29, 2014), 79 FR 32351 (June 4, 2014) (Order Approving File No. SR-FINRA-2014-018) (“ATS Fee Approval Order”).

volume and number of trades for both NMS stocks and OTC equity securities.⁷ The first reports pursuant to Rule 4552 were due to FINRA by May 28, 2014, covering the week of May 12-16, 2014.⁸ After FINRA began receiving the self-reported data from ATSs, FINRA began publishing on its website, on a delayed basis, the reported information for each equity security for each ATS with appropriate disclosures that the published volume numbers are based on ATS-submitted reports and not on reports produced or validated by FINRA.⁹ FINRA currently makes available on its website the ATS Data through weekly reports listing aggregate volume and number of trades by security for each ATS within the designated time period.

Rule 4553 establishes three categories of users of the ATS Data, each of which is entitled to different levels and use of data and is subject to a different fee structure: (i) Non-Professionals; (ii) Professionals; and (iii) Vendors.¹⁰ Under Rule 4553, the most recently published four weeks of ATS Data is accessible to Non-Professionals¹¹ at no

⁷ See Rule 4552(a), (d)(4).

⁸ See Regulatory Notice 14-07 (February 2014).

⁹ See Rule 4552(b).

¹⁰ Any individual seeking access to the ATS Data on FINRA's website must confirm that he or she is either (i) a Non-Professional or (ii) a Professional (or an affiliate or employee thereof) that has a current Professional or Vendor subscription.

¹¹ A "Non-Professional" is generally a natural person who uses the ATS Data solely for his or her personal, non-commercial use and is not: (i) registered or qualified in any capacity with the SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, nor an employee of the above; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act (whether or not registered or qualified under that Act), nor an employee of the above; (iii) employed by a bank, insurance company or other organization exempt from registration under federal

cost on FINRA's website, and FINRA provides a basic web display listing all reporting ATSs and aggregate volume and number of trades for each symbol in which a trade was reported by the ATS during the designated time period.¹² Non-Professionals may access, at no cost, the most recent four weeks of ATS Data in a viewable, but not downloadable, format. A Non-Professional must certify that he or she is a "Non-Professional" within the meaning of Rule 4553 and agree to certain terms of use of the ATS Data, including representations that he or she receives and uses the ATS Data solely for his or her personal, non-commercial use, and conditions regarding use of the data and prohibiting redistribution of the data.

Under Rule 4553, Professionals are required to pay an annual, enterprise-wide subscription fee of \$12,000 that is non-transferable and renewable annually to access the ATS Data.¹³ A Professional who has paid the subscription fee has access to the same ATS Data available to Non-Professionals. However, a Professional subscription allows a user access to the 27 most current weeks of published reports (Non-Professionals are

or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt, nor any other employee of a bank, insurance company or such other organization referenced above; or (iv) engaged in, or has the intention to engage in, any commercial redistribution of all or any portion of the ATS Data or Derived Data. See Rule 4552(e)(3); see also 15 U.S.C. 80b-2(a)(11). Rule 4553(e)(2) defines "Derived Data" as data that is derived from ATS Data and that is not able to be (A) reverse engineered by a reasonably skilled user into ATS Data or (B) used as a surrogate for ATS Data. Generally, non-commercial requests from regulators, academics, and ad hoc requests from media reporters are considered non-professional usage under this definition.

¹² See Rule 4553(d). FINRA also currently produces quarterly reports summarizing the ATS Data that are publicly available for no charge on FINRA's website.

¹³ See Rule 4553(b). A "Professional" is defined as "any non-natural person or any natural person that does not meet the definition of 'Non-Professional.'" Rule 4553(e)(4).

limited to four weeks) as well as access to historical ATS Data in a downloadable format.¹⁴ The Professional subscription allows an unlimited number of users within the firm to access the ATS Data.¹⁵ Thus, regardless of the size of the entity in question, the subscription fee for the entity is \$12,000 for a twelve-month subscription. Professionals are not permitted to redistribute ATS Data or Derived Data outside of the enterprise (e.g., to their customers); however, Professionals are permitted to distribute ATS Data and Derived Data within the enterprise (including the firm, any affiliates of the firm, and employees thereof). Professionals are required to agree to the terms of FINRA's ATS Data Subscriber Agreement, which establishes the terms and conditions of access to the ATS Data.

Rule 4553 also includes a Vendor subscription fee of \$18,000 per year.¹⁶ A Vendor subscription permits a Vendor to redistribute the ATS Data or Derived Data within and outside the enterprise; however, a Vendor may provide this data to a third party only if a yearly, non-transferable, enterprise-wide Professional subscription has been purchased for each such third party. Vendors must track specific users and their entitlements (and annual commitment term) and are subject to regular audits to ensure

¹⁴ The downloadable reports provide the same data as the web-based reports but in pipe delimited format.

¹⁵ If the Professional is a FINRA member, the member has access to the ATS Data so that all of the member's entitled users can access the ATS Data under the member's Central Registration Depository number. Professionals that are not FINRA members are provided with a single log-on that may be shared within the entity and its affiliates and employees, but may not be used outside of the entity, its affiliates, and their employees.

¹⁶ See Rule 4553(c). A "Vendor" is defined as "a Professional who distributes ATS Data or Derived Data to any third party." Rule 4553(e)(6).

accurate and timely compliance with re-dissemination reporting and payment. Vendors are responsible for reporting entity usage as a result of their redistribution of the data.

FINRA established the fee rates for access to ATS Data by Professionals and Vendors to recover the costs associated with collecting, formatting, and disseminating the data.¹⁷ FINRA noted, when proposing the fee, that it did not have an exact estimate as to how many subscribers will ultimately pay to access ATS Data and stated that FINRA intended to reassess the fairness and reasonableness of the fee once it had experience with the actual usage and ultimate fees paid to access ATS Data.¹⁸

After approximately one year of receiving and disseminating the ATS Data on FINRA's website, FINRA has reviewed the usage of the ATS Data and the costs incurred and is proposing to eliminate the fee for all potential users and disseminate the ATS Data on its website at no charge. FINRA has found that there are significantly fewer firms and data vendors accessing the ATS Data than anticipated, which limits the opportunities for broader dissemination and analysis of the data FINRA makes available. By making the ATS Data available at no cost, FINRA believes more data vendors and firms will access the ATS Data and provide useful statistics and analysis to the industry and to individual investors and the public. FINRA currently anticipates making publicly available on its website 27 weeks of online reports and up to five years of historical reports available in a downloadable format.¹⁹

¹⁷ See ATS Fee Approval Order, supra note 6, 79 FR 32351, 32353.

