2/1/2014

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

RE: **File No. SR–FINRA–2013–042: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Require Alternative Trading Systems to Report Volume Information to FINRA and Use Unique Market Participant Identifiers**

Dear Ms. Murphy:

ModernIR, a data-analytics provider and the No. 1 Market Structure Analytics firm for public companies, appreciates the opportunity to comment on FINRA's proposal to improve dark-pool transparency.

We support these efforts in concept. Data-reporting form is woefully out of step with market function. But why without uniformity, and why elevate a regulatory need above public transparency?

If FINRA is entitled to data for enforcement purposes a week after the fact, but everybody else must wait another week, the implication is that rulemakers are more important than those paying the rulemakers. FINRA has revenues above $800 million, and its top executives receive compensation ranging from roughly $700,000 to over $2 million annually[1]. Are we getting things backward here? The purpose of rules isn't to enrich regulators. It's to address shortcomings in markets that otherwise legislatively are to remain free of impediment.

I'll observe too as I have in the past: There are no comments from public companies. All come from brokers, market operators and industry associations. This rule would not be under consideration if there were no shares of public companies to trade. The number of National Market System components in the Wilshire 5000 Index stood at 3,687 at Dec 31, 2012, and 3,665 at Dec 31, 2013[2], perpetuating the long, slow slide extant since 1998. There have not been 5,000 components in the Wilshire 5000 for a decade. Yet on goes rule-making at the exclusion of the goose that lays the golden egg. This seems short-sighted.

It is incumbent upon both FINRA and the SEC to engage issuers, which do not matriculate in trading and brokerage conclaves. The regulatory imprimatur to avoid discriminating against any constituency in rule-making abides, and the cornerstone of democracy is open discourse. FINRA could at very least approach

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[1] FINRA Annual Report:
http://www.finra.org/web/groups/corporate/@corp/@about/@ar/documents/corporate/p291721.pdf

[2] Source: Wilshire Associates, statistics on index-composition available publicly here:
http://web.wilshire.com/Indexes/Broad/Wilshire5000/Characteristics.html

NIRI, the trade association for public companies, and provide a backgrounder for circulation, inviting comment on the rule-proposal. If issuers fail to respond, the fault is their own then.

And let's be honest about the purpose of the proposal. An average person trying to read it would run screaming into the nearest pond (true of all these rule filings –written in language only regulators and lawyers follow well) but strip out the gobbledygook and SR-FINRA-2013-042 is a rule for figuring out if brokers are complying with another rule created by the SEC. Do we need a rule to determine if a rule is being followed?

If so, how about fixing the original problem? Amend Reg ATS to include data-reporting requirements, and appoint FINRA the keeper of the data. Then the SEC is in charge of the rule, to boot.

Real purpose No. 2 for this proposal is so FINRA can float a trial balloon about selling more data. We don't object to FINRA selling data. In fact we'd support appointing FINRA the keeper of market data – from the SIP to consolidated trade summaries (volume by MPID and by security, subdivided into long and short volume) available to everyone in a timely fashion.

But requiring Alternative Trading Systems to report data and then selling that data is murky legal water indeed and seems to open the process to lawsuits. It's in effect regulatory confiscation, which federal courts have rejected.

We have two more objections: Timing, and scope. First, trades happen in fractions of seconds. BATS posts consolidated volume for the whole market continuously[3]. Exchanges furnish trading data to issuers about brokers responsible for trades on the listing exchange on a one-to-two-day delay[4].

Short interest reports are released every two weeks – and this appears to be the model FINRA is following, where brokers are required to furnish data to the regulatory body a week before they are offered publicly. But short interest is nearly as useless today as 13Fs, regulatory filings on ownership. Both are hopelessly outdated. At June 2013, data for the S&P 500 showed short interest at roughly 2.3% of total outstanding shares, and yet data from FINRA and the exchanges shows short VOLUME – trades marked short as opposed to long – were 40% of total market volume over the same time. In other words, short interest as tracked doesn't reflect how markets work, where the bulk of shorting occurs intraday and closes out by day's end. Reporting trading data two weeks after the fact is nearly useless too. It doesn't reflect how markets work.

Why go through the hassle, the disruption, the expense, of propagating a rule that doesn't match market function? Casting about for an answer, we'd conclude that the purpose is self-serving for FINRA and not really in the best interest of the public or market constituencies, including issuers. Could we get it right, rather than just passing another rule, please?

Our final objection: For the national market system to function as the unified one it's designed to be, there should be a single disclosure standard for market operators, period. If Alternative Trading Systems – dark pools – are going to be forced to offer transparency that's greater than the displayed markets, a point SIFMA's Theodore Lazo made more subtly than I in his comment letter on the original rule-filing[5], what

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[3] BATS Trading Market Volume Summary: http://www.batstrading.com/market_summary/

[4] NYSE Connect, Nasdaq Online, data facilities providing exchange trade-executions to issuers.

[5] SIFMA comment letter, Nov 11, 2013: http://www.sec.gov/comments/sr-finra-2013-042/finra2013042-1.pdf

about standardizing disclosure-requirements across the board? I like Mr. Lazo's suggestion but differ with him that a month after the month past, the standard for Rule 605, is the answer.

Here's the answer, seems to me. FINRA already hosts daily (the day following) TRF voluntary disclosures on a per-security basis for short volume and total volume.[6] Why couldn't FINRA host a facility for which it's compensated that provides complete market data on a one-day delay?

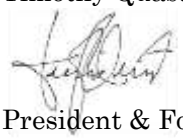
This is simple stuff. If security XYZ traded one million shares, one should be able to add up volumes by market-participant ID that equals one million shares, and know what's long and what's short. That information is already captured. FINRA could compensate the producers of that data, and then mark it up and sell it to cover its own costs.

If we're going to slog through this process, how about doing it once and getting it right? Let's create a simple set of standards so the market functions transparently amid clear rules reflecting contemporary behavior. Complicating the market by further subdividing supposed transparency standards doesn't help anyone save FINRA trying to fulfill its regulatory duties. This is not the purpose for rule-making.

And please involve issuers. If effort isn't made to include them in discourse, I cannot see why issuers would not seek legal remedies. The Securities Act forbids discrimination against issuers. Any way one slices it, rule-making processes that exclude a core constituency are contrary to the manifest tenor.

Yours sincerely,

Timothy Quast



President & Founder

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[6] FINRA Daily Reg SHO Rule 201 data files: http://regsho.finra.org/regsho-Index.html