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VIRTU FINANCIAL

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

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[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. Publication Could Result in Harm

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.

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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