¹⁸ See Securities Exchange Act Release No. 71919 (April 9, 2014), 79 FR 21324, 21327 (April 15, 2014) (Notice of Filing File No. SR-FINRA-2014-018).

¹⁹ There are no reports for time periods before the implementation of Rule 4552.

As FINRA noted when it proposed collecting and disseminating the ATS Data, Rule 4552 was intended in part to increase transparency in the over-the-counter market. Although Rule 4552 has no doubt achieved this goal, particularly by providing individual investors with access to the ATS Data at no cost, FINRA believes that transparency may be even further enhanced by eliminating the fee for Professionals and Vendors so that individual investors and the public can benefit from more detailed and widely-available analysis of the ATS Data. Consequently, FINRA is proposing to eliminate the fee for Professionals and Vendors and make the ATS Data publicly available at no cost.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 13, 2015. FINRA staff is currently working on changes to FINRA's website to enable all users to access the ATS Data and to remove functionality that currently limits access to the ATS Data to either Non-Professionals or those with paid subscriptions. FINRA anticipates that these changes will be made so that the ATS Data will be publicly available beginning July 13, 2015. Until that time, the ATS Data will continue to be available only to paid subscribers or, in more limited formats, to Non-Professionals consistent with Rule 4553.²⁰

²⁰

Because the subscriptions purchased pursuant to Rule 4553 are on an annual basis, some subscribers' annual subscriptions will lapse before July 13, 2015. Those subscribers that choose to renew their annual subscription for the amount required under Rule 4553 before July 13, 2015, will receive a pro rata refund as of July 13, 2015. Current subscribers that have an annual subscription that expires after July 13, 2015, will also receive a pro rata refund. Thus, for example, if a firm purchased an annual Professional subscription for \$12,000 on August 13, 2014, the firm will receive a \$1,000 refund for the period between July 13, 2015, and August 13, 2015.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15A(b)(5) of the Act,²² which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that, by eliminating the fees imposed by Rule 4553 and making the ATS Data available to the public at no cost, more data vendors and firms will use the ATS Data to provide useful statistics and analysis to the industry, individual investors, and the public. This, in turn, will further improve transparency in the over-the-counter market by making the ATS Data, and analysis of the data, more widely available not only for Professionals and Vendors, but also for individual investors who can benefit from more detailed analysis of the ATS Data.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that eliminating the fee may, in fact, remove potential burdens by

²¹ 15 U.S.C. 78o-3(b)(6).

²² 15 U.S.C. 78o-3(b)(5).

widening access to the ATS Data, particularly for smaller firms that may not have been able to pay the existing Professional or Vendor fees.

Economic Impact Analysis

As described above, FINRA is proposing to remove Rule 4553 to eliminate the fee for all potential users of ATS Data and disseminate the ATS Data on its website at no charge. Currently, FINRA makes this data available on its website and charges according to the three tiers described above. In the presence of this proposed rule change, the ATS Data will continue to be made available, and FINRA will seek no fees for its usage. FINRA anticipates that the demand for the ATS Data will increase in the absence of professional and vendor fees.

FINRA believes that eliminating the fee for Professionals and Vendors to access ATS Data will extend the impact of transparency in the over-the-counter market and will not result in any burden on FINRA members or the public. Yet, investors may benefit from an externality if the wider availability of the ATS Data leads to an increased production of relevant analysis by professionals.²³ Also, FINRA believes – based on member firms’ and vendors’ feedback – that there is a wide range of market participants that will start using the ATS Data and benefit from it when it is made available free of charge.

FINRA would incur no additional costs as a result of the proposed rule change, as FINRA already aggregates and publishes the ATS Data on a weekly basis; however,

²³ For example, one study showed that brokers’ order routing behavior, in search for best execution for their clients, changed after the increased transparency due to Rule 11Ac1-5, which requires market centers to publish standardized execution quality metrics. See Ekkehart Boehmer, Robert Jennings & Li Wei, Public Disclosure and Private Decisions: Equity Market Execution Quality and Order Routing, 20 (2) Rev. Fin. Stud. 315 (March 2007).

FINRA will forego the revenue that partially covers the cost of maintaining the ATS Data, although both the cost and revenue have been non-material since the data dissemination started in June 2014. FINRA's experience in the past year suggests that the marginal costs to provide this information to the public is de minimis, with no material impact to its budget or members.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Although written comments were not solicited regarding the elimination of Rule 4553, FINRA has received one comment letter since the adoption of Rule 4553 that addresses the current fee structure for access to ATS Data.²⁴ The Securities Industry and Financial Markets Association ("SIFMA") submitted a written comment letter in response to Regulatory Notice 14-48²⁵ that, among other things, noted that SIFMA "continues to oppose FINRA charging a fee to access the [ATS] data and the fact that only a limited scope of information is available for free on the FINRA website."²⁶ A copy of Regulatory Notice 14-48 is attached as Exhibit 2a. A copy of SIFMA's comment

²⁴ FINRA notes that, although written comments were not solicited regarding the current proposed rule change to eliminate Rule 4553, comments addressing the adoption of a fee for access to ATS Data were received in response to the rule filings proposing Rules 4552 and 4553, and these commenters generally opposed the fee. See ATS Fee Approval Order, *supra* note 6, 79 FR 32351, 32352; see also Securities Exchange Act Release No. 71341 (January 17, 2014), 79 FR 4213 (January 24, 2014) (Order Approving File No. SR-FINRA-2013-042).

²⁵ In Regulatory Notice 14-48, FINRA requested comment on a proposal to expand the ATS transparency initiative to publish the remaining equity volume executed over the counter, including trading on non-ATS electronic trading systems and internalized trades. See Regulatory Notice 14-48 (November 2014).

²⁶ Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 20, 2015.

letter received in response to the Regulatory Notice is attached as Exhibit 2b. FINRA believes the elimination of Rule 4553 would address the concern raised by SIFMA in its comment letter.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act²⁷ and paragraph (f)(2) of Rule 19b-4 thereunder,²⁸ in that the proposed rule change is establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization. The proposed rule change eliminates the fee currently charged under Rule 4553 for access to ATS Data and makes the information publicly available for no charge.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Copy of Regulatory Notice 14-48.

