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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2019 - * 019
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☑	☐	☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Expand OTC Equity Trading Volume Data Published on FINRA's Website

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 * Robert Last Name * McNamee

Title * Assistant General Counsel

E-mail * robert.mcnamee@finra.org

Telephone * (202) 728-8012 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.

Date 07/01/2019

By Stephanie Dumont

(Name *)

(Title *)

Senior Vice President and Director of Capital Markets Policy

Stephanie Dumont,

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.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View	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 * Add Remove View	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 * Add Remove View	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 Add Remove View Exhibit Sent As Paper Document ☐	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 Add Remove View Exhibit Sent As Paper Document ☐	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 Add Remove View	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 Add Remove View	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 Add Remove View	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"),[1] Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Rules 6110 and 6610 to expand the summary firm data relating to over-the-counter ("OTC") equity trading that FINRA publishes on its website.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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.

If the Commission approves the proposed rule change, FINRA proposes that the effective date of the proposed rule change will be no earlier than October 1, 2019 and no later than March 31, 2020. Currently, FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2019 and will announce the specific date in a Regulatory Notice.

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1 15 U.S.C. 78s(b)(1).

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

(a) Purpose

Pursuant to Rules 6110(b) and 6610(b), FINRA currently publishes certain volume information for OTC transactions[2] in NMS stocks[3] and OTC Equity Securities,[4] respectively, that are executed outside of an alternative trading system ("ATS").[5] All published data is derived directly from OTC trades reported to a FINRA equity trade reporting facility (i.e., the Alternative Display Facility, a Trade Reporting Facility or the OTC Reporting Facility). FINRA does not charge a fee for this data.[6]

Specifically, FINRA publishes weekly non-ATS OTC volume information (number of trades and shares) by firm and by security on a two-week or four-week delayed basis. Weekly security-specific information for transactions in NMS stocks in

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2 Rules 6110 and 6610 apply only to OTC transactions in NMS stocks and OTC Equity Securities, respectively, i.e., transactions effected otherwise than on or through a national securities exchange.

3 "NMS stock" is defined in Rule 600(b)(47) of the SEC's Regulation NMS. See Rule 6110(a). Generally, NMS stocks include any security, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. See 17 C.F.R. 242.600(b)(47).

4 "OTC Equity Security" means any equity security that is not an NMS stock, other than a Restricted Equity Security. See Rule 6420(f). A "Restricted Equity Security" means any equity security that meets the definition of "restricted security" as contained in Securities Act Rule 144(a)(3). See Rule 6420(k); 17 C.F.R. 230.144(a)(3).

5 Rules 6110(b) and 6610(b) govern the publication of information for OTC transactions executed outside of an ATS ("non-ATS" volume data or information). Rules 6110(c) and 6610(c) separately govern the publication of trading information for OTC transactions executed on ATSs.

6 OTC transaction volume data published pursuant to Rules 6110 and 6610 is available on FINRA's OTC Transparency Data webpage, available at https://otctransparency.finra.org/otctransparency/.

Tier 1 of the NMS Plan to Address Extraordinary Market Volatility ("Tier 1 NMS stocks") is published on a two-week delayed basis, while information on the remaining NMS stocks ("Tier 2 NMS stocks") and OTC Equity Securities is published on a four-week delayed basis. FINRA also publishes aggregate weekly non-ATS volume totals by firm and category of security (Tier 1 NMS stocks, Tier 2 NMS stocks and OTC Equity Securities) on the same timeframes, as well as aggregate non-ATS volume totals by firm for all NMS stocks and OTC Equity Securities, respectively, for each calendar month on a one-month delayed basis.[7] All data is published by firm on an attributed basis,[8] except that for firms executing fewer than, on average, 200 non-ATS transactions per day during the reporting period,[9] FINRA combines and publishes the volume for these firms on an aggregate non-attributed basis identified in the published data as "De Minimis Firms."[10]

As part of FINRA's ongoing efforts to improve market transparency, FINRA is proposing to expand the summary firm data relating to non-ATS OTC equity trading that FINRA publishes on its website. The proposed rule change has two primary components. First, FINRA is proposing to publish new monthly aggregate block-size trading data for

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7 Monthly aggregated data is categorized by NMS stocks and OTC Equity Securities, i.e., there is no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks.

8 Non-ATS data is published at the firm level, aggregating each market participant identifier ("MPID") used by a particular firm (but excluding any MPIDs used by a firm to report trades executed on its ATS).

9 For a firm with multiple non-ATS MPIDs, the total volume across all its MPIDs is combined for purposes of determining whether the de minimis threshold has been met.

10 There is no parallel de minimis exception for ATS transactions under Rules 6110(c) and 6610(c). Therefore, all ATS volume data is currently published on an attributed basis.

non-ATS OTC trades in NMS stocks, on the same terms as FINRA currently publishes aggregate block-size trading data for trades in NMS stocks occurring on ATSs. Second, FINRA is proposing to eliminate the current de minimis exception for publication of aggregate non-ATS trading volume across all NMS stocks and OTC Equity Securities and publish each firm's aggregate non-ATS volume on an attributed basis. These two components of the proposed rule change are each addressed below.

Non-ATS Block-Size Trading Data

FINRA currently publishes monthly information on block-size trades in all NMS stocks occurring on ATSs pursuant to Rule 6110(c)(2). Data regarding ATS block-size trades is aggregated across all NMS stocks (i.e., there is no security-by-security block data), is for a time period of one month of trading, and is published no earlier than one month following the end of the month for which trading was aggregated.

As announced in Regulatory Notice 16-14,[11] FINRA currently publishes information on block-size ATS trades in NMS stocks using share-based thresholds, dollar-based thresholds and thresholds that include both shares and dollar amount as follows:

- 10,000 or more shares;
- \$200,000 or more in dollar value;
- 10,000 or more shares and \$200,000 or more in dollar value;
- 2,000 to 9,999 shares;
- \$100,000 to \$199,999 in dollar value; and
- 2,000 to 9,999 shares and \$100,000 to \$199,999 in dollar value.

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[11] See Regulatory Notice 16-14 (April 2016).

For each of these categories, FINRA publishes monthly trade count and volume information for each ATS, on an attributed basis, aggregated across all NMS stocks with no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks. FINRA also calculates and displays the average trade size and each ATS's rank as well as "ATS Block Market Share" (i.e., the proportion of each ATS's block-size trading volume in relation to total block-size trading by all ATSs) and "ATS Block Business Share" (i.e., the proportion of a particular ATS's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.[12]

FINRA is proposing to expand the block-size trading data that it publishes on its website to also include monthly aggregate non-ATS block-size trading data for all NMS stocks. The new non-ATS block-size data would be published on the same terms as current ATS block-size data and FINRA would not charge a fee for the new data. Specifically, proposed paragraph (b)(3) of Rule 6110 provides that non-ATS block-size data would be aggregated across all NMS stocks (i.e., there would be no security-by-security block data), would be for a time period of one month of trading, and would be published no earlier than one month following the end of the month for which trading was aggregated. All published data would be derived directly from OTC trades reported to the Alternative Display Facility or a Trade Reporting Facility.

Pursuant to proposed Rule 6110(b)(3), FINRA will publish the new non-ATS block-size data with elements to be determined from time to time by FINRA in its

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12 ATS block-size data can be viewed on FINRA's OTC Transparency Data webpage, available at https://otctransparency.finra.org/otctransparency/AtsBlocks. The data may also be directly downloaded through the OTC Transparency Data webpage, available at https://otctransparency.finra.org/otctransparency/AtsBlocksDownload.

discretion as stated in a Regulatory Notice or other equivalent publication. As with current ATS block-size data, rather than defining what constitutes a "block-size" trade, non-ATS block-size data would be published using the same share-based, dollar-based and combination share- and dollar-based thresholds used for ATS block-size data, as described above. For each category, FINRA would publish monthly trade count and volume information for each firm, on an attributed basis,[13] aggregated across all NMS stocks with no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks.[14] FINRA would also calculate and display the average trade size and each firm's rank as well as "Firm Block Market Share" (i.e., the proportion of each firm's block-size trading volume in relation to total block-size trading by all firms) and "Firm Block Business Share" (i.e., the proportion of a particular firm's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.[15]

In developing its proposal to publish non-ATS block-size data, FINRA discussed the initiative with a number of FINRA's industry advisory committees, informally consulted a number of firms and solicited written comment in Regulatory Notice 18-28

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[13] Each firm that engages in block-size non-ATS trading of NMS stocks would be separately identified, i.e., FINRA is not proposing any de minimis exception for non-ATS block-size data.

[14] FINRA is not proposing at this time to publish non-ATS block-size data for trading in OTC Equity Securities, due largely to the wide variance of trading activity in these securities and the difficulty associated with determining appropriate block thresholds. FINRA notes that the currently published ATS block-size data is also limited to NMS stocks and does not cover trading in OTC Equity Securities. FINRA will continue to assess whether block-size trading data should be expanded to include trades in OTC Equity Securities or a subset thereof.

[15] FINRA will announce any changes to these elements in advance in a Regulatory Notice or similar publication.

(discussed in greater detail below). Firms were generally supportive of publishing non-ATS block-size data, which would provide enhanced transparency into the OTC market as a complement to the currently published ATS block-size data. Several firms noted potential information leakage concerns involved with publishing new block-size data, but indicated that such concerns would be mitigated by publishing data on an aggregated basis, rather than security-by-security, and by delaying publication.

FINRA believes that publication of non-ATS block-size data as described above would be beneficial to firms and the general public and provide interested parties with more detailed information on non-ATS trading activities, thus enhancing transparency in the OTC market for NMS stocks.

Elimination of the De Minimis Exception

As noted above, pursuant to Rules 6110(b)(2)(B) and 6610(b)(2)(B), for firms executing fewer than, on average, 200 non-ATS transactions per day during the reporting period, FINRA publishes the volume for these firms on an aggregate non-attributed basis identified in the published data as "De Minimis Firms." FINRA is proposing to eliminate this de minimis exception and publish on an attributed basis each firm's aggregate non-ATS volume (number of trades and shares) on a weekly or monthly basis, as applicable. As a result, each individual firm would be identified in the published aggregate data and there would no longer be a de minimis exception for published aggregate volume information. However, FINRA is not proposing to eliminate the de minimis exception for purposes of the security-specific non-ATS volume data under Rules 6110(b)(2)(C) and 6610(b)(2)(C). Therefore, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA would continue to aggregate the firm's volume in that security with that of similarly situated firms and there would continue to be a De Minimis Firms category for published security-by-security volume data.

When FINRA amended its rules to expand its transparency initiative by publishing non-ATS trading volume, it noted its belief at the time that publishing volume information for each firm that executed only a small number of trades or shares in any given period would not provide meaningful information to the marketplace.[16] FINRA also noted that it would consider whether modifications to the de minimis threshold would be appropriate based on feedback it may receive from interested parties.[17] Since that time, FINRA has continued to review and assess the published data to determine whether changes are warranted that would improve market transparency, including whether publishing more granular data on trading currently aggregated in the "De Minimis Firms" category would provide meaningful information to firms and the public.

Based on a review of trading data for the period from January 1, 2018 through December 30, 2018, FINRA determined that, on average, there are only 37 and 33 firms with attributed volume for Tier 1 NMS stocks and Tier 2 NMS stocks, respectively, on a weekly basis. For OTC Equity Securities during the same time period, there are, on average, only 23 firms with attributed volume on a weekly basis. By removing the de minimis exception, on average, 148 and 177 firms would have their aggregate non-ATS volume in Tier 1 NMS stocks and Tier 2 NMS stocks, respectively, published. For

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16 See Securities Exchange Act Release No. 75356 (July 2, 2015), 80 FR 39463, 39464 (July 9, 2015) (Notice of Filing of File No. SR-FINRA-2015-020).

17 See Securities Exchange Act Release No. 75356 (July 2, 2015), 80 FR 39463, 39467 (July 9, 2015) (Notice of Filing of File No. SR-FINRA-2015-020).

OTC Equity Securities, the number of firms that would have their aggregate non-ATS volume published, on average, is 124. Since a large number of small trades can add up to significant volume, FINRA believes that the data at the firm level may be more meaningful if each firm's volume is published, irrespective of size.

