



May 21, 2014

Kevin O'Neill  
Deputy Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: File No. SR-FINRA-2014-018 (Proposed Rule Change to Establish a Fee Schedule for Alternative Trading System Volume Information) – Response to Comments**

Dear Mr. O'Neill:

This letter is being submitted by Financial Industry Regulatory Authority, Inc. (“FINRA”) in response to a comment letter submitted to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing (“Filing”).<sup>1</sup> The Commission received one comment letter on the Filing, which urged the Commission not to approve the proposed rule change.<sup>2</sup>

In the Filing, FINRA proposed to adopt Rule 4553 (Fees for ATS Data) to establish a fee schedule for optional professional access to alternative trading system (“ATS”) volume information published by FINRA on its website (“ATS Data”). Under Rule 4552, individual ATSs are required to submit weekly reports to FINRA regarding volume information within the ATS.<sup>3</sup> For equity securities, this information includes share volume and number of trades for both NMS stocks and OTC equity securities.<sup>4</sup>

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<sup>1</sup> See Securities Exchange Act Release No. 71919 (April 9, 2014), 79 FR 21324 (April 15, 2014).

<sup>2</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, CEO, and Dave Lauer, President, KOR Group LLC, dated April 16, 2014 (“KOR”).

<sup>3</sup> See Rule 4552(a). The first reports pursuant to Rule 4552 are currently due to FINRA by May 28, 2014, covering the week beginning May 12, 2014. See *Regulatory Notice* 14-07 (February 2014).

<sup>4</sup> See Rule 4552(d).

After FINRA begins receiving the self-reported data from ATSS, FINRA will publish on its website, on a delayed basis, the reported information for each equity security for each ATS with appropriate disclosures that the published volume numbers are based on ATS-submitted reports and not reports produced or validated by FINRA.<sup>5</sup>

Based on the information reported by the ATSS pursuant to Rule 4552 (and, later, generated by FINRA), the ATS Data will consist of reports listing aggregate volume and number of trades by security for each ATS within the designated time period. Under the fee schedule proposed in the Filing, the most recently published four weeks of reports will be accessible to Non-Professionals, as defined in the proposed rule, at no cost on FINRA's website, and FINRA will provide a basic web display listing all reporting ATSS and aggregate volume and number of trades for each symbol in which a trade was reported by the ATS during the designated time period. In addition to viewing the information via FINRA's website, Professionals and Vendors, as defined in the proposed rule, will have the ability to download reports electronically for their internal use or, in the case of Vendors, for external redistribution. The downloadable reports will provide the same data as the web-based reports but in pipe delimited format, and historical reports of up to five years will be available to those with a Professional or Vendor subscription.<sup>6</sup> Under the proposed fee schedule, Professionals would pay an annual subscription fee of \$12,000, and Vendors would pay an annual subscription fee of \$18,000.

KOR opposes the proposed rule change on the basis that FINRA should provide the ATS Data for free. KOR expresses its view that "the role of the regulator is not to profit from, or even cover the costs of, providing access to data that will so clearly provide much needed, critical information to the public about the operation and activities in ATSS." KOR incorrectly states that the proposed fee schedule somehow "prohibits" access to data and "prevents" market participants from analyzing market data. Finally, KOR takes issue with the proposed amount of the fee. As described more fully below, FINRA disagrees with each of these assertions and is not proposing any changes to the proposed rule in response to the comment letter.

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<sup>5</sup> See Rule 4552(b). Once the requirement for ATSS to use unique MPIDs is implemented, FINRA anticipates that it will be calculating the data based on trade reports and will no longer be providing data that is self-reported by ATSS. See *Regulatory Notice* 14-07.

<sup>6</sup> There will be no reports for time periods before the implementation of Rule 4552. In addition to weekly reports, FINRA noted in the Filing that it intends to produce quarterly reports summarizing the information that would be publicly available for no charge on FINRA's website.

### ***Recovering Costs***

First, FINRA fundamentally disagrees with KOR's proposition that it is somehow inappropriate for self-regulatory organizations ("SROs") to impose fees to recover costs.<sup>7</sup> FINRA will incur costs to establish and operate the ATS website, ultimately including the calculation of the ATS Data, which must be funded in some manner. FINRA believes it is entirely appropriate and fair to recover those costs from the users of the data rather than require all FINRA members to shoulder the burden, particularly when this data is of little interest to many FINRA members or their customers, and many of the potential users of the data will not be FINRA members at all. FINRA believes that requiring professional market intermediaries that use the data (i.e., Professionals and Vendors) to cover the costs associated with providing the ATS Data is fair and reasonable and is in complete conformance with the provisions of the Securities Exchange Act of 1934 governing SRO fees, while continuing to permit non-professionals to access recent data free of charge.<sup>8</sup>

### ***Access to Data***

Secondly, KOR incorrectly asserts that the proposed rule change will somehow prohibit the use of ATS Data, obstruct the distribution of derived data, and damage efforts to improve market health. KOR also claims that academics "will be unable to download data in a machine readable format and unable to publish any findings with derived data."