Exhibit 2b. Copy of SIFMA's comment letter submitted in response to Regulatory Notice 14-48.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2015-023)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 4553 and Fees for Access to Alternative Trading System Volume Information Published on FINRA's Website

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to remove Rule 4553 (Fees for ATS Data) from the FINRA rulebook.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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4000. FINANCIAL AND OPERATIONAL RULES

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4500. BOOKS, RECORDS AND REPORTS

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4550. ATS Reporting

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[4553. Fees for ATS Data]

[(a) General]

[Fees are charged for ATS Data as set forth in this Rule. Professionals and Vendors must pay the subscription fee to receive ATS Data in accordance with this Rule and execute appropriate agreements with FINRA.]

[(b) Professionals]

[(1) Professionals may subscribe for the most currently published ATS Data and up to five years of historical ATS Data in a downloadable, pipe delimited format for a twelve-month subscription fee of \$12,000. Such fee is not refundable or transferable.]

[(2) Payment of the Professional subscription fee described in this paragraph (b) provides the Professional with use of such ATS Data to generate Derived Data.]

[(3) Professionals may distribute ATS Data or Derived Data to their employees, affiliates, or employees of affiliates but are prohibited from providing ATS Data or Derived Data to any third party.]

[(c) Vendors]

[(1) Vendors may subscribe for access to the most currently published ATS Data and up to five years of historical ATS Data in a downloadable, pipe delimited format for a twelve-month subscription fee of \$18,000. Such fee is not refundable or transferable.]

[(2) Payment of the Vendor subscription fee described in this paragraph (c) provides the Vendor with use of such ATS Data to generate Derived Data.]

[(3) Vendors are prohibited from providing ATS Data to any third party unless a Professional subscription has been purchased for each such third party in accordance with paragraph (b) above.]

[(d) Non-Professionals]

[(1) There shall be no charge paid by a Non-Professional for access to the most recently published four weeks of ATS Data; however, such ATS Data will not be available in a downloadable format.]

[(2) A Non-Professional must agree to terms of use before accessing the ATS Data, including that he or she receives and uses the ATS Data solely for his or her personal, non-commercial use and will not otherwise distribute the ATS Data or Derived Data to other parties. The terms of use for Non-Professionals will be clearly posted on the FINRA.org website, and access to the non-fee liable ATS Data content will require a user to acknowledge the terms of use.]

[(e) Definitions]

[For purposes of this rule, the following terms have the meaning set forth:]

[(1) “ATS Data” means Trading Information published by FINRA on its website.]

[(2) “Derived Data” means data that is derived from ATS Data and that is not able to be (A) reverse engineered by a reasonably skilled user into ATS Data or (B) used as a surrogate for ATS Data.]

[(3) “Non-Professional” means a natural person who uses the ATS Data solely for his or her personal, non-commercial use. A “Non-Professional” is not:]

[(A) registered nor qualified in any capacity with the SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, nor an employee of the above and, with respect to any person identified in this subparagraph (A), uses ATS Data for other than personal, non-commercial use;]

[(B) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act (whether or not registered or qualified under that Act), nor an employee of the above and, with respect to any person identified in this subparagraph (B), uses ATS Data for other than personal, non-commercial use;]

[(C) employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if

such functions were performed for an organization not so exempt, nor any other employee of a bank, insurance company or such other organization referenced above and, with respect to any person identified in this subparagraph (C), uses ATS Data for other than personal, non-commercial use; nor]

[(D) engaged in, nor has the intention to engage in, any commercial redistribution of all or any portion of the ATS Data or Derived Data.]

[(4) “Professional” means any non-natural person or any natural person that does not meet the definition of “Non-Professional” in subparagraph (3).]

[(5) “Trading Information” has the same meaning as set forth in Rule 4552.]

[(6) “Vendor” means a Professional who distributes ATS Data or Derived Data to any third party.]

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 17, 2014, the SEC approved a proposed rule change to (i) adopt Rule 4552 (Alternative Trading Systems – Trading Information for Securities Executed Within the Alternative Trading System) to require alternative trading systems (“ATSs”)⁵ to report to FINRA weekly volume information and number of trades regarding securities transactions within the ATS (“ATS Data”) and to publish the ATS Data on a delayed basis on FINRA’s website;⁶ and (ii) amend FINRA Rules 6160, 6170, 6480, and 6720 to require each ATS to acquire and use a single, unique market participant identifier (“MPID”) when reporting information to FINRA (“MPID Requirement”).⁷ The

⁵ Regulation ATS defines an “alternative trading system” as “any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading.” 17 CFR 242.300(a). Rule 4552 applies to any alternative trading system, as that term is defined in Regulation ATS, that has filed a Form ATS with the Commission. See Rule 4552(a).

⁶ FINRA subsequently filed a proposed rule change to limit the reporting requirements in Rule 4552 to equity securities and exclude TRACE-Reportable Securities. See Securities Exchange Act Release No. 71911 (April 9, 2014), 79 FR 21316 (April 15, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-017).

⁷ See Securities Exchange Act Release No. 71341 (January 17, 2014), 79 FR 4213 (January 24, 2014) (Order Approving File No. SR-FINRA-2013-042). The MPID Requirement was subsequently amended to permit the use of two MPIDs by a single ATS provided each MPID is used only to report to either the Trade Reporting and Compliance Engine (“TRACE”) or one or more of FINRA’s equity reporting facilities. See Securities Exchange Act Release No. 71911 (April 9,

implementation date for the reporting requirements under Rule 4552 was May 12, 2014, and FINRA began publishing the ATS Data for equity securities on its website on June 2, 2014.⁸ On May 29, 2014, the SEC approved Rule 4553, which established a fee schedule for access to the ATS Data.⁹ The proposed rule change deletes Rule 4553.

Under Rule 4552, individual ATSs are required to submit weekly reports to FINRA regarding equity security volume information within the ATS, including share volume and number of trades for both NMS stocks and OTC equity securities.¹⁰ The first reports pursuant to Rule 4552 were due to FINRA by May 28, 2014, covering the week of May 12-16, 2014.¹¹ After FINRA began receiving the self-reported data from ATSs, FINRA began publishing on its website, on a delayed basis, the reported information for each equity security for each ATS with appropriate disclosures that the published volume numbers are based on ATS-submitted reports and not on reports produced or validated by FINRA.¹² FINRA currently makes available on its website the ATS Data through weekly

2014), 79 FR 21316 (April 15, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-017).

⁸ The MPID Requirement was implemented on February 2, 2015. See Securities Exchange Act Release No. 73340 (October 10, 2014), 79 FR 62500 (October 17, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-042).

⁹ See Securities Exchange Act Release No. 72280 (May 29, 2014), 79 FR 32351 (June 4, 2014) (Order Approving File No. SR-FINRA-2014-018) (“ATS Fee Approval Order”).