FINRA discussed the proposed elimination of the de minimis exception with a number of FINRA's industry advisory committees, informally consulted a number of firms and solicited written comment. Based on the feedback received, FINRA believes that removing the de minimis exception for publication of aggregated non-ATS volume data would provide valuable additional transparency into the OTC markets that is not currently available.[18]

Technical Changes

The text of the proposed rule change, attached as Exhibit 5, also includes several other minor, non-substantive and conforming changes to the current rule text in addition to the two substantive proposed changes discussed above. These edits are being proposed to improve the readability and consistency of the rules and are not intended to create or modify any substantive provisions. First, Rules 6110(b)(1)(A) and (B) and 6610(b)(1)(A) would be amended to clarify that those provisions apply to the publication of aggregate weekly Trading Information. This conforms to language in current Rules 6110(c) and 6610(c). Second, conforming changes would be made to Rules

18 FINRA notes that some firms and commenters suggested that FINRA should also eliminate the de minimis exception for security-by-security non-ATS volume data. FINRA continues to assess whether further enhancements to its published volume data may be warranted but is not at this time proposing to eliminate the de minimis exception for the security-by-security non-ATS volume data that it publishes on its website.

6110(b)(2)(B) and 6610(b)(2)(B) (as re-designated by the proposed rule change) to clarify that the remaining de minimis exceptions under those provisions apply to Trading Information by security. Third, the final sentence of Rule 6610(b)(3) would be amended to correct the cross-reference to the definition of "ATS Trading Information." Finally, Rule 6610(c)(1) would be amended to correct the punctuation at the end of the sentence.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA proposes that the effective date of the proposed rule change will be no earlier than October 1, 2019 and no later than March 31, 2020. Currently, FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2019 and will announce the specific date in a Regulatory Notice.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] 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. FINRA believes that the proposed rule change will provide enhanced transparency into the OTC market by providing more detailed information on block-size OTC transactions in NMS stocks and by enabling market participants and investors to better understand each individual firm's OTC trading volume and market share in the equity market.

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[19] 15 U.S.C. 78o-3(b)(6).

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 has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and any alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

FINRA is proposing to publish new monthly aggregate block-size trading data for non-ATS OTC trades in NMS stocks, with the intent to improve market transparency relating to trading in the OTC market. As mentioned above, FINRA makes similar block-size trading data for trades in NMS stocks occurring on ATSs available to the public, and has received support from the industry on its transparency initiatives in the non-ATS OTC equity markets.

FINRA also proposes to eliminate the de minimis exception for firms that have fewer than, on average, 200 non-ATS transactions per day and publish, on an attributed basis, each firm's aggregate non-ATS volume on a weekly or monthly basis, as applicable. FINRA believes that non-ATS data at the firm level provides better insight into market activity when each firm's volume is published individually, irrespective of size.

Economic Baseline

FINRA currently publishes monthly information on block-size trades in NMS stocks on ATSs, by share- and dollar-based thresholds as announced in Regulatory

Notice 16-14, but does not make such data publicly available for trading in NMS stocks outside ATSs in the OTC equity market. Therefore, market participants and investors have access to trading data on block trades in only one segment of the market. In the sample period from January 2018 through December 2018, non-ATS OTC block trading volume for the 10,000 share threshold constituted, on average, 39.4% of the monthly share volume in the aggregate non-ATS OTC volume. For the same sample period, non-ATS OTC block trading volume for the $200,000 threshold constituted, on average, 37.7% of the monthly share volume in the aggregate non-ATS OTC volume. This represents a higher percentage compared to the share of ATS block trading in the aggregate ATS volume during the same period. From January 2018 through December 2018, ATS block trading volume for the 10,000-share threshold constituted, on average, 11.9% of the monthly share volume in the aggregate ATS OTC volume. For the same sample period, ATS OTC block trading volume for the $200,000 threshold constituted, on average, 13.5% of the monthly share volume in the aggregate ATS OTC volume.

FINRA also currently publishes weekly non-ATS OTC volume information by firm and by security on a two-week (Tier 1 NMS stocks) and four-week (Tier 2 NMS stocks and OTC Equity Securities) delayed basis, as well as aggregate non-ATS volume by firm for all NMS stocks and OTC Equity Securities for each calendar month on a one-month delayed basis. FINRA combines and publishes volume data for firms executing fewer than, on average, 200 non-ATS transactions per day during the reporting period, on an aggregate non-attributed basis under "De Minimis Firms."

Economic Impacts

The proposal described above would not impose any additional requirements on firms because the non-ATS OTC block trade data will be derived solely from trade reports already submitted to the FINRA equity trade reporting facilities and disseminated trade-by-trade on an anonymous basis through the securities information processors. In addition, because the data is available free of charge, FINRA does not believe that there would be any direct costs associated with the proposal – to firms, investors or data consumers.

At the same time, the proposal is anticipated to help market participants better understand the overall OTC trading of equities, by providing information that could be utilized in assessing where liquidity is concentrated and how order routing strategies could be improved. Based on a review of trading data in the sample period, there would be 236 firms, on average, represented in the monthly non-ATS block-size data, compared to 32 ATSs during the same sample period. Hence, the proposal would provide additional transparency into OTC trading activity by expanding the availability of information about OTC block-size trading to non-ATS volume at no required cost to firms.

FINRA evaluated the impact of removing the de minimis exception for publication of aggregated non-ATS OTC volume. During the sample period,[20] there were, on average, 37, 33 and 23 firms in the weekly volume reports for Tier 1 NMS, Tier 2 NMS and OTC Equity Securities, respectively. By removing the de minimis exception, the number of additional firms that would have their aggregate non-ATS volume published would be 111, 144, and 101, respectively, for the categories of securities described above. Their average weekly share volume represented 8.43%, 7.99% and

[20] The sample period included weekly data from January 1, 2018 through December 30, 2018.

0.90% of the aggregate non-ATS OTC volume in the sample period. Hence, FINRA believes that expanding transparency to all segments of the OTC equity market would bridge gaps in information published across ATS versus non-ATS segments of the OTC equity market and removing the de minimis exception would provide a more complete picture of OTC trading activity, thereby reducing any competitive distortions that may be associated with such information gaps.

FINRA also considered information leakage concerns, i.e., whether a firm's proprietary trading strategy could be discerned from the published data. FINRA believes that the proposed data dissemination structure mitigates such information leakage concerns, by limiting the granularity of the data at the firm level only, with no accompanying security level data. In addition, FINRA believes that the delay in publication is a well-calibrated effort to reduce information leakage. FINRA's previous experience with the publication of ATS OTC trading volume provides support that the proposed dissemination is expected to benefit market participants by providing access to meaningful information on non-ATS trading activity.

FINRA also notes that there may be differences in non-ATS block-size trading and ATS block-size trading, e.g., the total number of shares traded in non-ATS block-size trades of 10,000 or more shares tends to be a significantly higher percentage of the overall non-ATS OTC activity as compared to ATS block activity. Nonetheless, such differences are not expected to produce any information that could be used as a part of a trading strategy due to the reasons explained in the above paragraph.

Other Proposals Considered

FINRA notes that Regulatory Notice 18-28 also solicited comment on a proposal to separately identify firms' volume of trading on a single dealer platform ("SDP"). FINRA continues to consider comments provided in response to Regulatory Notice 18-28 but is not proposing at this time to require identification of SDP trading volume.

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

The proposed rule change was published for comment in Regulatory Notice 18-28 (September 2018). Four comments were received in response to the Regulatory Notice.[21] A copy of the Regulatory Notice is attached as Exhibit 2a. Copies of the comment letters received in response to the Regulatory Notice are attached as Exhibit 2c. The comments are summarized below.[22]

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21 See Letter from Christopher Bok, Esq., Financial Information Forum to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 9, 2018 ("FIF Letter"); letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 12, 2018 ("Citadel Letter"); letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2018 ("Virtu Letter"); and letter from Bob Hill, Global OTC to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 16, 2018 ("Global OTC Letter").

22 As noted above, Regulatory Notice 18-28 also solicited comment on other possible enhancements to the OTC equity trading volume data published on FINRA's website, including a proposal to separately identify firms' volume of trading on an SDP. FINRA is not proposing at this time to require identification of SDP trading volume. The discussion above is therefore limited to comments relevant to the proposed rule change.

Citadel generally supported efforts to increase market transparency that benefit end investors, but did not specifically comment on the two aspects of the proposed rule change that FINRA is proposing at this time.[23]

Virtu and Global OTC specifically supported the proposal to publish new non-ATS block-size data for NMS stocks.[24] Virtu noted its belief that any concerns about information leakage with respect to non-ATS block-size data are alleviated by the one-month publication delay and the fact that disclosure would not be made on a security-by-security basis or differentiate between Tier 1 NMS stocks and Tier 2 NMS stocks.[25]

Global OTC suggested that the proposal go further by including all OTC Equity Securities in published monthly aggregate non-ATS block-size trading data, noting its belief that the public interest of including all OTC Equity Securities outweighs the difficulty that may arise in determining block thresholds that would be appropriate across all OTC Equity Securities.[26] As noted above, FINRA is not proposing at this time to publish non-ATS block-size data for trading in OTC Equity Securities, but will continue to assess whether block-size trading data should be expanded in the future.

FIF stated that the rationale for publication of non-ATS block-size data does not bear a valid relationship to the costs and risks associated with the proposal.[27] However, FIF did not identify any specific costs or risks associated with the proposed publication of

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[23] See Citadel Letter.

[24] See Virtu Letter; Global OTC Letter.

[25] See Virtu Letter.

[26] See Global OTC Letter.

[27] See FIF Letter.

non-ATS block-size data. FINRA notes that the newly published information would be derived directly from data already reported to FINRA's equity reporting facilities and that firms would have no new reporting obligations as a result of the proposed rule change. Based on consultations with firms and industry advisory committees, FINRA believes that the proposal to publish non-ATS block-size data will provide additional transparency into non-ATS activity and enhance market participants' and investors' understanding of the OTC market.

Global OTC generally supported additional transparency into OTC trading activity and expanding the availability of information about OTC trading, but did not specifically address the proposed elimination of the de minimis exception for publication of aggregate non-ATS volume data.[28] Virtu disagreed with the proposed elimination of the de minimis exception because it is concerned that the "next 'logical' step" would be to require the publication of transaction data on a security-by-security basis.[29] While Virtu believes that eliminating the de minimis exception for security-by-security volume data could expose firms to principal risk,[30] Virtu did not express any specific concerns regarding the proposal to eliminate the de minimis exception for aggregate, rather than security-by-security, data. As noted above, FINRA is not proposing to eliminate the de minimis exception for purposes of security-specific non-ATS volume data.

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28 See Global OTC Letter.

29 See Virtu Letter.

30 See Virtu Letter.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[31]

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)

Not applicable.

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.

11. Exhibits

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

Exhibit 2a. Regulatory Notice 18-28 (September 2018).

Exhibit 2b. List of commenters.

Exhibit 2c. Comments received in response to Regulatory Notice 18-28.

Exhibit 5. Text of the proposed rule change.

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31 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2019-019)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Expand OTC Equity Trading Volume Data 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. 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 amend Rules 6110 and 6610 to expand the summary firm data relating to over-the-counter ("OTC") equity trading that FINRA publishes on its website.

The text of the proposed rule change is available on FINRA's website at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

Pursuant to Rules 6110(b) and 6610(b), FINRA currently publishes certain volume information for OTC transactions[3] in NMS stocks[4] and OTC Equity Securities,[5] respectively, that are executed outside of an alternative trading system ("ATS").[6] All published data is derived directly from OTC trades reported to a FINRA equity trade

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3 Rules 6110 and 6610 apply only to OTC transactions in NMS stocks and OTC Equity Securities, respectively, i.e., transactions effected otherwise than on or through a national securities exchange.

4 "NMS stock" is defined in Rule 600(b)(47) of the SEC's Regulation NMS. See Rule 6110(a). Generally, NMS stocks include any security, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. See 17 C.F.R. 242.600(b)(47).