The proposed rule change does not prohibit anyone from accessing ATS Data; it merely requires professional users to pay a reasonable fee to receive the data. As noted in the Filing, individual investors accessing ATS Data for their personal use are provided data free of charge, and FINRA will also provide quarterly summaries of the data to the public for no fee. However, as noted above, FINRA believes that professional consumers

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<sup>7</sup> The SEC has previously approved proposed rule filings that were designed, in part, to recover the costs associated with providing market data. *See* FINRA Rule 7330 (establishing fees for the receipt of market data concerning real-time TRACE transaction information, historic TRACE data, and the FINRA Automated Data Delivery Service ("ADDS")). When proposing the ADDS fees, for example, FINRA noted that, among other things, the fees are intended to offset costs associated with providing the information. *See* Securities Exchange Act Release No. 68387 (December 7, 2012), 77 FR 74249, 74251 (December 13, 2012) (Notice of Filing of SR-FINRA-2012-053) ("The proposed fees are reasonable in that such fees are designed to defray a portion of expenses incurred to establish, operate, and administer the two [FINRA ADDS] optional services."); *see also* Securities Exchange Act Release No. 68675 (January 16, 2013), 78 FR 4917 (January 23, 2013) (Order Approving SR-FINRA-2012-053).

<sup>8</sup> *See* 15 U.S.C. 78o-3(b)(5).

of the data should be expected to pay a reasonable fee for access to the data so that the costs associated with providing the data are borne by those using it. As FINRA noted in the Filing, non-commercial requests from regulators, academics, and ad hoc requests from media reporters would generally be considered non-professional usage. FINRA accommodates such ad hoc requests on an individual basis and will work with the requestor to provide specified information in a usable format. Consistent with this approach, FINRA intends to address these types of ad hoc requests as it does requests for TRACE data: by working with the requesting party to determine the scope of data requested, the form in which the data can be provided, and the extent to which the requesting party is permitted certain redistribution rights under a separate agreement. As a general matter, the academic research-related agreements provide that redistribution of data pursuant to the agreement is not considered commercial use or prohibited redistribution. FINRA also will consider making the data available in other formats as we gain experience with the information reported.

#### *Amount of Proposed Fee*

Finally, KOR asserts that the proposed fee amounts represent a “very high amount” and that the fee comparison provided by FINRA in the Filing “defies common sense” and should be compared “with other efforts to provide data about regulated enterprises to the public by other regulators.”

FINRA believes the proposed amount of the fee is fair and reasonable. As noted in the Filing, FINRA is proposing to establish a fee for professional access (on an enterprise-wide basis) to the data in order to recover the costs associated with collecting, formatting, and disseminating the data; however, in setting the amount of the fee, FINRA does not have an exact estimate as to how many subscribers will ultimately pay the proposed fee. Because of this uncertainty, FINRA intends to reassess the amount of the fee once it has more experience with the actual usage and ultimate fees paid. For example, if FINRA appears to be generating on a consistent basis significantly more revenue than the cost to build and support the program, it would lower the fee on a per subscription basis so as to better align the total revenue received from the fees with the costs of providing the data. Any such fee change would be filed as a proposed rule change with the Commission.

The proposed fee amount of \$12,000 per year for Professionals and \$18,000 per year for Vendors (each on an enterprise-wide basis) is not only fair and reasonable, but also significantly lower than comparable data that is currently available in the marketplace. Despite KOR's assertion to the contrary, one of the comparative fees set forth in the Filing was a fee adopted by Nasdaq OMX, another self-regulatory organization, and approved by the Commission for Nasdaq OMX's Daily Share Volume (“DSV”) product, which provides some market transparency by market participant identifier, rather than by ATS, with respect to aggregate volume executed through the

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NASDAQ OMX equity exchange facilities.<sup>9</sup> As noted in the Filing, Nasdaq OMX charges \$2,500 per user or \$5,000 per month on an enterprise basis (or \$54,000 for an annual subscription) for its DSV product.

\* \* \* \* \*

FINRA believes that the foregoing fully responds to the issues raised by the commenter. If you have any questions, please contact me at 202-728-6927.

Sincerely,

A handwritten signature in black ink that reads "Brant K. Brown". The signature is written in a cursive, slightly slanted style.

Brant K. Brown

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<sup>9</sup> See Securities Exchange Act Release No. 59580 (March 13, 2009), 74 FR 12169 (March 23, 2009).