¹⁰ See Rule 4552(a), (d)(4).

¹¹ See Regulatory Notice 14-07 (February 2014).

¹² See Rule 4552(b).

reports listing aggregate volume and number of trades by security for each ATS within the designated time period.

Rule 4553 establishes three categories of users of the ATS Data, each of which is entitled to different levels and use of data and is subject to a different fee structure: (i) Non-Professionals; (ii) Professionals; and (iii) Vendors.¹³ Under Rule 4553, the most recently published four weeks of ATS Data is accessible to Non-Professionals¹⁴ at no cost on FINRA's website, and FINRA provides a basic web display listing all reporting ATSs and aggregate volume and number of trades for each symbol in which a trade was reported by the ATS during the designated time period.¹⁵ Non-Professionals may access,

¹³ Any individual seeking access to the ATS Data on FINRA's website must confirm that he or she is either (i) a Non-Professional or (ii) a Professional (or an affiliate or employee thereof) that has a current Professional or Vendor subscription.

¹⁴ A "Non-Professional" is generally a natural person who uses the ATS Data solely for his or her personal, non-commercial use and is not: (i) registered or qualified in any capacity with the SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, nor an employee of the above; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act (whether or not registered or qualified under that Act), nor an employee of the above; (iii) employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt, nor any other employee of a bank, insurance company or such other organization referenced above; or (iv) engaged in, or has the intention to engage in, any commercial redistribution of all or any portion of the ATS Data or Derived Data. See Rule 4552(e)(3); see also 15 U.S.C. 80b-2(a)(11). Rule 4553(e)(2) defines "Derived Data" as data that is derived from ATS Data and that is not able to be (A) reverse engineered by a reasonably skilled user into ATS Data or (B) used as a surrogate for ATS Data. Generally, non-commercial requests from regulators, academics, and ad hoc requests from media reporters are considered non-professional usage under this definition.

¹⁵ See Rule 4553(d). FINRA also currently produces quarterly reports summarizing the ATS Data that are publicly available for no charge on FINRA's website.

at no cost, the most recent four weeks of ATS Data in a viewable, but not downloadable, format. A Non-Professional must certify that he or she is a “Non-Professional” within the meaning of Rule 4553 and agree to certain terms of use of the ATS Data, including representations that he or she receives and uses the ATS Data solely for his or her personal, non-commercial use, and conditions regarding use of the data and prohibiting redistribution of the data.

Under Rule 4553, Professionals are required to pay an annual, enterprise-wide subscription fee of \$12,000 that is non-transferable and renewable annually to access the ATS Data.¹⁶ A Professional who has paid the subscription fee has access to the same ATS Data available to Non-Professionals. However, a Professional subscription allows a user access to the 27 most current weeks of published reports (Non-Professionals are limited to four weeks) as well as access to historical ATS Data in a downloadable format.¹⁷ The Professional subscription allows an unlimited number of users within the firm to access the ATS Data.¹⁸ Thus, regardless of the size of the entity in question, the subscription fee for the entity is \$12,000 for a twelve-month subscription. Professionals are not permitted to redistribute ATS Data or Derived Data outside of the enterprise (e.g.,

¹⁶ See Rule 4553(b). A “Professional” is defined as “any non-natural person or any natural person that does not meet the definition of ‘Non-Professional.’” Rule 4553(e)(4).

¹⁷ The downloadable reports provide the same data as the web-based reports but in pipe delimited format.

¹⁸ If the Professional is a FINRA member, the member has access to the ATS Data so that all of the member’s entitled users can access the ATS Data under the member’s Central Registration Depository number. Professionals that are not FINRA members are provided with a single log-on that may be shared within the entity and its affiliates and employees, but may not be used outside of the entity, its affiliates, and their employees.

to their customers); however, Professionals are permitted to distribute ATS Data and Derived Data within the enterprise (including the firm, any affiliates of the firm, and employees thereof). Professionals are required to agree to the terms of FINRA's ATS Data Subscriber Agreement, which establishes the terms and conditions of access to the ATS Data.

Rule 4553 also includes a Vendor subscription fee of \$18,000 per year.¹⁹ A Vendor subscription permits a Vendor to redistribute the ATS Data or Derived Data within and outside the enterprise; however, a Vendor may provide this data to a third party only if a yearly, non-transferable, enterprise-wide Professional subscription has been purchased for each such third party. Vendors must track specific users and their entitlements (and annual commitment term) and are subject to regular audits to ensure accurate and timely compliance with re-dissemination reporting and payment. Vendors are responsible for reporting entity usage as a result of their redistribution of the data.

FINRA established the fee rates for access to ATS Data by Professionals and Vendors to recover the costs associated with collecting, formatting, and disseminating the data.²⁰ FINRA noted, when proposing the fee, that it did not have an exact estimate as to how many subscribers will ultimately pay to access ATS Data and stated that FINRA intended to reassess the fairness and reasonableness of the fee once it had experience with the actual usage and ultimate fees paid to access ATS Data.²¹

¹⁹ See Rule 4553(c). A "Vendor" is defined as "a Professional who distributes ATS Data or Derived Data to any third party." Rule 4553(e)(6).

²⁰ See ATS Fee Approval Order, supra note 9, 79 FR 32351, 32353.

²¹ See Securities Exchange Act Release No. 71919 (April 9, 2014), 79 FR 21324, 21327 (April 15, 2014) (Notice of Filing File No. SR-FINRA-2014-018).

After approximately one year of receiving and disseminating the ATS Data on FINRA's website, FINRA has reviewed the usage of the ATS Data and the costs incurred and is proposing to eliminate the fee for all potential users and disseminate the ATS Data on its website at no charge. FINRA has found that there are significantly fewer firms and data vendors accessing the ATS Data than anticipated, which limits the opportunities for broader dissemination and analysis of the data FINRA makes available. By making the ATS Data available at no cost, FINRA believes more data vendors and firms will access the ATS Data and provide useful statistics and analysis to the industry and to individual investors and the public. FINRA currently anticipates making publicly available on its website 27 weeks of online reports and up to five years of historical reports available in a downloadable format.²²

As FINRA noted when it proposed collecting and disseminating the ATS Data, Rule 4552 was intended in part to increase transparency in the over-the-counter market. Although Rule 4552 has no doubt achieved this goal, particularly by providing individual investors with access to the ATS Data at no cost, FINRA believes that transparency may be even further enhanced by eliminating the fee for Professionals and Vendors so that individual investors and the public can benefit from more detailed and widely-available analysis of the ATS Data. Consequently, FINRA is proposing to eliminate the fee for Professionals and Vendors and make the ATS Data publicly available at no cost.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 13, 2015. FINRA staff is currently working on changes to FINRA's website to enable all users to access the ATS Data and to remove