5 "OTC Equity Security" means any equity security that is not an NMS stock, other than a Restricted Equity Security. See Rule 6420(f). A "Restricted Equity Security" means any equity security that meets the definition of "restricted security" as contained in Securities Act Rule 144(a)(3). See Rule 6420(k); 17 C.F.R. 230.144(a)(3).

6 Rules 6110(b) and 6610(b) govern the publication of information for OTC transactions executed outside of an ATS ("non-ATS" volume data or information). Rules 6110(c) and 6610(c) separately govern the publication of trading information for OTC transactions executed on ATSs.

reporting facility (i.e., the Alternative Display Facility, a Trade Reporting Facility or the OTC Reporting Facility). FINRA does not charge a fee for this data.[7]

Specifically, FINRA publishes weekly non-ATS OTC volume information (number of trades and shares) by firm and by security on a two-week or four-week delayed basis. Weekly security-specific information for transactions in NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility ("Tier 1 NMS stocks") is published on a two-week delayed basis, while information on the remaining NMS stocks ("Tier 2 NMS stocks") and OTC Equity Securities is published on a four-week delayed basis. FINRA also publishes aggregate weekly non-ATS volume totals by firm and category of security (Tier 1 NMS stocks, Tier 2 NMS stocks and OTC Equity Securities) on the same timeframes, as well as aggregate non-ATS volume totals by firm for all NMS stocks and OTC Equity Securities, respectively, for each calendar month on a one-month delayed basis.[8] All data is published by firm on an attributed basis,[9] except that for firms executing fewer than, on average, 200 non-ATS transactions per day during

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7 OTC transaction volume data published pursuant to Rules 6110 and 6610 is available on FINRA's OTC Transparency Data webpage, available at https://otctransparency.finra.org/otctransparency/.

8 Monthly aggregated data is categorized by NMS stocks and OTC Equity Securities, i.e., there is no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks.

9 Non-ATS data is published at the firm level, aggregating each market participant identifier ("MPID") used by a particular firm (but excluding any MPIDs used by a firm to report trades executed on its ATS).

the reporting period,[10] FINRA combines and publishes the volume for these firms on an aggregate non-attributed basis identified in the published data as "De Minimis Firms."[11]

As part of FINRA's ongoing efforts to improve market transparency, FINRA is proposing to expand the summary firm data relating to non-ATS OTC equity trading that FINRA publishes on its website. The proposed rule change has two primary components. First, FINRA is proposing to publish new monthly aggregate block-size trading data for non-ATS OTC trades in NMS stocks, on the same terms as FINRA currently publishes aggregate block-size trading data for trades in NMS stocks occurring on ATSs. Second, FINRA is proposing to eliminate the current de minimis exception for publication of aggregate non-ATS trading volume across all NMS stocks and OTC Equity Securities and publish each firm's aggregate non-ATS volume on an attributed basis. These two components of the proposed rule change are each addressed below.

Non-ATS Block-Size Trading Data

FINRA currently publishes monthly information on block-size trades in all NMS stocks occurring on ATSs pursuant to Rule 6110(c)(2). Data regarding ATS block-size trades is aggregated across all NMS stocks (i.e., there is no security-by-security block data), is for a time period of one month of trading, and is published no earlier than one month following the end of the month for which trading was aggregated.

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10 For a firm with multiple non-ATS MPIDs, the total volume across all its MPIDs is combined for purposes of determining whether the de minimis threshold has been met.

11 There is no parallel de minimis exception for ATS transactions under Rules 6110(c) and 6610(c). Therefore, all ATS volume data is currently published on an attributed basis.

As announced in Regulatory Notice 16-14,[12] FINRA currently publishes information on block-size ATS trades in NMS stocks using share-based thresholds, dollar-based thresholds and thresholds that include both shares and dollar amount as follows:

- 10,000 or more shares;
- $200,000 or more in dollar value;
- 10,000 or more shares and $200,000 or more in dollar value;
- 2,000 to 9,999 shares;
- $100,000 to $199,999 in dollar value; and
- 2,000 to 9,999 shares and $100,000 to $199,999 in dollar value.

For each of these categories, FINRA publishes monthly trade count and volume information for each ATS, on an attributed basis, aggregated across all NMS stocks with no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks. FINRA also calculates and displays the average trade size and each ATS's rank as well as "ATS Block Market Share" (i.e., the proportion of each ATS's block-size trading volume in relation to total block-size trading by all ATSs) and "ATS Block Business Share" (i.e., the proportion of a particular ATS's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.[13]

FINRA is proposing to expand the block-size trading data that it publishes on its

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12 See Regulatory Notice 16-14 (April 2016).

13 ATS block-size data can be viewed on FINRA's OTC Transparency Data webpage, available at https://otctransparency.finra.org/otctransparency/AtsBlocks. The data may also be directly downloaded through the OTC Transparency Data webpage, available at https://otctransparency.finra.org/otctransparency/AtsBlocksDownload.

website to also include monthly aggregate non-ATS block-size trading data for all NMS stocks. The new non-ATS block-size data would be published on the same terms as current ATS block-size data and FINRA would not charge a fee for the new data. Specifically, proposed paragraph (b)(3) of Rule 6110 provides that non-ATS block-size data would be aggregated across all NMS stocks (i.e., there would be no security-by-security block data), would be for a time period of one month of trading, and would be published no earlier than one month following the end of the month for which trading was aggregated. All published data would be derived directly from OTC trades reported to the Alternative Display Facility or a Trade Reporting Facility.

Pursuant to proposed Rule 6110(b)(3), FINRA will publish the new non-ATS block-size data with elements to be determined from time to time by FINRA in its discretion as stated in a Regulatory Notice or other equivalent publication. As with current ATS block-size data, rather than defining what constitutes a "block-size" trade, non-ATS block-size data would be published using the same share-based, dollar-based and combination share- and dollar-based thresholds used for ATS block-size data, as described above. For each category, FINRA would publish monthly trade count and volume information for each firm, on an attributed basis,[14] aggregated across all NMS stocks with no differentiation between Tier 1 NMS stocks and Tier 2 NMS stocks.[15]

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14 Each firm that engages in block-size non-ATS trading of NMS stocks would be separately identified, i.e., FINRA is not proposing any de minimis exception for non-ATS block-size data.

15 FINRA is not proposing at this time to publish non-ATS block-size data for trading in OTC Equity Securities, due largely to the wide variance of trading activity in these securities and the difficulty associated with determining appropriate block thresholds. FINRA notes that the currently published ATS block-size data is also limited to NMS stocks and does not cover trading in OTC Equity Securities. FINRA will continue to assess whether block-size trading data

FINRA would also calculate and display the average trade size and each firm's rank as well as "Firm Block Market Share" (i.e., the proportion of each firm's block-size trading volume in relation to total block-size trading by all firms) and "Firm Block Business Share" (i.e., the proportion of a particular firm's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.[16]

In developing its proposal to publish non-ATS block-size data, FINRA discussed the initiative with a number of FINRA's industry advisory committees, informally consulted a number of firms and solicited written comment in Regulatory Notice 18-28 (discussed in greater detail below). Firms were generally supportive of publishing non-ATS block-size data, which would provide enhanced transparency into the OTC market as a complement to the currently published ATS block-size data. Several firms noted potential information leakage concerns involved with publishing new block-size data, but indicated that such concerns would be mitigated by publishing data on an aggregated basis, rather than security-by-security, and by delaying publication.

FINRA believes that publication of non-ATS block-size data as described above would be beneficial to firms and the general public and provide interested parties with more detailed information on non-ATS trading activities, thus enhancing transparency in the OTC market for NMS stocks.

Elimination of the De Minimis Exception

As noted above, pursuant to Rules 6110(b)(2)(B) and 6610(b)(2)(B), for firms

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should be expanded to include trades in OTC Equity Securities or a subset thereof.

16 FINRA will announce any changes to these elements in advance in a Regulatory Notice or similar publication.

executing fewer than, on average, 200 non-ATS transactions per day during the reporting period, FINRA publishes the volume for these firms on an aggregate non-attributed basis identified in the published data as "De Minimis Firms." FINRA is proposing to eliminate this de minimis exception and publish on an attributed basis each firm's aggregate non-ATS volume (number of trades and shares) on a weekly or monthly basis, as applicable. As a result, each individual firm would be identified in the published aggregate data and there would no longer be a de minimis exception for published aggregate volume information. However, FINRA is not proposing to eliminate the de minimis exception for purposes of the security-specific non-ATS volume data under Rules 6110(b)(2)(C) and 6610(b)(2)(C). Therefore, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA would continue to aggregate the firm's volume in that security with that of similarly situated firms and there would continue to be a De Minimis Firms category for published security-by-security volume data.

When FINRA amended its rules to expand its transparency initiative by publishing non-ATS trading volume, it noted its belief at the time that publishing volume information for each firm that executed only a small number of trades or shares in any given period would not provide meaningful information to the marketplace.[17] FINRA also noted that it would consider whether modifications to the de minimis threshold would be appropriate based on feedback it may receive from interested parties.[18] Since

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17 See Securities Exchange Act Release No. 75356 (July 2, 2015), 80 FR 39463, 39464 (July 9, 2015) (Notice of Filing of File No. SR-FINRA-2015-020).

18 See Securities Exchange Act Release No. 75356 (July 2, 2015), 80 FR 39463, 39467 (July 9, 2015) (Notice of Filing of File No. SR-FINRA-2015-020).

that time, FINRA has continued to review and assess the published data to determine whether changes are warranted that would improve market transparency, including whether publishing more granular data on trading currently aggregated in the "De Minimis Firms" category would provide meaningful information to firms and the public.

Based on a review of trading data for the period from January 1, 2018 through December 30, 2018, FINRA determined that, on average, there are only 37 and 33 firms with attributed volume for Tier 1 NMS stocks and Tier 2 NMS stocks, respectively, on a weekly basis. For OTC Equity Securities during the same time period, there are, on average, only 23 firms with attributed volume on a weekly basis. By removing the de minimis exception, on average, 148 and 177 firms would have their aggregate non-ATS volume in Tier 1 NMS stocks and Tier 2 NMS stocks, respectively, published. For OTC Equity Securities, the number of firms that would have their aggregate non-ATS volume published, on average, is 124. Since a large number of small trades can add up to significant volume, FINRA believes that the data at the firm level may be more meaningful if each firm's volume is published, irrespective of size.

FINRA discussed the proposed elimination of the de minimis exception with a number of FINRA's industry advisory committees, informally consulted a number of firms and solicited written comment. Based on the feedback received, FINRA believes that removing the de minimis exception for publication of aggregated non-ATS volume data would provide valuable additional transparency into the OTC markets that is not currently available.[19]

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19 FINRA notes that some firms and commenters suggested that FINRA should also eliminate the de minimis exception for security-by-security non-ATS volume data. FINRA continues to assess whether further enhancements to its published

Technical Changes

The text of the proposed rule change also includes several other minor, non-substantive and conforming changes to the current rule text in addition to the two substantive proposed changes discussed above. These edits are being proposed to improve the readability and consistency of the rules and are not intended to create or modify any substantive provisions. First, Rules 6110(b)(1)(A) and (B) and 6610(b)(1)(A) would be amended to clarify that those provisions apply to the publication of aggregate weekly Trading Information. This conforms to language in current Rules 6110(c) and 6610(c). Second, conforming changes would be made to Rules 6110(b)(2)(B) and 6610(b)(2)(B) (as re-designated by the proposed rule change) to clarify that the remaining de minimis exceptions under those provisions apply to Trading Information by security. Third, the final sentence of Rule 6610(b)(3) would be amended to correct the cross-reference to the definition of "ATS Trading Information." Finally, Rule 6610(c)(1) would be amended to correct the punctuation at the end of the sentence.

If the Commission approves the proposed rule change, FINRA proposes that the effective date of the proposed rule change will be no earlier than October 1, 2019 and no later than March 31, 2020. Currently, FINRA anticipates that it will begin publication of data in accordance with the proposed rule change in the fourth quarter of 2019 and will announce the specific date in a Regulatory Notice.

