FINANCIAL INFORMATION FORUM

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March 26, 2012

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

Re: Regulatory Notice 12-07 - Proposed Amendments Relating to Reporting of OTC Trades Executed in a Mixed Capacity

Dear Ms. Asquith,

The Financial Information Forum (FIF)[1] would like to take this opportunity to provide comments on the proposed amendments relating to reporting of OTC trades executed in a mixed capacity. In Regulatory Notice 12-07, FINRA requests comment on proposed amendments relating to the reporting of OTC trades executed in a mixed capacity. Both of FINRA's alternative approaches would result in significant challenges and costs to the industry for an activity that is limited in scope and where FINRA already has additional information available in the form of OATS reports.

Before addressing FINRA's proposed alternatives and responding to specific questions, FIF would like to comment on several points raised by the staff. First, Footnote 5 states that "FINRA notes that, depending on the specific circumstances, the use by a firm of mixed capacity trading could be detrimental to a customer, for example, if the principal portion of a mixed agency and principal trade delays the overall execution of the order." FIF believes a delay of execution may be caused by any number of variables in the market, depending on the specific circumstances however; the overarching purpose of mixed capacity trading is to provide equal treatment to more than one customer order being handled simultaneously, which may be handled in different capacities.

Additionally, as stated in the Notice regarding changes in trading systems to "separately report[ing] each component of a mixed-capacity trade," the notice cites the NASDAQ Exchange, noting in Footnote 8 that NASDAQ allows for the entry of orders in different capacities at the same and multiple price levels." We would like to point out that this functionality, specifically trading orders independently, does not ensure that more than one customer order being handled simultaneously, but in different capacities, will receive equal treatment.

For example, two orders (on the same side of the market) can be routed to the NASDAQ Exchange at the same price, in different capacities, but depending on the specific circumstances, only one order might

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology 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.

get executed. It is precisely to address such a scenario, and ensure the two orders get equal treatment, that a mixed capacity order would be routed to the Exchange. It is also significant to note that a mixed capacity order may represent client orders that are being handled in an agency capacity, as well as client orders being handled in a principal capacity. It should not be inferred that a principal order is solely used to represent a Firm position. In many cases, the principal order may represent customer facilitation and not a proprietary order. By splitting agency and principal orders, one client order may receive an execution while another would remain unexecuted.

The notice states that "FINRA has determined that firms rarely submit the voluntary non-tape reports." This is not surprising for two reasons. First, FIF believes that while firms may need to work two orders simultaneously in different capacities to ensure they receive equal treatment, it may not be the predominant method of trading used by member firms. Second, the optional regulatory report specified in NTM 01-85, requires that "the ACT control number for the original trade report generated by the Nasdaq system be noted in the memo field." To accomplish this, the control numbers for all executions (presumably included in the execution message sent by Nasdaq) would need to be retrieved and stored by the FINRA member and used, if the execution was split and allocated to an order in a capacity other than what was used in the order, on these voluntary reports. This would not be a simple undertaking. Trading and trade reporting systems are not designed to take data from external sources in order to obtain the ACT control number and associate that data with the original reported trade in order to create a non-tape message to the TRF. Since these voluntary reports are optional, and would provide the same information that is currently provided through OATS, many FINRA Members would not elect to undergo the significant amount of work required to automate such a process. The fact that FINRA gave firms fifteen minutes to make these reports suggests that it was anticipated they would be made manually.

The staff's first proposed approach "is to expressly require firms to report a mixed capacity as multiple trade executions ." These proposals relate to orders that are bunched and routed to another market center for execution. This first approach is akin to asking Nasdaq to report two transactions, one as principal and one as agent, for orders they receive in a mixed capacity basis. Nasdaq is currently unable to make such reports because they do not know the order was received in a mixed capacity. For the same reasons, Member Firms do not know if the orders they receive from other Members are mixed capacity.