²² There are no reports for time periods before the implementation of Rule 4552.

functionality that currently limits access to the ATS Data to either Non-Professionals or those with paid subscriptions. FINRA anticipates that these changes will be made so that the ATS Data will be publicly available beginning July 13, 2015. Until that time, the ATS Data will continue to be available only to paid subscribers or, in more limited formats, to Non-Professionals consistent with Rule 4553.²³

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁴ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15A(b)(5) of the Act,²⁵ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that, by eliminating the fees imposed by Rule 4553 and making the ATS Data available to the public at no cost, more data vendors and firms will use the

²³ Because the subscriptions purchased pursuant to Rule 4553 are on an annual basis, some subscribers' annual subscriptions will lapse before July 13, 2015. Those subscribers that choose to renew their annual subscription for the amount required under Rule 4553 before July 13, 2015, will receive a pro rata refund as of July 13, 2015. Current subscribers that have an annual subscription that expires after July 13, 2015, will also receive a pro rata refund. Thus, for example, if a firm purchased an annual Professional subscription for \$12,000 on August 13, 2014, the firm will receive a \$1,000 refund for the period between July 13, 2015, and August 13, 2015.

²⁴ 15 U.S.C. 78o-3(b)(6).

²⁵ 15 U.S.C. 78o-3(b)(5).

ATS Data to provide useful statistics and analysis to the industry, individual investors, and the public. This, in turn, will further improve transparency in the over-the-counter market by making the ATS Data, and analysis of the data, more widely available not only for Professionals and Vendors, but also for individual investors who can benefit from more detailed analysis of the ATS Data.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that eliminating the fee may, in fact, remove potential burdens by widening access to the ATS Data, particularly for smaller firms that may not have been able to pay the existing Professional or Vendor fees.

Economic Impact Analysis

As described above, FINRA is proposing to remove Rule 4553 to eliminate the fee for all potential users of ATS Data and disseminate the ATS Data on its website at no charge. Currently, FINRA makes this data available on its website and charges according to the three tiers described above. In the presence of this proposed rule change, the ATS Data will continue to be made available, and FINRA will seek no fees for its usage. FINRA anticipates that the demand for the ATS Data will increase in the absence of professional and vendor fees.

FINRA believes that eliminating the fee for Professionals and Vendors to access ATS Data will extend the impact of transparency in the over-the-counter market and will not result in any burden on FINRA members or the public. Yet, investors may benefit from an externality if the wider availability of the ATS Data leads to an increased

production of relevant analysis by professionals.²⁶ Also, FINRA believes – based on member firms’ and vendors’ feedback – that there is a wide range of market participants that will start using the ATS Data and benefit from it when it is made available free of charge.

FINRA would incur no additional costs as a result of the proposed rule change, as FINRA already aggregates and publishes the ATS Data on a weekly basis; however, FINRA will forego the revenue that partially covers the cost of maintaining the ATS Data, although both the cost and revenue have been non-material since the data dissemination started in June 2014. FINRA’s experience in the past year suggests that the marginal costs to provide this information to the public is de minimis, with no material impact to its budget or members.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Although written comments were not solicited regarding the elimination of Rule 4553, FINRA has received one comment letter since the adoption of Rule 4553 that addresses the current fee structure for access to ATS Data.²⁷ The Securities Industry and

²⁶ For example, one study showed that brokers’ order routing behavior, in search for best execution for their clients, changed after the increased transparency due to Rule 11Ac1-5, which requires market centers to publish standardized execution quality metrics. See Ekkehart Boehmer, Robert Jennings & Li Wei, Public Disclosure and Private Decisions: Equity Market Execution Quality and Order Routing, 20 (2) Rev. Fin. Stud. 315 (March 2007).

²⁷ FINRA notes that, although written comments were not solicited regarding the current proposed rule change to eliminate Rule 4553, comments addressing the adoption of a fee for access to ATS Data were received in response to the rule filings proposing Rules 4552 and 4553, and these commenters generally opposed the fee. See ATS Fee Approval Order, supra note 9, 79 FR 32351, 32352; see also Securities Exchange Act Release No. 71341 (January 17, 2014), 79 FR 4213 (January 24, 2014) (Order Approving File No. SR-FINRA-2013-042).

Financial Markets Association (“SIFMA”) submitted a written comment letter in response to Regulatory Notice 14-48²⁸ that, among other things, noted that SIFMA “continues to oppose FINRA charging a fee to access the [ATS] data and the fact that only a limited scope of information is available for free on the FINRA website.”²⁹ A copy of Regulatory Notice 14-48 is attached as Exhibit 2a. A copy of SIFMA’s comment letter received in response to the Regulatory Notice is attached as Exhibit 2b. FINRA believes the elimination of Rule 4553 would address the concern raised by SIFMA in its comment letter.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁰ and paragraph (f)(2) of Rule 19b-4 thereunder.³¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

²⁸ In Regulatory Notice 14-48, FINRA requested comment on a proposal to expand the ATS transparency initiative to publish the remaining equity volume executed over the counter, including trading on non-ATS electronic trading systems and internalized trades. See Regulatory Notice 14-48 (November 2014).

²⁹ Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 20, 2015.

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f)(x).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-023 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-023 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Robert W. Errett
Deputy Secretary

³² 17 CFR 200.30-3(a)(12).

Regulatory Notice

14-48

Equity Trading Initiatives: OTC Equity Trading Volume

FINRA Requests Comment on a Proposal to Publish OTC Equity Volume Executed Outside Alternative Trading Systems

Comment Period Expires: Friday, January 9, 2015

Executive Summary

FINRA requests comment on a proposal to expand FINRA's alternative trading system (ATS) transparency initiative to publish the remaining equity volume executed over-the-counter (OTC), including non-ATS electronic trading systems and internalized trades. FINRA believes that the public will be able to better understand a firm's trading of equities off exchanges by reviewing the firm's new OTC equity trading volume information together with its existing ATS volume reports.

The proposed rule text is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Dave Chapman, Director, Market Regulation, at (240) 386-4995;
- ▶ Brendan Loonam, Director, Business Services, at (212) 858-4203; or
- ▶ Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190.