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volume data may be warranted but is not at this time proposing to eliminate the de minimis exception for the security-by-security non-ATS volume data that it publishes on its website.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] 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. FINRA believes that the proposed rule change will provide enhanced transparency into the OTC market by providing more detailed information on block-size OTC transactions in NMS stocks and by enabling market participants and investors to better understand each individual firm's OTC trading volume and market share in the equity market.

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 has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and any alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

FINRA is proposing to publish new monthly aggregate block-size trading data for non-ATS OTC trades in NMS stocks, with the intent to improve market transparency relating to trading in the OTC market. As mentioned above, FINRA makes similar block-size trading data for trades in NMS stocks occurring on ATSs available to the

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[20] 15 U.S.C. 78o-3(b)(6).

public, and has received support from the industry on its transparency initiatives in the non-ATS OTC equity markets.

FINRA also proposes to eliminate the de minimis exception for firms that have fewer than, on average, 200 non-ATS transactions per day and publish, on an attributed basis, each firm's aggregate non-ATS volume on a weekly or monthly basis, as applicable. FINRA believes that non-ATS data at the firm level provides better insight into market activity when each firm's volume is published individually, irrespective of size.

Economic Baseline

FINRA currently publishes monthly information on block-size trades in NMS stocks on ATSs, by share- and dollar-based thresholds as announced in Regulatory Notice 16-14, but does not make such data publicly available for trading in NMS stocks outside ATSs in the OTC equity market. Therefore, market participants and investors have access to trading data on block trades in only one segment of the market. In the sample period from January 2018 through December 2018, non-ATS OTC block trading volume for the 10,000 share threshold constituted, on average, 39.4% of the monthly share volume in the aggregate non-ATS OTC volume. For the same sample period, non-ATS OTC block trading volume for the $200,000 threshold constituted, on average, 37.7% of the monthly share volume in the aggregate non-ATS OTC volume. This represents a higher percentage compared to the share of ATS block trading in the aggregate ATS volume during the same period. From January 2018 through December 2018, ATS block trading volume for the 10,000-share threshold constituted, on average, 11.9% of the monthly share volume in the aggregate ATS OTC volume. For the same sample period, ATS OTC block trading volume for the $200,000 threshold constituted, on average, 13.5% of the monthly share volume in the aggregate ATS OTC volume.

FINRA also currently publishes weekly non-ATS OTC volume information by firm and by security on a two-week (Tier 1 NMS stocks) and four-week (Tier 2 NMS stocks and OTC Equity Securities) delayed basis, as well as aggregate non-ATS volume by firm for all NMS stocks and OTC Equity Securities for each calendar month on a one-month delayed basis. FINRA combines and publishes volume data for firms executing fewer than, on average, 200 non-ATS transactions per day during the reporting period, on an aggregate non-attributed basis under "De Minimis Firms."

Economic Impacts

The proposal described above would not impose any additional requirements on firms because the non-ATS OTC block trade data will be derived solely from trade reports already submitted to the FINRA equity trade reporting facilities and disseminated trade-by-trade on an anonymous basis through the securities information processors. In addition, because the data is available free of charge, FINRA does not believe that there would be any direct costs associated with the proposal – to firms, investors or data consumers.

At the same time, the proposal is anticipated to help market participants better understand the overall OTC trading of equities, by providing information that could be utilized in assessing where liquidity is concentrated and how order routing strategies could be improved. Based on a review of trading data in the sample period, there would be 236 firms, on average, represented in the monthly non-ATS block-size data, compared to 32 ATSs during the same sample period. Hence, the proposal would provide additional transparency into OTC trading activity by expanding the availability of information about OTC block-size trading to non-ATS volume at no required cost to firms.

FINRA evaluated the impact of removing the de minimis exception for publication of aggregated non-ATS OTC volume. During the sample period,[21] there were, on average, 37, 33 and 23 firms in the weekly volume reports for Tier 1 NMS, Tier 2 NMS and OTC Equity Securities, respectively. By removing the de minimis exception, the number of additional firms that would have their aggregate non-ATS volume published would be 111, 144, and 101, respectively, for the categories of securities described above. Their average weekly share volume represented 8.43%, 7.99% and 0.90% of the aggregate non-ATS OTC volume in the sample period. Hence, FINRA believes that expanding transparency to all segments of the OTC equity market would bridge gaps in information published across ATS versus non-ATS segments of the OTC equity market and removing the de minimis exception would provide a more complete picture of OTC trading activity, thereby reducing any competitive distortions that may be associated with such information gaps.

FINRA also considered information leakage concerns, i.e., whether a firm's proprietary trading strategy could be discerned from the published data. FINRA believes that the proposed data dissemination structure mitigates such information leakage concerns, by limiting the granularity of the data at the firm level only, with no accompanying security level data. In addition, FINRA believes that the delay in publication is a well-calibrated effort to reduce information leakage. FINRA's previous experience with the publication of ATS OTC trading volume provides support that the

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21 The sample period included weekly data from January 1, 2018 through December 30, 2018.

proposed dissemination is expected to benefit market participants by providing access to meaningful information on non-ATS trading activity.

FINRA also notes that there may be differences in non-ATS block-size trading and ATS block-size trading, e.g., the total number of shares traded in non-ATS block-size trades of 10,000 or more shares tends to be a significantly higher percentage of the overall non-ATS OTC activity as compared to ATS block activity. Nonetheless, such differences are not expected to produce any information that could be used as a part of a trading strategy due to the reasons explained in the above paragraph.

Other Proposals Considered

FINRA notes that Regulatory Notice 18-28 also solicited comment on a proposal to separately identify firms' volume of trading on a single dealer platform ("SDP"). FINRA continues to consider comments provided in response to Regulatory Notice 18-28 but is not proposing at this time to require identification of SDP trading volume.

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

The proposed rule change was published for comment in Regulatory Notice 18-28 (September 2018). Four comments were received in response to the Regulatory Notice.[22] The comments are summarized below.[23]

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[22] See Letter from Christopher Bok, Esq., Financial Information Forum to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 9, 2018 ("FIF Letter"); letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 12, 2018 ("Citadel Letter"); letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2018 ("Virtu Letter"); and letter from Bob Hill, Global OTC to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 16, 2018 ("Global OTC Letter").

Citadel generally supported efforts to increase market transparency that benefit end investors, but did not specifically comment on the two aspects of the proposed rule change that FINRA is proposing at this time.[24]

Virtu and Global OTC specifically supported the proposal to publish new non-ATS block-size data for NMS stocks.[25] Virtu noted its belief that any concerns about information leakage with respect to non-ATS block-size data are alleviated by the one-month publication delay and the fact that disclosure would not be made on a security-by-security basis or differentiate between Tier 1 NMS stocks and Tier 2 NMS stocks.[26]

Global OTC suggested that the proposal go further by including all OTC Equity Securities in published monthly aggregate non-ATS block-size trading data, noting its belief that the public interest of including all OTC Equity Securities outweighs the difficulty that may arise in determining block thresholds that would be appropriate across all OTC Equity Securities.[27] As noted above, FINRA is not proposing at this time to publish non-ATS block-size data for trading in OTC Equity Securities, but will continue to assess whether block-size trading data should be expanded in the future.

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23 As noted above, Regulatory Notice 18-28 also solicited comment on other possible enhancements to the OTC equity trading volume data published on FINRA's website, including a proposal to separately identify firms' volume of trading on an SDP. FINRA is not proposing at this time to require identification of SDP trading volume. The discussion above is therefore limited to comments relevant to the proposed rule change.

24 See Citadel Letter.

25 See Virtu Letter; Global OTC Letter.

26 See Virtu Letter.

27 See Global OTC Letter.

FIF stated that the rationale for publication of non-ATS block-size data does not bear a valid relationship to the costs and risks associated with the proposal.[28] However, FIF did not identify any specific costs or risks associated with the proposed publication of non-ATS block-size data. FINRA notes that the newly published information would be derived directly from data already reported to FINRA's equity reporting facilities and that firms would have no new reporting obligations as a result of the proposed rule change. Based on consultations with firms and industry advisory committees, FINRA believes that the proposal to publish non-ATS block-size data will provide additional transparency into non-ATS activity and enhance market participants' and investors' understanding of the OTC market.

Global OTC generally supported additional transparency into OTC trading activity and expanding the availability of information about OTC trading, but did not specifically address the proposed elimination of the de minimis exception for publication of aggregate non-ATS volume data.[29] Virtu disagreed with the proposed elimination of the de minimis exception because it is concerned that the "next 'logical' step" would be to require the publication of transaction data on a security-by-security basis.[30] While Virtu believes that eliminating the de minimis exception for security-by-security volume data could expose firms to principal risk,[31] Virtu did not express any specific concerns regarding the proposal to eliminate the de minimis exception for aggregate, rather than

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28 See FIF Letter.

29 See Global OTC Letter.

30 See Virtu Letter.

31 See Virtu Letter.

security-by-security, data. As noted above, FINRA is not proposing to eliminate the de minimis exception for purposes of security-specific non-ATS volume data.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-2019-019 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2019-019. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2019-019 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]

Eduardo A. Aleman
Deputy Secretary

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[32] 17 CFR 200.30-3(a)(12).

Exhibit 2a

Regulatory Notice 18-28

OTC Equity Trading Volume

FINRA Requests Comment on a Proposal to Expand OTC Equity Trading Volume Data Published on FINRA's Website

Comment Period Expires: November 12, 2018

Summary

FINRA requests comment on a proposal to expand the summary firm data relating to over-the-counter (OTC) equity trading that FINRA publishes on its website by (1) publishing on a one-month delayed basis new monthly aggregate block-size trading data for OTC trades in NMS stocks executed outside an alternative trading system (ATS); (2) publishing aggregate non-ATS volume for all firms, by eliminating the existing *de minimis* exception; and (3) separately identifying firms' volume of trading on a single dealer platform (SDP), by requiring firms to use a unique market participant identifier (MPID) when reporting their SDP trades to FINRA.

The proposed rule text is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- Chris Stone, Vice President, Transparency Services, at (202) 728-8457;
- Brendan Loonam, Senior Director, Transparency Services, at (212) 858-4203; or
- Lisa Horrigan, Associate General Counsel, Office of General Counsel, at (202) 728-8190.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by November 12, 2018.

Comments must be submitted through one of the following methods:

- Emailing comments to *pubcom@finra.org*; or

FINRA

Financial Industry Regulatory Authority

September 11, 2018

Notice Type

- Request for Comment

Suggested Routing

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

Key Topics

- Alternative Display Facility
- ATS Data
- NMS Stocks
- Non-ATS Data
- OTC Equity Securities
- OTC Reporting Facility
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 6110
- FINRA Rule 6160
- FINRA Rule 6170
- FINRA Rule 6480
- FINRA Rule 6610

- 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

To improve market transparency relating to trading occurring on ATSs, in June 2014, FINRA began publishing individual ATS volume information for equity securities on its website. In April 2016, FINRA expanded its transparency initiative by publishing the remaining equity volume executed OTC by member firms, including their trading activity in non-ATS electronic trading systems and internalized trades.

FINRA publishes weekly OTC volume information (number of trades and shares) by ATS or firm and by security on a two-week or four-week delayed basis.[3] FINRA also publishes aggregate non-ATS volume totals across all NMS stocks and OTC equity securities for each calendar month.[4] For firms executing fewer than, on average, 200 non-ATS transactions per day during the reporting period, FINRA combines and publishes the volume for these firms on an aggregated non-attributed basis identified in the data as "*de minimis* firms."[5] FINRA does not charge for this data.

ATS and non-ATS volume information is derived directly from OTC trades reported to a FINRA equity trade reporting facility (*i.e.*, the Alternative Display Facility, a Trade Reporting Facility or the OTC Reporting Facility). Firms that operate an ATS are required to obtain and use a single separate MPID for exclusive use for reporting trades occurring on the ATS.[6] Non-ATS data is published at the firm level and not by individual MPID.