The staff's second proposal is also problematic. The notice provides an example of member Firm A routing " an order to Firm B for 10,000 shares in a mixed capacity of 6,000 shares as principal and 4,000 shares as agent", where "Firm B has the reporting obligation under FINRA trade reporting rules." It goes on to note that "if Firm B reports the trade in a single tape report with Firm A’s capacity identified as principal, under this proposed approach, Firm A would be required to submit a non-tape report to FINRA to show that it executed 4,000 of those shares as agent." Firm A's regulatory report would need to match Firm B's trade report, but there is currently no existing mechanism for Firm B to pass the matching criteria to Firm A in the execution message.

Significant development would be required to support either proposal. This work would need to be done by every FINRA Member that receives orders from, or sends orders to other FINRA Members, unless they could be assured that mixed capacity orders would never be sent. Since most broker-dealers do not wish to restrict their business, they would need to consider doing a significant amount of work for information that is provided through OATS and activity which is limited in usage. Please see the appendix for feedback from FIF Members specifically related to questions asked by FINRA in Regulatory Notice 12-07.

In closing, we ask that FINRA weigh the benefits of making changes to mixed capacity trade reporting against the implementation effort. Development resources are currently focused on implementing the SEC's Large Trader Rule with both Limit Up-Limit Down and Consolidated Audit Trail expected shortly. Given the importance of these other regulatory initiatives, additional changes may not be warranted at this time.

Sincerely,

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Appendix. Feedback from FIF Members on questions asked by FINRA in Regulatory Notice 12-07.

1. What percentage of your firm's trading is done in a mixed capacity?
   a. *At least 50% of our overall activity is done in a mixed capacity basis.*
   b. *We do not do this at all.*
   c. *We do not send outbound mixed capacity but are unaware of whether inbound traffic is mixed capacity*

2. What are the technological implications and burdens associated with each of the proposed approaches described above?
   a. *Both options would exponentially increase our message traffic. Aside from developmental cost and the complexities surrounding new logic to create more messaging, additional bandwidth for all of our service bureau reporting lines and increased oversight on latency and network monitoring would be required. At a minimum, the message volume would be doubled, requiring the need for an increase to bandwidth for unexpected surges in TRF messaging as well as database storage.*

3. How much time would firms need to make the necessary systems changes to implement each of the proposed approaches described above?
   a. *We would need 18 - 24 months to implement either of the proposed approaches when prioritized with other regulatory initiatives with current deadlines for 2012.*

4. Is there another approach or variation on the two approaches described above that FINRA should consider?
   a. *We would like the opportunity to suggest an alternative option to the two approaches where the structure of the TRF message would change to allow one single tape message with an identifier for mixed capacity ('M' or an expanded field to report in line with the next fields) and an expansion of the contra-broker fields and quantity fields to send multiple reports in one message. The pertinent fields would haves sequential messages to match quantity of the transaction and contra side: capacity = A, P, quantity = 4,000, 6000, contra-party = VNDM, ETRS. This would translate as:*
   Agency trade for 4,000 shares with VNDM
   Principal trade for 6,000 shares with ETRS
   Other fields such as contra capacity may also need expansion. This may be easier than re-coding OMS logic to break down single executions or create multiple, non-tape messages.

5. If FINRA were to mandate the submission of non-tape reports—which would require the use of a unique identifier to link tape and non-tape reports—should the identifier be:

a. a unique identifier that is generated and submitted by the firm (*e.g.*, as a new field in both the tape and non-tape reports);
   i. *A unique identifier submitted by the firm. Our current Order ID (ordid) abilities for Order Reference Number (ordrefno) and cross ordrefno would alleviate anything new on our side and it is available to all executing parties in our system. Something assigned by another entity has the potential to cause a lot of discrepancies for us.*

b. a control number assigned by the trade reporting facility on the confirmation of receipt of the tape report that would then be entered by the firm submitting the non-tape report; or
c. some other linkage mechanism?