November 2014

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Alternative Display Facility
- ▶ NMS Securities
- ▶ OTC Equity Securities
- ▶ OTC Reporting Facility
- ▶ Trade Reporting
- ▶ Trade Reporting Facilities

Referenced Rules & Notices

- ▶ FINRA Rule 4552
- ▶ FINRA Rule 4553
- ▶ FINRA Rule 6282
- ▶ FINRA Rule 6380A
- ▶ FINRA Rule 6380B
- ▶ FINRA Rule 6622



Financial Industry Regulatory Authority

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by Friday, January 9, 2015.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to _____
- ▶ Mailing comments in hard copy to:
 Marcia E. Asquith
 Office of the Corporate Secretary
 FINRA
 1735 K Street, NW
 Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.¹

Before becoming effective, the proposed rule change must be filed with the Securities and Exchange Commission (SEC) pursuant to Section 19(b) of the SEA.²

Background & Discussion

The proposal set forth in this *Notice* is one of seven FINRA initiatives relating to equity market structure and automated trading activities including high frequency trading (HFT).³ These initiatives are designed to increase the scope of trading information FINRA receives, provide more transparency into trading activities to market participants and investors and require firms engaged in electronic trading and their employees to be trained, educated and accountable for their role in equity trading.

Under FINRA rules, each ATS is required to report its weekly volume, by security, to FINRA, and as of February 2, 2015, each ATS must use a unique market participant identifier (MPID) for reporting order and trade information to FINRA. As part of these requirements, FINRA makes the reported volume and trade count information for equity securities publicly available on its website.⁴ Pursuant to the proposal, FINRA is considering expanding this transparency initiative by publishing the remaining equity trading volume executed OTC by each firm on a security-by-security basis. The proposal would provide additional transparency into a significant portion of the OTC market⁵ by enabling market participants and investors to get a better understanding of each firm's OTC trading.

FINRA would derive a firm's non-ATS volume information directly from OTC trades reported to FINRA's equity trade reporting facilities (*i.e.*, the Alternative Display Facility, a Trade Reporting Facility or the OTC Reporting Facility). As such, firms would not have any new or additional reporting requirements as a result of the proposal. A firm's non-ATS volume would be based on trades reported for dissemination purposes—or "tape reports"—on which the firm is identified as the member firm with the trade reporting obligation—or "Executing Party."⁶ A firm's published trading volume information would not include trades for which the firm is the reported contra party,⁷ nor would it include trades that are reported for regulatory or clearing purposes only—or "non-tape reports." Volume information for each equity security would be published on the FINRA website on a two-week or four-week delayed basis in accordance with the time frames specified for ATS volume publication.⁸

As noted above, FINRA would publish non-ATS trading volume information at the firm level and not on an MPID-by-MPID basis. FINRA believes that this is appropriate because, outside of the ATS context, not all firms have a separate MPID for each unique trading center at the firm, and as such, publishing volume information at the MPID level may not provide meaningful or consistent information to the marketplace. For firms that use more than one MPID for their non-ATS trading,⁹ FINRA would aggregate and publish the non-ATS trading volume for all non-ATS MPIDs belonging to the firm under a single "parent" identifier or firm name.¹⁰

FINRA does not believe that publishing volume information for each firm that executed only a small number of trades or shares in any given period would provide meaningful information to the marketplace. Accordingly, FINRA would combine volume from all firms that do not meet a specified minimum threshold and publish such *de minimis* volume information for those firms on an aggregated basis. For example, if five firms each execute 10 trades in the reporting period in a security, their 50 trades would be aggregated and published as a single line item; the firms and their volume information would not be identified separately. For a firm with more than one non-ATS MPID, the total volume across all of its non-ATS MPIDs would be combined for purposes of determining whether the *de minimis* threshold has been met. FINRA notes that all of the OTC volume would be published, but for firms that meet the *de minimis* threshold, their volume would not be attributed by name.

FINRA is proposing to establish a threshold of fewer than on average 200 non-ATS transactions per day executed by the firm in the security during the one-week reporting period. This proposed threshold is based on the level of trading activity used by the SEC to identify "small market makers" for purposes of exemptive relief from the rule requiring market centers that trade NMS securities to make publicly available electronic reports that include uniform statistical measures of execution quality (SEC Rule 605 of Regulation NMS).¹¹ FINRA reviewed volume statistics for firms across all securities for a one-week period (June 23 – 29, 2014). This review indicates that without applying any threshold,

approximately 300 individual firms would have volume attributed by name. Looking at market participants with on average 200 or more trades per day across all securities, approximately 60 firms—which account for over 98 percent of all trading volume—would have volume attributed by name.

Thus, under the proposal, if a firm averages below 200 (non-ATS) transactions per day across all securities during the reporting period, FINRA would aggregate the firm’s volume with that of similarly situated firms. Additionally, because the published volume data would be broken down by security, if a firm averages below 200 (non-ATS) transactions per day in a given security during the reporting period, FINRA would aggregate the firm’s volume in that security with that of similarly situated firms, even if the firm averages more than 200 (non-ATS) transactions per day across all securities during the reporting period. For example, if, during the reporting period, Firm 1 averages 10,000 trades per day across all securities, but averages only 50 trades per day in ABCD security, Firm 1’s volume in ABCD security would be aggregated with other firms’ volume in ABCD for that period.

FINRA seeks comment on the appropriate *de minimis* threshold, and to help inform comments, presents volume statistics at alternative thresholds for the one-week period cited above:

| Threshold | | |
|-----------|--|--|
| 300 | | |
| | | |
| | | |
| | | |

FINRA considered whether dividing published volume information into more granular categories, such as by trading capacity (*i.e.*, principal versus agency or riskless principal) or by participant type (*e.g.*, market maker), would be feasible or provide additional meaningful or reliable information to market participants. However, FINRA believes that publishing non-ATS trading volume information at more granular levels may increase the potential impact on firms and may raise concerns about potential information leakage, such as the possibility that a firm's trading activity or strategy could be discerned from the data. Further segregating the data, *e.g.*, by trading desk, would entail potentially significant development work by firms to sufficiently identify the activity for FINRA (*e.g.*, volume attributable to a market making desk) and may not be consistent across firms, while also leading to some of the same concerns about information leakage. Thus, FINRA currently is not proposing to publish the non-ATS volume data at more granular levels than by firm and security. FINRA believes that this approach, coupled with the delayed publication of data, should address any concerns a firm may have regarding potential information leakage.

Economic Impacts

Anticipated Benefits

As discussed above, the proposal would expand the benefits of FINRA's ATS transparency program by providing additional transparency on the remaining equity volume executed OTC. The increased transparency would enable market participants and investors to better understand a firm's trading of equities off exchanges, thereby enhancing their understanding of executing firms' trading volume and market shares in the equity market.