In October 2016, FINRA further expanded its transparency initiative and began publishing monthly information on block-size trades in all NMS stocks occurring on ATSs. Data regarding ATS block-size trades is aggregated across all NMS stocks (*i.e.*, there is no security-by-security block data), is for a time period of one month of trading, and is published no earlier than one month following the end of the month for which trading was aggregated. Rather than narrowly defining what constitutes a "block-size" trade for purposes of the published data, FINRA provides information on ATS trades using share-based thresholds, dollar-based thresholds and thresholds that include both shares and dollar amount as follows:

- 10,000 or more shares;
- $200,000 or more in dollar value;
- 10,000 or more shares and $200,000 or more in dollar value;
- 2,000 to 9,999 shares;
- $100,000 to $199,999 in dollar value; and
- 2,000 to 9,999 shares and $100,000 to $199,999 in dollar value.

For each of these categories, FINRA publishes monthly trade count and volume information for each ATS aggregated across all NMS stocks. As a convenience for users, FINRA also calculates and displays the average trade size and each ATS's rank as well as "ATS Block Market Share" (*i.e.*, the proportion of each ATS's block-size trading volume in relation to total block-size trading by all ATSs) and "ATS Block Business Share" (*i.e.*, the proportion of a particular ATS's overall trading volume that was done as block-size trades) and rankings of those metrics for each of the above categories.

Proposal to Expand Published OTC Equity Trading Volume Data

FINRA is proposing to expand the OTC equity trading volume data that FINRA publishes on its website as follows.

First, FINRA is proposing to publish monthly aggregate non-ATS block-size trading data for all NMS stocks,[7] which data is not currently published, on the same terms as current ATS block-size data. Specifically, monthly non-ATS block-size data would be published on a one-month delayed basis and would be broken down by firm.[8] As with the current ATS block-size data, there would be no security-by-security block data and there would be no differentiation between Tier 1 and the remaining NMS stocks. In addition, non-ATS block-size data would be published according to the current thresholds for publication of ATS block-size data set forth above.[9] Non-ATS block information would be generated from trades reported to a FINRA equity trade reporting facility.

FINRA believes that non-ATS block-size data would be beneficial to firms and the general public and provide interested parties with more detailed information on non-ATS trading activities, thus enhancing transparency in the OTC market.

Second, as noted above, if a firm averages fewer than 200 non-ATS transactions per day across all securities during the reporting period, FINRA aggregates the firm's volume with that of similarly situated firms. FINRA is proposing to eliminate this *de minimis* exception and publish on an attributed basis each firm's aggregate non-ATS volume (number of trades and number of shares). Thus, there would no longer be a *de minimis* line item on the OTC (non-ATS) Firm Data page.

Based on a review of trading data for the period from August 21, 2017, through April 22, 2018, FINRA determined that, on average, there are only 36 and 32 firms with attributed volume for Tier 1 NMS stocks and the remaining NMS stocks, respectively, on a weekly basis. For OTC equity securities during the same time period, there are, on average, only 37 firms with attributed volume on a weekly basis. By removing the *de minimis* category, on average 151 and 182 firms would have their aggregate non-ATS volume in Tier 1 and the remaining NMS stocks, respectively, published. For OTC equity securities, the number of firms that would have their aggregate non-ATS volume published, on average, is 126.

Since a large number of small trades can add up to significant volume, FINRA believes that the data at the firm level may be more meaningful if each firm's volume is published, irrespective of size. FINRA notes that the *de minimis* exception would continue to apply for purposes of the security-specific non-ATS volume data. Thus, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA will continue to aggregate the firm's volume in that security with that of similarly situated firms and there will continue to be a *de minimis* line item on the OTC (non-ATS) Issue Data "Details" page.

Third, FINRA is proposing to publish information regarding trading by firms through their SDPs. OTC dealer firms offer access to their SDPs to other brokers and active trading customers to provide an efficient way for these customers to execute trades directly with the dealer firm away from an exchange or ATS. Unlike a dark pool, where multiple buyers and sellers can interact and are matched anonymously, the dealer firm operating the SDP always represents either the buy or sell side of the trade on a proprietary basis. Thus, SDPs are electronic trading platforms in which firms are systematically interacting with order flow by dealing on their own accounts.

SDPs are not registered ATSs, and as such, data relating to trades occurring on an SDP currently is published as part of (and hence indistinguishable from) the operating firm's OTC volume (*i.e.*, non-ATS volume) data. FINRA proposes to separately identify volume data for SDPs in the published data on FINRA's website.

To gather the SDP data, FINRA proposes to require firms that operate an SDP to obtain and use a unique MPID for purposes of reporting trades executed on the SDP to a FINRA equity trade reporting facility. A firm that already has a single MPID used solely for SDP transactions and no other transactions would be required to notify FINRA; the firm would not be required to obtain a new MPID. If a firm operates multiple SDPs, either directly or through another firm, consistent with the current ATS MPID requirement, it would be required to obtain a separate MPID for each of its SDPs irrespective of where that SDP activity may be situated. If an SDP is embedded in or linked to an ATS, the ATS should not report the SDP trades under the ATS MPID, but instead would report under the SDP MPID to ensure that SDP volume is not included in ATS volume.

FINRA believes that the proposal will bring additional transparency to this part of the market, and much like with the ATS data, it would highlight important trading platforms firms use. If customers see a significant concentration of volume at a given SDP, it may help inform their order flow routing decisions related to that platform.

Economic Impacts

Except for the proposed requirement that firms use a unique MPID for trades occurring on SDPs, the proposal described above would not impose any additional requirements on firms because the data will be derived solely from trade reports submitted to the FINRA equity trade reporting facilities and already disseminated trade-by-trade on an anonymous basis through the securities information processors. In addition, because the data is available free of charge, FINRA does not believe that there would be any direct costs associated with the proposal—to firms, investors or data consumers. Thus, FINRA believes that the proposal would have minimal to no impact on firms with respect to systems development. At the same time, the proposal is anticipated to help market participants better understand the overall OTC trading of equities, by providing information that could be used in assessing where liquidity is concentrated and how order routing strategies could be improved. The proposal would provide additional transparency into OTC trading activity by expanding the availability of information about OTC block-size trading to non-ATS volume at no required cost to firms.

FINRA believes that, by expanding transparency to all segments of the OTC equity market, the proposal would bridge gaps in information published across ATS versus non-ATS segments of the OTC equity market, thereby reducing any competitive distortions that may be associated with such information gaps.

Firms that operate SDPs would incur costs associated with systems changes needed to incorporate a separate MPID for their SDP activity. However, FINRA believes that there is no alternative method of identifying SDP transactions on an automated basis (*e.g.*, using an SDP "flag" or other modifier on trade reports) that would provide FINRA with the same degree of comprehensive, reliable information as requiring unique MPIDs, since MPIDs are used across FINRA trade reporting facilities. Some firms may choose to incur costs to verify the information FINRA publishes, but these cost are also likely to be minimal and are not required by the proposal.

FINRA also considered information leakage concerns, *i.e.*, whether a firm's proprietary trading strategy could be discerned from the published data. FINRA notes that there may be differences in non-ATS block-size trading and ATS block-size trading, *e.g.*, the total number of shares traded in non-ATS block-size trades of 10,000 or more shares tends to be a significantly higher percentage of the overall non-ATS OTC activity as compared to ATS block activity. Nonetheless, given that the proposed non-ATS block-size trading data would be displayed at the firm aggregate level only, with no accompanying security level data, along with the delay in publication and FINRA's previous experience with the parallel publication of ATS OTC trading volume, FINRA believes that the proposal is a well-calibrated effort to reduce information leakage concerns and to provide market participants access to meaningful information on non-ATS trading activity.

Request for Comment

Current Proposals

FINRA seeks comments on the proposals outlined above. Depending on the comments received, FINRA anticipates filing a proposed rule change with the SEC proposing to implement these proposals. In addition to general comments, FINRA specifically requests comments on the following questions:

- Would the proposals outlined above provide valuable information to the marketplace? If so, how do you intend to use the information in your operations (input into the routing algorithm, assessment of execution metrics)? Are there any areas outside operations, for example, in regard to investments in technology or connectivity, where such information may potentially impact firm-level decisions?
- What (if any) concerns do firms have about the proposals?
- What other economic impacts, including costs and benefits, might be associated with the proposals? Who might be affected and how?
- What would be an appropriate definition of SDP for purposes of the proposed unique MPID requirement?
  - What types of activities should fall into the SDP category?
  - For those firms that conduct both SDP and non-SDP activities, what should distinguish each type of activity within the firm?
  - For firms that operate ATSs and SDPs, either directly or through another firm, how do firms structure these separate platforms and differentiate for operational and regulatory reporting purposes?
- Would data users find the breakdown of SDP data to be of interest or use to them?
- Should security-specific SDP data be subject to the *de minimis* threshold that currently applies to security-specific non-ATS data?

Future enhancements

In addition, FINRA is requesting comment on possible future enhancements to the OTC equity trading volume data published on FINRA's website. FINRA notes that such future enhancements would not be part of any proposed rule change to implement the set of current proposals discussed above, but would be proposed at a later time.

First, should FINRA consider adopting a uniform publication delay across all equity securities, for example, by publishing weekly ATS and non-ATS data on a two-week delayed basis for all NMS stocks and OTC equity securities? Thus, the current four-week delay for NMS stocks that are not in Tier 1 of the Limit Up/Limit Down Plan and OTC equity securities would be shortened to two weeks, and volume data for NMS stocks would no longer be divided into two tiers and instead would be published in a single combined data set.

- Do commenters believe a two-week delay for all securities (*i.e.*, all NMS stocks and OTC equity securities) would be appropriate? Is there an alternative uniform schedule for all securities (*e.g.*, three-week delay) that commenters would suggest and why?
- Do commenters believe that the current four-week delay is still appropriate for less liquid securities (*i.e.*, non-Tier 1 NMS stocks and OTC equity securities)?
- FINRA has heard from firms that the bifurcation of data relating to NMS stocks into two tiers may complicate the data sets for users. Do commenters agree? Do commenters see any value in continuing to bifurcate the NMS data?

Second, should FINRA consider lowering the *de minimis* threshold for security-specific data? As noted above, a firm must average 200 non-ATS trades per day during the reporting period in a given security to have its volume attributed at the security level. Alternatively, should FINRA consider eliminating the *de minimis* threshold for non-ATS data altogether?

- Do commenters believe that the current threshold is appropriate? If not, is there an alternative threshold that FINRA should consider and why?
- What concerns would commenters have if the *de minimis* threshold for security-specific data were eliminated altogether? For example, would there be a greater possibility for reverse engineering a firm's trading strategy, particularly with respect to more thinly traded securities, if FINRA were to no longer aggregate *de minimis* volume in the security-specific data?
- If FINRA were to eliminate the *de minimis* threshold for security-specific data, should FINRA nonetheless mask the identity of each firm with *de minimis* volume, *e.g.*, Firm 1, Firm 2, in the published data?
  - Do commenters feel that data masked in this way would still provide useful information to the marketplace?

Third, are there additional statistical offerings that FINRA should consider in the future? For example, ATS heat maps could display time of execution clusters by ATS on average for the trading week. These heat maps could show whether certain ATSs are better able to execute more or larger trades in certain types of stocks (or specific stocks) at different times of the day (*e.g.*, at the open or the close). Another potential offering could be unique Top 10 lists for the most active securities and ETPs. FINRA is interested in any suggestions that commenters may have for other future offerings.

Fourth, should FINRA consider adding ATS and non-ATS block-size data for OTC equity securities? As noted above, FINRA is not proposing to include such data at this time, due largely to the wide variance of trading activity in these securities and the difficulty associated with determining appropriate block thresholds that would be appropriate across this class of securities.

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

Endnotes

1. Persons submitting comments are cautioned that FINRA does not redact or edit personal identifying information, such as names or email addresses, from comment 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. Information on NMS stocks in Tier 1 of the Limit Up/Limit Down NMS Plan is published on a two-week delayed basis; information on the remaining NMS stocks and OTC equity securities is published on a four-week delayed basis. *See* Rules 6110 and 6610. OTC volume information regarding fixed income securities is not reported or disseminated pursuant to the rules.

4. Monthly aggregate totals are published on a one month delayed basis, *e.g.*, totals for the month of June are published on or about August 1.

5. Thus, if a firm averages fewer than 200 non-ATS transactions per day across all securities during the reporting period, FINRA aggregates the firm's volume with that of similarly situated firms. Additionally, because the published volume data is broken down by security, if a firm averages fewer than 200 non-ATS transactions per day in a given security during the reporting period, FINRA aggregates 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.

6. *See* Rules 6160, 6170 and 6480.

7. As with ATS block-size data, FINRA believes that OTC equity securities should not be included in the initial publication phase, due largely to the wide variance of trading activity in these securities and the difficulty associated with determining appropriate block thresholds that would be appropriate across this class of securities. However, FINRA will continue to assess whether the data should be expanded to include trades in OTC equity securities or some subset thereof and welcomes comment on such an expansion.

8. As is the case with non-ATS data today, non-ATS block-size data would not be published on an MPID-by-MPID basis.

9. FINRA notes that there would be no *de minimis* exception for non-ATS block-size data.

ATTACHMENT A

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

6000. QUOTATION, ORDER, AND TRANSACTION REPORTING FACILITIES

6100. QUOTING AND TRADING IN NMS STOCKS

6110. Trading Otherwise than on an Exchange

(a) No Change.

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

(1) FINRA will publish on its public web site the Trading Information 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, <u>aggregate weekly</u> Trading Information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility;

(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; and

(C) no earlier than one month following the end of the Trading Information month, aggregate volume totals across all NMS stocks.

(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 or <u>single dealer platform</u>).

[(B) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day across all NMS stocks during the applicable Trading Information period.]

([C]<u>B</u>) Trading Information <u>by security</u> will be aggregated for members that have executed on average fewer than 200 transactions per day in [an NMS stock] <u>the security</u> during the applicable Trading Information period.

(3) FINRA will publish on its public web site monthly aggregate block trading statistics, with elements to be determined from time to time by FINRA in its discretion as stated in a Regulatory Notice or other equivalent publication, for each member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b). For each member, such block trading statistics shall be aggregated for all Market Participant Identifiers (MPIDs) used by the member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system), be aggregated across all NMS stocks, be for a minimum time period of one month of trading, and be published no earlier than one month following the end of the month for which trading was aggregated.

([3]4) For purposes of this paragraph (b), "Trading Information" includes:

(A) the number of shares of an 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 an NMS stock 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 paragraph (b) shall not include any ATS Trading Information, as that term is defined in paragraph (c)(3).

(c) Trading Information for OTC Transactions in NMS Stocks Executed on Alternative Trading Systems

(1) FINRA will publish on its public web site [the] aggregate weekly ATS Trading Information for each ATS 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 ATS Trading Information week, aggregate weekly ATS 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 ATS Trading Information week, aggregate weekly ATS 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) FINRA will publish on its public web site monthly aggregate ATS block trading statistics, with elements to be determined from time to time by FINRA in its discretion as stated in a Regulatory Notice or other equivalent publication, for each ATS with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b). For each ATS, such block trading statistics shall be aggregated across all NMS stocks, be for a minimum time period of one month of trading, and be published no earlier than one month following the end of the month for which trading was aggregated.

(3) For purposes of this paragraph (c):

(A) "ATS" has the same meaning as the term "alternative trading system" as that term is defined in Rule 300 of SEC Regulation ATS; and

(B) "ATS Trading Information" includes:

(i) the number of shares of an NMS stock executed on an ATS with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA; and

(ii) the number of trades in an NMS stock executed on an ATS with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b) and reported to FINRA.

* * * * *

6160. Multiple MPIDs for Trade Reporting Facility Participants

[Note: Identical changes will be made to Rules 6170 (relating to ADF) and 6480 (relating to ORF)]

(a) through (b) No Change.

(c) ATS MPID Requirement

(1) Except as set forth in paragraph ([d]c)(2), a Trade Reporting Facility Participant that operates an alternative trading system ("ATS"), as that term is defined in Rule 300 of SEC Regulation ATS, must obtain a single, separate MPID for each such ATS designated for exclusive use for reporting each ATS's transactions. The member must use such separate MPID to report all transactions executed within the ATS to a Trade Reporting Facility (or Facilities), except if the member is submitting a clearing-only, non-regulatory report pursuant to Rule 7230A(i)(4) or 7230B(h)(4). The member shall not use such separate MPID to report any transaction that is not executed within the ATS. Any member that operates multiple ATSs must obtain a separate MPID for

each ATS. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the ATS.

([d]2) An ATS is permitted to use two separate MPIDs only if one MPID is used exclusively for reporting transactions to TRACE and the other MPID is used exclusively for reporting transactions to the equity trade reporting facilities (the Alternative Display Facility, the OTC Reporting Facility, the FINRA/Nasdaq TRF, or the FINRA/NYSE TRF).

(d) SDP MPID Requirement

(1) Except as set forth in paragraph (d)(2), a Trade Reporting Facility Participant that operates a single dealer platform ("SDP"), as that term is defined in paragraph (d)(4), must obtain a single, separate MPID for each such SDP designated for exclusive use for reporting each SDP's transactions. The member must use such separate MPID to report all transactions executed within the SDP to a Trade Reporting Facility (or Facilities), except if the member is submitting a clearing-only, non-regulatory report pursuant to Rule 7230A(i)(4) or 7230B(h)(4). The member shall not use such separate MPID to report any transaction that is not executed within the SDP. Any member that operates multiple SDPs must obtain a separate MPID for each SDP. Members must have policies and procedures in place to ensure that trades reported with a separate MPID obtained under this paragraph are restricted to trades executed within the SDP.

(2) An SDP is permitted to use two separate MPIDs only if one MPID is used exclusively for reporting transactions to TRACE and the other MPID is used exclusively for reporting transactions to the equity trade reporting facilities (the Alternative Display Facility, the OTC Reporting Facility, the FINRA/Nasdaq TRF, or the FINRA/NYSE TRF).

(3) If a member has a single MPID and that MPID is used solely for SDP transactions and no other transactions, the member must notify FINRA and must comply with the provisions of this paragraph (d).

(4) For purposes of this paragraph (d), "single dealer platform" or "SDP" shall mean an electronic trading platform owned and operated by a member on which the member trades solely for its own account when executing orders routed to the SDP and represents either the buy or sell side of each trade on a proprietary basis.

• • • Supplementary Material: --------------

.01 through .02 No Change.

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6600. OTC REPORTING FACILITY

6610. General

(a) No Change.

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

(1) FINRA will publish on its public web site the Trading Information for each member with the trade reporting obligation under Rule 6622(b) on the following timeframes:

(A) no earlier than four weeks following the end of the Trading Information week, aggregate weekly Trading Information for OTC Equity Securities; and

(B) no earlier than one month following the end of the Trading Information month, aggregate volume totals across all OTC Equity Securities.

(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 or single dealer platform).

[(B) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day across all OTC Equity Securities during the applicable Trading Information period.]

([C]B) Trading Information by security will be aggregated for members that have executed on average fewer than 200 transactions per day in [an OTC Equity Security] the security during the applicable Trading Information period.

(3) For purposes of this paragraph (b), "Trading Information" includes:

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

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

"Trading Information" for purposes of this paragraph (b) shall not include any ATS Trading Information, as that term is defined in paragraph (c)(3).

(c) Trading Information for OTC Transactions in OTC Equity Securities Executed on Alternative Trading Systems

(1) FINRA will publish on its public web site the aggregate weekly ATS Trading Information for each alternative trading system with the trade reporting obligation under Rules 6622(b) no earlier than four weeks following the end of the ATS Trading Information week[,].

(2) For purposes of this paragraph (c), "ATS Trading Information" includes:

(A) the number of shares of an OTC Equity Security executed on an alternative trading system with the trade reporting obligation under Rule 6622(b) and reported to FINRA; and

(B) the number of trades in an OTC Equity Security executed on an alternative trading system with the trade reporting obligation under Rule 6622(b) and reported to FINRA.

* * * * *

EXHIBIT 2b

Alphabetical List of Written Comments
Regulatory Notice 18-28

1. Stephen John Berger, Citadel Securities (November 12, 2018)

2. Christopher Bok, Financial Information Forum (November 9, 2018)

3. Bob Hill, Global OTC (November 16, 2018)

4. Thomas M. Merritt, Virtu Financial, Inc. (November 14, 2018)

November 12, 2018

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

Re: Proposal to Expand OTC Equity Trading Volume Data Published on FINRA's Website (Regulatory Notice 18-28)

Dear Ms. Asquith:

Citadel Securities[1] appreciates the opportunity to comment on the FINRA proposal to expand the data that is published relating to OTC equity trading (the "Proposal").[2] We support efforts to increase market transparency that benefit end investors.

One important aspect of the Proposal is that FINRA will begin publishing information regarding trading activity through single-dealer platforms ("SDPs"). Currently, this SDP trading activity is reported as part of a firm's overall OTC volume. In order to specifically isolate SDP trading activity, FINRA is proposing to require firms that operate an SDP to obtain a unique MPID for reporting their SDP activity.

In order to effectively implement this aspect of the Proposal, it will be important to clearly and accurately define what constitutes an SDP. In our view, the proposed SDP definition correctly incorporates several key concepts, including (a) the existence of an identifiable electronic trading platform that is owned and operated by a member and (b) a requirement that the member trades solely for its own account. In order to further delineate SDP trading activity, we recommend supplementing the proposed definition by specifying that only immediate-or-cancel ("IOC") and fill-or-kill ("FOK") order types are in-scope. Focusing specifically on these order types will result in capturing true "dealing" activity (i.e. orders routed to a dealer to be filled on a principal-only basis or cancelled), while helping to ensure that other client businesses, such as the handling and execution of retail order flow, remain outside of the SDP definition.[3] We believe this is consistent with the intent of the proposed SDP definition.

[1] Citadel Securities is a leading global market maker across a broad array of fixed income and equity securities. In partnering with us, our clients, including asset managers, banks, broker-dealers, hedge funds, government agencies and public pension programs, are better positioned to meet their investment goals. On an average day, Citadel accounts for approximately 21 percent of U.S. listed equity volume, 23 percent of U.S. listed equity option volume, and more than 39 percent of all retail U.S. listed equity volume.

[2] http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-18-28.pdf.

[3] This is because the handling and execution of retail order flow includes the routing of orders to other venues for execution, such as exchanges and ATSs. In addition, a variety of different order types are received, including marketable orders, non-marketable limit orders, and orders that contain other specific instructions, such as stop-loss

In connection with finalizing the Proposal, we also recommend that FINRA provide further guidance regarding the application of the SDP definition in certain scenarios. For example:

- In what circumstances will an SDP be considered to be embedded within an ATS? In this context, is the relevant distinction whether or not the SDP constitutes a separate 'tier' within the ATS (and therefore can be specifically targeted by IOC or FOK orders)?

- Can SDP activity include IOC or FOK orders received directly from a client (whether a broker-dealer or not) or from an internal smart order router? In addition, can any such SDP activity include IOC or FOK child orders that the SDP receives that are generated during the execution of a parent order?

Finally, we note that the proposed changes regarding separately reporting and publishing data on SDP trading activity should be accompanied by conforming changes to Rule 605. Otherwise, standardized execution quality reports will not reflect the same level of granularity as the data published by FINRA, impeding the regulatory objective of increasing transparency regarding SDP trading activity.

* * * * * * * * * *

We appreciate the opportunity to provide comments on the FINRA proposal. Please feel free to call the undersigned at (646) 403-8200 with any questions regarding these comments.

Respectfully,

/s/ Stephen John Berger

Managing Director, Government & Regulatory Policy

triggers. The handling and execution of this order flow is very distinct from the principal-only filling of IOC and FOK orders provided by a dealer operating an SDP.

Via Electronic Delivery

November 9, 2018

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

RE: Regulatory Notice 18-28 – OTC Equity Trading Volume

Dear Ms. Asquith,

The Financial Information Forum[1] ("FIF") on behalf of its member firms, respectfully requests further clarity and guidance on the regulatory intent of Regulatory Notice 18-28, expanding OTC Equity Trading Volume Data Published on FINRA's Website ("Proposed Rule").