Anticipated Costs

The proposal would not impose any additional reporting requirements on firms, and as a result, would have minimal impact on firms from a systems development perspective. FINRA, however, will incur costs for standardizing and compiling the data, development, testing, quality control, business support, and storage and maintenance of the data. While FINRA currently publishes ATS volume data on its website, the proposal would impose additional costs for Web page development and software changes to present the information as proposed, *e.g.*, for purposes of the *de minimis* threshold and aggregation of volume executed by a single market participant's multiple MPIDs.

For fee purposes, this data may be combined with the ATS data that is currently available and for which subscribers are charged under Rule 4553.

Request for Comment

FINRA seeks comments on the proposal outlined above. In addition to general comments, FINRA specifically requests comment on the following questions:

- ▶ Would the proposal provide valuable information to the marketplace?
 - ▶ How might firms and other market participants use the published non-ATS OTC volume data?
 - ▶ Is your firm likely to use this data?
- ▶ What (if any) concerns do firms have about publication of their non-ATS OTC volume data?
 - ▶ Are there potential competitive disadvantages to attributing non-ATS volume information by firm name?
 - ▶ Does limiting the granularity of information and publishing it on a two-week or four-week delayed basis mitigate any concerns firms might have about publication of their volume information? Are there other alternative steps FINRA could take to mitigate those concerns, while still disseminating meaningful information to the marketplace?
- ▶ Does the proposal to publish data on a two-week or four-week delayed basis lessen or otherwise change the value of the information?
 - ▶ Would data published on a real-time or next-day basis be more useful or provide additional value, and if so, in what way?
 - ▶ As discussed above, FINRA is proposing to publish non-ATS volume information on the same delayed basis on which ATS volume data is currently published. Should FINRA consider a different schedule? If so, what alternative schedule do commenters suggest and why?
- ▶ Do commenters agree with FINRA's proposal to publish non-ATS volume information at the firm level rather than at the MPID level?
 - ▶ If commenters recommend publishing at the MPID level, what additional value would that provide? Would there be ways to increase the consistency and reliability of information at the MPID level?
- ▶ Should FINRA consider publishing volume information for non-ATS trading at more granular levels, and if so, what levels (e.g., by capacity)? What would be the costs and benefits of such an approach?

- ▶ Do commenters agree with the proposal to aggregate volume information for firms with a *de minimis* amount of trading in any given period?
 - ▶ Is the proposed threshold for purposes of publishing aggregated non-ATS trading volume information (*i.e.*, on average 200 trades per day) appropriate? If not, what alternative threshold should FINRA consider and why?
 - ▶ Should FINRA consider a separate threshold for less frequently traded securities (*e.g.*, a lower threshold for securities that are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility)? If so, what separate threshold do commenters suggest and why?
 - ▶ Would a threshold based on share or dollar volume rather than number of trades be more appropriate? Are there other alternative metrics that FINRA should consider in setting the threshold?
- ▶ What other economic impacts, including costs and benefits, might be associated with this proposal? Who might be affected and how?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See NTM 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
2. *See* Section 19 of the Securities Exchange Act of 1934 (SEA) and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. *See* FINRA September 19, 2014, News Release “

volume information regarding fixed income securities currently is not being disseminated.
5. For example, for the period from May 12 through June 23, 2014, approximately 57 percent of the share volume of OTC trades in NMS stocks was executed outside an ATS.

FINRA notes that its purview extends only to OTC data, and as such, this proposal does not apply to publication of data relating to trades executed on an exchange.
6. Under FINRA rules, in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the “Executing Party,” defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade. *See* Rules 6282, 6380A, 6380B and 6622.
7. FINRA is proposing to include only volume from the executing party perspective because otherwise, published OTC volume would be inflated (*i.e.*, publishing volume from both the executing party and contra party perspectives would double count the executed volume).
8. Under Rule 4552, ATS volume information is published on a two-week delayed basis for NMS stocks in Tier 1 under the NMS Plan to Address Extraordinary Market Volatility (also referred to as the Limit Up/Limit Down Plan) and a four-week delayed basis for all other NMS stocks and OTC equity securities.
9. For example, a firm may use separate MPIDs for its proprietary and agency desks.
10. FINRA reiterates that a firm’s ATS volume will continue to be published separately under the unique MPID(s) for each ATS operated by the firm.
11. Specifically, the SEC exempted any market center that reported fewer than 200 transactions per trading day on average over the preceding six month period in securities that are covered by the rule. *See* letter from Annette L. Nazareth, Director, Division, to Richard Romano, Chair, and Carl P. Sherr, Vice-Chair, NASD Small Firms Advisory Board, dated June 22, 2001.

ATTACHMENT A

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

6100. QUOTING AND TRADING IN NMS STOCKS

6110. Trading Otherwise than on an Exchange

(a) Members are required to report transactions in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, effected otherwise than on or through a national securities exchange to FINRA. For purposes of the Rule 6100 Series, “otherwise than on an exchange” means a trade effected by a FINRA member otherwise than on or through a national securities exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(b) Trading Information for OTC Transactions Executed Outside of Alternative Trading Systems

(1) FINRA will publish on its public web site the Trading Information for NMS stocks for each member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) on the following timeframes:

(A) no earlier than two weeks following the end of the Trading Information week, Trading Information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility; and

(B) no earlier than four weeks following the end of the Trading Information week, Trading Information regarding NMS stocks that are subject to FINRA trade reporting requirements and are not in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility.

(2) Published Trading Information will be presented on FINRA’s web site as follows:

(A) Trading Information will be aggregated for all Market Participant Identifiers (MPIDs) used by a single member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system).

(B) Trading Information shall be aggregated for members that have executed on average fewer than 200 transactions per day in the NMS stock during the Trading Information week.

(3) “Trading Information” includes:

(A) the number of shares of each NMS stock executed by the member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA; and

(B) the number of trades in a security executed by the member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA.

“Trading Information” for purposes of this Rule shall not include any transactions executed within an alternative trading system, which information is published under Rule 4552.

6600. OTC REPORTING FACILITY

6610. General

(a) Members are required to report transactions (other than transactions executed on or through an exchange) in OTC Equity Securities, including secondary market transactions in non-exchange-listed Direct Participation Program securities, and Restricted Equity Securities to the OTC Reporting Facility in compliance with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

(b) Trading Information for OTC Transactions Executed Outside of Alternative Trading Systems

(1) FINRA will publish on its public web site the Trading Information for OTC Equity Securities for each member with the trade reporting obligation under Rule 6622(b) no earlier than four weeks following the end of the Trading Information week.

(2) Published Trading Information will be presented on FINRA’s web site as follows:

(A) Trading Information will be aggregated for all Market Participant Identifiers (MPIDs) used by a single member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system).

(B) Trading Information shall be aggregated for members that have executed on average fewer than 200 transactions per day in the OTC Equity Security during the Trading Information week.

(3) "Trading Information" includes:

(A) the number of shares of each OTC Equity Security executed by the member with the trade reporting obligation under Rule 6622(b) and reported to FINRA; and

(B) the number of trades in a security executed by the member with the trade reporting obligation under Rule 6622(b) and reported to FINRA.

"Trading Information" for purposes of this Rule shall not include any transactions executed within an alternative trading system, which information is published under Rule 4552.



February 20, 2015

Via Electronic Mail (pubcom@finra.org)

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

Re: FINRA Regulatory Notice 14-48: Proposal to Publish OTC Equity Volume Executed Outside Alternative Trading Systems

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to comment on the above-referenced proposal by the Financial Industry Regulatory Authority (“FINRA”). Under the proposal, FINRA would expand its alternative trading system (“ATS”) transparency initiative to publish the remaining equity volume executed over-the-counter (“OTC”), including non-ATS electronic trading systems and internalized trades. SIFMA supports the proposal, with some suggestions to avoid unnecessary operational friction.

For many years, SIFMA and its members have been vocal advocates and thought leaders on equity market structure issues. The U.S. equity markets are the deepest, most liquid and most efficient in the world, with investors enjoying extraordinarily low transaction costs, narrow spreads, and fast execution speeds. Nevertheless, SIFMA believes there are aspects of market structure that could be enhanced through steps designed to decrease unnecessary market complexity, increase transparency of market information, and promote fairness in access. To sharpen the focus on these important issues, SIFMA’s Board of Directors convened a broad-based task force in 2014 of members from across the country and across the industry, including retail and institutional dealers and asset managers, to develop a series of tangible and actionable market structure reforms. Through this task force, SIFMA has developed more than a dozen specific recommendations for addressing equity market structure.²

SIFMA generally supports FINRA’s proposal, consistent with its recommendations on transparency & disclosure. However, some of the specifics of the proposal raise the possibility of

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See SIFMA Equity Market Structure Recommendations (July 10, 2014), available at <http://www.sifma.org/workarea/downloadasset.aspx?id=8589949840>

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operational concerns that FINRA should address before this initiative is filed with the Securities and Exchange Commission (“SEC”) as a proposed rule change. Specifically, our comments fall into three areas: (1) the potential for information leakage; (2) FINRA’s fee to access Alternative Trading System (ATS) / Over-The-Counter (OTC) volume information; and (3) the need to sunset the current ATS reporting requirement under FINRA Rule 4552.

Information Leakage and Scope of OTC Information

Under the proposal, FINRA would publish OTC volume data in the same format and on the same schedule that it uses for ATS volume data, which is to publish weekly aggregated information, on either a two or four week delayed basis depending on the security type.³ We are concerned that the two-week publication timeframe may result in unintended information leakage. In particular, the current proposal would include disclosure of large institutional trades done OTC, which could enable reverse engineering of those trades if they are published within two weeks. For the OTC volume disclosure, we believe the volume information should be aggregated on a monthly rather than weekly basis, and made available to the public and industry participants following a four-week delayed basis, as currently provided under FINRA Rule 4552(b)(2).⁴

FINRA Fee to Access ATS/OTC Volume Information

SIFMA has previously expressed opposition to FINRA’s fee structure for access to ATS Volume information, and that opposition applies equally for this proposal. In the proposal, FINRA notes that, “[f]or fee purposes, [the OTC volume] data may be combined with the ATS data that is currently available and for which subscribers are charged under Rule 4553.” SIFMA continues to oppose FINRA charging a fee to access the data and the fact that only a limited scope of information is available for free on the FINRA website.⁵ As we have noted before, non-professional, non-subscriber users have access only to four weeks of ATS volume data, and only in a viewable, non-downloadable format. Any person who wants access to more extensive information, or to any downloadable information, whether professional or non-professional, must pay at least \$12,000 for an annual subscription for that data. Moreover, professional users are not permitted even to access the limited website information unless they also are subscribers.

FINRA’s fee structure for access to this information calls into question how the benefits of market transparency are furthered by providing members of the public with only a limited snapshot of ATS Data unless they pay a significant fee to FINRA. FINRA should make available to the public all ATS and OTC volume data for free in a downloadable format. Such

³ See FINRA Rule 4552(b).

⁴ In this regard, we note that order execution reports published pursuant to SEC Rule 605 provide standardized, monthly reports of statistical information concerning order executions, and such reports are made available within one month after the end of the month addressed in the report.

⁵ See e.g. Letter from Theodore R. Lazo, Managing Direct and Associate General Counsel, SIFMA to Securities and Exchange Commission dated May 29, 2014.

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an approach would be analogous to the SEC's Market Structure website, which provides all individuals with the opportunity to view and download key metrics and certain market data produced from the Market Information Data and Analytics System. This approach also is consistent with public access to information that is provided by market centers pursuant to Rule 605 of Regulation NMS. SIFMA continues to believe that increased transparency will benefit all market participants, and we can see no reason why FINRA would not make all of the ATS Data available to the public at large for free in a downloadable format.

Sunsetting of ATS Reporting Requirement

As we noted previously, FINRA should eliminate the current requirement for ATSs to report volume information to FINRA. Under FINRA rules, each ATS is currently required to report its weekly trading volume, by security, to FINRA. As of February 2, 2015, each ATS must use a unique market participant identifier ("MPID") for reporting order and trade information to FINRA.⁶ Accordingly, FINRA now has access through its own systems to all of the ATS volume information without the need for a separate reporting requirement. Now that the MPID requirement is effective and functioning, the regulatory need for the self-reporting has been fully obviated, which is further reflected in the fact that the current proposal would not require broker-dealers to separately report their OTC volumes to FINRA.

* * *

SIFMA would be pleased to discuss these comments in greater detail. If you have any questions, please contact either me (at 202-962-7383 or tlazo@sifma.org) or Timothy Cummings (at 212-313-1239 or tcummings@sifma.org).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: Stephanie Dumont/FINRA

⁶ See Securities Exchange Act Release No. 73340 (October 10, 2014), 79 FR 62500 (October 17, 2014)