In FIF's view, the Proposed Rule, in its current form, provides industry members and investors with insufficient guidance regarding the regulatory purpose and the benefit to the market and investors of publishing data executed on a Single Dealer Platform ("SDP"). Specifically, FIF member firms believe that the information that would be provided to the market under the Proposed Rule does not provide additional transparency in the marketplace as non-ATS information is currently reported through Trade Reporting Facilities ("TRFs"), through the Order Audit Trail System ("OATS"), and soon through the Consolidated Audit Trail ("CAT"). Additionally, the Proposed Rule does not clearly specify how and to what degree investors will benefit from the publication of non-ATS data and data derived from orders executed on an SDP.

As industry members believe that the term "Single Dealer Platform" is insufficiently defined and thus does not adequately inform industry members whether a particular trading system is subject to the proposed rule. As will be explained below, the *term SDP should be more clearly defined prior to adoption of the Proposed Rule*.

Furthermore, the Proposed Rule suggests that the cost to implement its requirements will be small and born only by the SDP operators.[2] However, the rule proposal fails to recognize the significance of the cost to order flow providers (especially retail broker-dealers), as well as the SDP operators, of adding a new MPID.

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.
[2] As noted in Regulatory Notice 18-28, "FINRA does not believe that there would be any direct costs associated with the proposal – to firms, investors, or data consumers."

In sum, due to the ambiguous benefit to investors, unclear definitional components (*i.e*. SDP), and understated cost, FIF respectfully requests that FINRA provide additional detail and analysis regarding the expected benefit the rule proposal will provide investors and to issue further guidance regarding the definition of which trading platforms fall under the intended definition of a Single Dealer Platform.

Regulatory Ambiguity

FIF recognizes the need for regulatory transparency in the marketplace and supports FINRA's many initiatives designed to provide investors with a greater transparency into the markets. However, FIF strongly emphasizes that in any regulatory mandate that requires the allocation of additional resources and costs onto industry participants, regulators should define clear objectives that will provide regulators, market participants, and investors with corresponding value. A rule proposal should also be sufficiently well-defined to enable market participants to adequately assess the potential aggregate impact of the Proposed Rule's requirements.

FIF members believe that in its current form, there is a lack of a clear objective in the Proposed Rule. The rationale for the publication of non-ATS block size trading data currently does not bear a valid relationship to the costs and risk associated with the proposal, especially given the fact that the data to be reported under the rule is already reported through TRFs. While FINRA cites that the objective of the Proposed Rule is that "non-ATS block size data would be beneficial to firms and the general public and that it will provide interested parties with more detailed information on non-ATS trading activity…," FIF believes that these conclusory statements do not demonstrate how the publication of electronically communicated non-ATS block size trades would benefit investors, the market, regulators, or other interested parties, nor how such parties would use this data. Therefore, FIF respectfully requests that FINRA provide participants with greater detail regarding the objectives and benefits of the Proposed Rule to investors.

Definition of Single Dealer Platform

Pursuant to the Proposed Rule, FINRA will publish/publicly disclose information of trades executed on a firm's SDP. To gather SDP data, FINRA is proposing to require that firms that operate an SDP obtain and use a unique MPID for reporting trades executed on the SDP to FINRA for publication on FINRA's website. To date, the term "Single Dealer Platform" is not sufficiently defined in an analogous rule requirement.[3] Thus, industry members believe that the definition of an SDP is broad and could encompass many of a firm's existing business(es), making it difficult for a firm to assess whether it operates one or more SDP and determine the full scope of the Proposed Rule's requirements in obtaining one or more new MPID(s). Specifically, because the term "SDP" has not been sufficiently defined in another FINRA rule, industry members believe that SDPs can be comprised of several trading platforms and applications in which the Proposed Rule is not intended to cover. Therefore, to properly assess whether a firm's trading platforms meet the intended definition of an SDP, FIF strongly urges FINRA to clearly define the intended meaning of an SDP.

Additional MPID to Segregate SDP Activity

[3] Reg ATS defines a single dealer as "such systems [that] automate the order routing and execution mechanisms of a single market maker and guarantee that the market maker will execute orders submitted to it as its own posted quotation for the security or, for example, at the inside price quote on Nasdaq."

As stated above, the Proposed Rule would require firms that operate an SDP to register for and obtain an additional MPID to separately report SDP activity to FINRA. FIF believes that the proposed requirement of obtaining an additional MPID to separately report SDP activities is redundant given that non-ATS OTC block-size data is currently reported to FINRA through TRFs and *could* be observed using a firm's primary MPID through the requirement of a separate reporting tag. FIF requests that the transparency benefits to investors of segregating SDP activity outside of what is currently reported through TRFs be assessed and communicated to industry members in a subsequent rule proposal.

FIF strongly emphasizes that requiring firms to use a separate MPID (*i.e.* a separate identity) to achieve FINRA's stated goal of separately identifying SDP transactions that could be attained through other regulatory reporting requirements (*i.e* segregating SDP activity through separate reporting tags tied to TRFs and later the Consolidated Audit Trail). Further, FIF believes that using tape data is not the best or a necessary source for accessing the desired data. Within current regulatory reporting regimes (*i.e.* OATS/TRFs), trades can likely be identified as having been originated from an SDP through tags, without introducing the unnecessary complexities of a separate MPID. Adding a further dependency or complexity in tape reporting is contrary to the purposes of (and large investment in) the establishment of CAT.

Furthermore, MPIDs are currently leveraged for many uses, including internally at firms to meet regulatory reporting responsibilities. Splitting out a subset of transactions (*i.e.* the reporting of trades executed on an SDP) through the creation of a new MPID(s) introduces many challenges to the marketplace. First, the management of entity-related data is already a difficult and costly exercise. Breaking the current relationship model of one MPID to another by creating what will effectively be a "sub-MPID" of a "whole" MPID entity will create difficulties in ensuring relationships are correctly maintained. Second, there is the potential that firms/FINRA will double count activity, or incorrectly attribute activity, given the current reporting requirements within the OATS infrastructure, as well as the routing of orders dependent upon MPIDs.

FIF believes that further fragmentation of the MPID infrastructure for the singular purpose of separately reporting trades executed on an SDP counters recent regulatory initiatives of identifying entities, institutions, and other parties (*i.e.* efforts led by the FSB, CPMI-IOSCO, and the G20 recommendations on entity and natural person identification), as well as basic data governance principles. Obtaining a new MPID may have potential long-term costs in operational errors, fragmentation, and poor data quality resulting in greater negative impact than the added transparency benefits the Proposed Rule is seeking to gain.

Changing the MPID of the SDP will require all parties to reconfigure or replace existing trading interfaces, and the reporting and clearing instructions associated with them. Further, changing the MPID of the SDP, which often holds a very large book of Good-Til-Canceled orders received from retail brokers, will require both the SDP and the retail order originators to cancel and re-enter all of those orders, due to the constraints of OATS reporting. This will impose a very significant effort for many retail brokers.

Redundancy with CAT

Firms are currently in the throes of planning for the implementation of the Consolidated Audit Trail, which will begin testing on August 15th, 2019 and will go live on November 15, 2019. Resource allocation associated with CAT implementation began in earnest after the final CAT Technical

Specification was published on October 30, 2018. Costs associated with CAT implementation will likely exceed tens of millions of dollars for many large Broker-Dealers. Since CAT will be capturing OTC trading data, FIF believes that the requirements of Regulatory Notice 18-28 are redundant with CAT and is therefore imposing additional and duplicative regulatory reporting requirements that CAT was intended to relieve.

Conclusion

While FIF supports FINRA's various transparency initiatives that are intended to provide a net benefit to the investor community, we believe that it is imperative that any regulatory mandate that imposes additional costs and complexity onto industry members should state a clear objective and be implemented in a manner that imposes the least amount of regulatory burden upon the impacted firms. FIF believes that the regulatory benefit of the Proposed Rule should be more clearly stated so that industry members may more adequately assess the benefits of the Proposed Rule versus the burden of implementation, fragmentation and reporting, especially considering the cost and limited resources firms have for additional system changes caused by the need to implement and comply with CAT. Furthermore, we have consistently urged regulators to fully assess alternatives to various regulatory requirements to reduce the costs of implementation and avoid duplicative mandates. Here, FIF views the requirements imbedded within the rule proposal (*i.e.* requiring firms to obtain an MPID) as redundant and unnecessary given that firms already report the data requested in the Proposed Rule through TRFs and other means.

Therefore, FIF respectfully requests that FINRA consider providing industry members with greater detail regarding the intent of the Proposed Rule, re-assess the complexity and costs involved, and further consider alternatives to access non-ATS OTC block-size data and SDP activity. In that regard, we look forward to providing additional substantive comments once the purpose and detail of the Proposed Rule has been clarified.

FIF welcomes the opportunity to discuss the considerations raised in this letter at FINRA's earliest convenience. Please feel free to contact me directly at 212-652-4485 or chris.bok@fif.com

Regards,

Christopher Bok, Esq.
Financial Information Forum

CC Chris Stone, Vice President, Transparency Services, FINRA
Brendan Loonam, Senior Director, Transparency Services, FINRA
Lisa Horrigan, Associate General Counsel, FINRA

Global OTC

Bob Hill
Senior Director
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Bob.hill@nyse.com
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November 16, 2018

VIA E-MAIL

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

Re: FINRA Request For Comment on a Proposal to Expand OTC Equity Trading Volume Data Published on FINRA's Website

Dear Ms. Asquith:

Global OTC[1] (the "Firm") appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") on the above-referenced proposal to expand over-the-counter ("OTC") equity trading volume data published on FINRA's website (the "Proposal"). The Firm is submitting this letter in support of the Proposal. The Firm believes that, by providing additional transparency into OTC trading activity and expanding the availability of information about OTC trading, the Proposal would close some of the gaps in information published by non-ATS OTC equity trading venues as compared to ATS trading venues. By bringing additional transparency to the OTC equity market, and thus providing information that could be used in assessing where liquidity is available, the Firm believes the Proposal would help market participants better understand the overall OTC trading of equities and help those participants to improve their order routing strategies and execution quality.

In particular, the Firm supports the Proposal with regard to publishing monthly aggregate non-ATS block-size trading data, and would suggest going further by including all OTC equity securities in such publication, not only NMS stocks,[2] as FINRA proposes. The Firm notes FINRA's concerns expressed in Footnote 7 of the Proposal that relate to the wide variance of trading activity in OTC equity securities, but believes that the public interest of including all OTC equity securities in such monthly publication greatly outweighs the difficulty that may arise in determining appropriate block thresholds that would be appropriate across all OTC equity securities. Other FINRA Rules, such as FINRA Rule 6433, have been able to address wide price variances in the OTC equities marketplace by breaking out tier size requirements accordingly. The Firm believes that a rule on publishing trading volume data could similarly address block thresholds across all OTC equity securities.

1 Global OTC is an Alternative Trading System ("ATS") and an interdealer quotation system ("IDQS") that provides an electronic platform for quoting and trading over-the-counter ("OTC") equity securities. Global OTC is operated by Archipelago Trading Services, Inc. and is a broker-dealer registered with the SEC and a member of the Financial Industry Regulatory Authority ("FINRA").

2 NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(47).

For the foregoing reasons, the Firm supports the Proposal. The Firm believes that increased transparency in the OTC equity market would provide valuable information to the marketplace, and provide future enhancements to the overall trading of OTC equities.

Sincerely,

Bob Hill

cc: Chris Stone, Vice President, Transparency Services
Brendan Loonam, Senior Director, Transparency Services
Lisa Horrigan, Associate General Counsel, Office of General Counsel

300 Vesey Street
New York, NY 10282
Tel: 1 212 418 0100
Fax: 1 212 418 0123

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November 14, 2018

Via Electronic Mail (pubcom@finra.org)
Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street
Washington, DC 20006-1506

Re: **Regulatory Notice 18-28: Proposal to Expand OTC Equity Trading Data Published on FINRA's Website**

Dear Ms. Asquith:

Virtu Financial, Inc. (together with its affiliates, "Virtu" or "we") respectfully submits this comment letter in response to the Proposal to Expand OTC Equity Trading Data Published on FINRA's Website (the "Proposal"). Virtu fully supports FINRA's efforts to improve market transparency which commenced in 2014 when FINRA first published individual ATS volume information on its website. With that said, Virtu has concerns about the current Proposal which are detailed below.

Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker and is a member of all U.S. registered stock exchanges. Virtu's market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. As such, Virtu broadly supports innovation and enhancements to transparency and fairness which enhance liquidity to the benefit of all marketplace participants.

A. Executive Summary

The Proposal seeks to expand the OTC equity trading volume data published by FINRA as follows:

- FINRA is proposing to publish monthly aggregate non-ATS block size trading data for all NMS stocks on the same terms as current block size ATS data. ***Virtu supports this aspect of the Proposal.***

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- Currently, FINRA aggregates a firm's volume with similarly situated firms for firms that average fewer than 200 non-ATS transactions per day across all securities during the reporting period (the "*de minimis* exception"). In the Proposal, FINRA is suggesting eliminating the *de minimis* exception and publishing on an attributed basis each firm's aggregate non-ATS volume (number of trades and number of shares). ***Virtu is not supportive of this component of the Proposal.***

- FINRA is also proposing to separately identify firms' volume of trading through their Single Dealer Platforms ("SDPs"). In order to gather this data, FINRA proposes requiring firms to obtain a unique MPID for purposes of reporting trades executed on the SDP to a FINRA equity trade reporting facility. If a firm has multiple SDPs, it would be required, at its own cost and expense, to obtain separate MPIDs for each SPD regardless of where the SPD activity is situated. ***Virtu is not supportive of this facet of the Proposal and submits that its economic impact was not correctly evaluated and considered by FINRA.***

B. Virtu is a Strong Proponent of Marketplace Transparency

Virtu is committed to transparency in the marketplace. For example, Virtu provides its clients with information (including information about fees paid to and rebates received from market centers) and analytics that clients need to assess execution quality. We have consistently "practiced what we preach" in supporting marketplace disclosure enhancements by providing our clients and the public with greater levels of order handling information than otherwise required under existing regulations. Virtu Americas LLC discloses as part of its quarterly Rule 606 statistics the aggregate fees paid to and rebates received from each execution venue. To the best our knowledge, we are one of the only firms that provides this level of detail in its Rule 606 disclosures.

Further, in expressing its support for the Securities and Exchange Commission's Transaction Fee Pilot[1], Virtu proposed the reexamination and modernization of Rules 605 and 606[2] and the expansion of the rules to require the disclosure of transaction fees paid and rebates received in a manner tailored to address the concerns of investors.

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[1] *See*, https://www.sec.gov/rules/proposed/2018/34-82873.pdf

[2] On November 2, 2018, the Commission announced the adoption of rules to increase information brokers must provide to investors on order handling. *See*, https://www.sec.gov/news/press-release/2018-253.

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We are in full agreement with the statements on transparency expressed by former Commissioner Troy Paredes:

> Disclosure is the cornerstone of the federal securities laws.... The essence of the disclosure philosophy of securities regulation is that investors, when armed with information, are well-positioned to evaluate their investment opportunities and to allocate their capital as they see fit. When investors are able to make informed decisions, it is more likely that the capital that fuels our economy will finance more productive enterprises than if investors did not have the benefit of useful information when deciding how to invest.[3]

C. Virtu Supports FINRA's Proposal to Publish Monthly Aggregate Non-ATS Block Size Trading Data for All NMS Stocks

Virtu is in support of FINRA's proposal to expand its current disclosure of block-size transaction data to include monthly aggregate non-ATS block size trading data. We believe that any concerns about information leakage with disclosing this information are alleviated by (1) having the information published on a one-month delayed basis; and (2) the disclosure would not be made on a security-by-security basis and there would be no differentiation between Tier 1 and the balance of NMS securities. Importantly, firms would not need to take any steps to comply with this component of the Proposal since the non-ATS block information would be generated from trades already reported to the TRF.

D. Virtu is Not Supportive of the Elimination of the *De Minimis* Exception

Virtu firmly disagrees with the suggestion in the Proposal to eliminate the *de minimis* exception for a firm that averages fewer than 200 non-ATS transactions per day across all securities and to publish each firm's aggregate volume on an attributed basis. If enacted, each firm's aggregate non-ATS volume in Tier 1 and remaining NMS stocks would be published and no longer aggregated with similar firms.

In support of this recommendation, FINRA makes the blanket statement that it "believes that the data at the firm level may be more meaningful if each firm's volume is published."[4] Virtu does not hold this view. Virtu is concerned that if the *de minimis* exception were to be eliminated

[3] Commissioner Troy A. Paredes, Remarks at The SEC Speaks in 2013, February 22, 2013, https://www.sec.gov/news/speech/2013-spch022213taphtm.
[4] NTM 18-28 at page 4.

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the next "logical" step would be to require the publication of transaction data on a security-by-security basis. This would be very problematic to firms such as Virtu since this disclosure could expose firms to principal risk. This would especially be the case in highly illiquid securities even with a four week publication delay. A firm that provides liquidity to thinly-traded names on behalf of investors could have its trading strategy discerned if the data was published on a security-by-security basis. As a result, a firm may decide not to engage in illiquid names and offer needed risk transference to investors.

E. Virtu is Not Supportive of FINRA's Proposal to Publish Information Regarding Trading Through A Firm's SDPs

FINRA is also proposing to publish information regarding trading by firms through their SDPs because it believes that separately publishing this information will provide increased transparency. In order to gather this data, FINRA is suggesting that firms be required to obtain a unique MPID for purposes of reporting trades executed on the SDP to a FINRA equity trade reporting facility. If a firm has multiple SDPs, it would be required, at its own costs and expense, to obtain separate MPIDs for each SDP regardless of where the SDP activity is situated.

As previously stated, Virtu is not supportive of this facet of the Proposal and submits that such a requirement is inconsistent with the concept of an SDP as articulated by the Securities and Exchange Commission ("SEC" or "Commission") and potentially has detrimental economic effects that have not been properly evaluated and considered by FINRA.

1. The Concept of a SDP

In 1998, the Securities and Exchange Commission adopted Rule 3b-16, which interpreted the definition of "Exchange" under section 3(a)(1) of the Exchange Act and, in the same release, adopted Regulation ATS, which provided a framework for systems that otherwise meet the new Exchange definition to operate without registering as an Exchange.[5] When the new rule was adopted, the Commission specifically provided for an exemption from the definition of Exchange in 3b-16(b)(2) to exclude the automated systems of single dealers, i.e. market makers and other dealers, whose systems matched orders as an incidental part of the operation of the system.

The single dealer framework as articulated by the SEC in the Regulation ATS Adopting Release, conceptually encompassed all market makers' activities in a broad fashion. FINRA's proposal now seeks to create an undefined and artificial distinction as to which of those activities

[5] Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70863 (December 22, 1998) (Regulation of Exchanges and Alternative Trading Systems) ("Regulation ATS Adopting Release").

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are single dealer activities and those which are not for the purpose of creating a category of data in an effort to somehow increase transparency.

Both ATS data and market maker data are already published on FINRA's website. Virtu does not see the benefit of artificially segmenting a market maker's business activities to create a category of data whose benefits are unclear. Further, Virtu does not agree with FINRA's assertion that expanding transparency to all segments of the OTC market would bridge gaps in information between ATS versus non-ATS segments of the OTC equity market and reduce any competitive distortions that may be associated with information gaps. As a market maker, the dealer is the single counterparty to all trades in either a principal or riskless principal capacity whether these trades are characterized as SDP trades or non-SDP trades. Separating out these volumes will not provide any meaningful distinction that will be beneficial to the market. Virtu strongly believes that market maker volume should continue to be included as part of the broker-dealer's overall volume data.

2. The Requirement to Purchase Separate MPIDs is Costly and Unnecessary

Further, FINRA proposes to require firms to obtain separate MPIDs to report SDP transactions. This would potentially force firms to incur unnecessary costs and make unnecessary system changes in connection with reporting under additional new MPIDs. These reporting changes would also require coding changes on the part of all of the market makers' clients. We respectfully submit that FINRA did not fully appreciate and evaluate the detrimental economic impact of this suggestion.

Conservatively, each additional required MPID would cost $3,000 to $4,000 in Nasdaq costs per month to purchase and implement for brokers that utilize the FINRA Nasdaq TRF as either a primary or backup reporting facility. This includes the cost to purchase a redundant MPID as well as additional connectivity and other MPID charges assessed by Nasdaq. In addition, there would be resources incurred to put each MPID into production both from a firm and a firm's client's perspective. This would include, but not be limited to, order routing and trade reporting changes, OATS reporting changes, and clearing changes that would need to be closely coordinated between any firms deemed to be subject to this requirement and each of their clients.[6]

[6] FINRA apparently suggested the MPID route under the mistaken belief that there is no alternative method of identifying transactions executed by dealers on an automated basis. While we do not believe FINRA should force firms to create these artificial distinctions, if FINRA insists on doing so there are alternatives to using MPIDs. For example, firms could utilize a Market Identifier Code ("MIC") tag to identify a market maker's trade which would accomplish the same goal without the need to purchase multiple MPIDs.

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3. <u>Publication Could Result in Harm</u>

Finally, we remained concerned that forcing market makers to segment their reporting based on some, as of now, undefined notion of a "Single Dealer Platform" that is different than the one previously articulated by the Securities and Exchange Commission could reveal competitive information about the market maker's businesses that ultimately may harm competition. If competition is impacted, market makers may be less able to provide liquidity especially in less liquid securities which, in turn, could harm investors.

*   *   *   *   *   *

Virtu appreciates the opportunity to submit this comment letter. Please do not hesitate to contact me if you have any questions regarding any of the comments provided in this submission.

Sincerely yours,

Thomas M. Merritt
Deputy General Counsel

EXHIBIT 5

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

* * * * *

6000. QUOTATION, ORDER, AND TRANSACTION REPORTING FACILITIES

6100. QUOTING AND TRADING IN NMS STOCKS

6110. Trading Otherwise than on an Exchange

(a) No Change.

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

(1) FINRA will publish on its public web site the Trading Information 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, <u>aggregate weekly</u> Trading Information regarding NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility;

(B) no earlier than four weeks following the end of the Trading Information week, <u>aggregate weekly</u> 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; and

(C) No Change.

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

(A) No Change.

[(B) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day across all NMS stocks during the applicable Trading Information period.]

([C]B) Trading Information by security will be aggregated for members that have executed on average fewer than 200 transactions per day in [an NMS stock] the security during the applicable Trading Information period.

(3) FINRA will publish on its public web site monthly aggregate block trading statistics, with elements to be determined from time to time by FINRA in its discretion as stated in a Regulatory Notice or other equivalent publication, for each member with the trade reporting obligation under Rules 6282(b), 6380A(b) and 6380B(b). For each member, such block trading statistics shall be aggregated for all MPIDs used by the member (excluding, if applicable, any MPIDs used by the member for reporting trades executed in its alternative trading system), be aggregated across all NMS stocks, be for a minimum time period of one month of trading, and be published no earlier than one month following the end of the month for which trading was aggregated.

(3) renumbered as (4)

(c) No Change.

* * * * *

6600. OTC REPORTING FACILITY

6610. General

(a) No Change.

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

(1) FINRA will publish on its public web site the Trading Information for each member with the trade reporting obligation under Rule 6622(b) on the following timeframes:

(A) no earlier than four weeks following the end of the Trading Information week, <u>aggregate weekly</u> Trading Information for OTC Equity Securities; and

(B) No Change.

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

(A) No Change.

[(B) Trading Information will be aggregated for members that have executed on average fewer than 200 transactions per day across all OTC Equity Securities during the applicable Trading Information period.]

([C]<u>B</u>) Trading Information <u>by security</u> will be aggregated for members that have executed on average fewer than 200 transactions per day in [an OTC Equity Security] <u>the security</u> during the applicable Trading Information period.

(3) For purposes of this paragraph (b), "Trading Information" includes:

(A) through (B) No Change.

"Trading Information" for purposes of this paragraph (b) shall not include any ATS Trading Information, as that term is defined in paragraph (c)([3]2).

(c) Trading Information for OTC Transactions in OTC Equity Securities Executed on Alternative Trading Systems

(1) FINRA will publish on its public web site the aggregate weekly ATS Trading Information for each alternative trading system with the trade reporting obligation under Rules 6622(b) no earlier than four weeks following the end of the ATS Trading Information week[,].

(2) No Change.

* * * * *