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July 30, 2015

Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

Re: SR–FINRA–2015–020: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Expand FINRA's Alternative Trading System (''ATS'') Transparency Initiative To Publish OTC Equity Volume Executed Outside ATSs

Dear Mr. Fields:

The Securities Industry and Financial Markets Association ("SIFMA")[1] submits this letter to comment on the above-referenced proposal by the Financial Industry Regulatory Authority ("FINRA"). Under the proposal, FINRA would publish the equity volume executed over-the-counter ("OTC"), including that from non-ATS electronic trading systems and internalized trades. SIFMA generally supports the proposal, however, the aggregation and publication timeframes must be modified in order to minimize information leakage. In addition, we reiterate our call for FINRA to sunset its current requirement that alternative trading systems ("ATSs") make weekly volume reports to FINRA under FINRA Rule 4552.

For many years, SIFMA and its members have been vocal advocates and thought leaders on equity market structure issues. The U.S. equity markets are the deepest, most liquid and most efficient in the world, with investors enjoying extraordinarily low transaction costs, narrow spreads, and fast execution speeds. Nevertheless, SIFMA believes there are aspects of market structure that could be enhanced through steps designed to decrease unnecessary market complexity, increase transparency of market information, and promote fairness in access. To sharpen the focus on these important issues, SIFMA's Board of Directors convened a broad-based task force in 2014 of members from across the country and across the industry, including retail and institutional dealers and asset managers, to develop a series of tangible and actionable

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

market structure reforms. Through this task force, SIFMA has developed more than a dozen specific recommendations for addressing equity market structure.[2]

SIFMA generally supports FINRA's proposal, consistent with its recommendations on transparency and disclosure. However, as raised in our comment letter in response to FINRA's Regulatory Notice 14-48, we believe that certain aspects of the proposal raise the possibility of information leakage that must be addressed before the proposal is approved by the Securities and Exchange Commission ("Commission").[3] Specifically: (1) the potential for information leakage; and (2) the need to sunset the current ATS reporting requirement.

Information Leakage and Scope of OTC Information

SIFMA reiterates the comments on information leakage from our previous comment letter. Under the current proposal, FINRA would publish OTC volume data in the same format and on the same schedule that it uses for ATS volume data, which is to publish weekly aggregated information, on either a two or four-week delayed basis depending on the security type.[4] We remain concerned that the two-week publication timeframe may result in unintended information leakage. In particular, the current proposal would include disclosure of large institutional trades done OTC, which could enable reverse engineering of those trades if they are published within two weeks. For these reasons, we requested that OTC volume disclosure be aggregated on a monthly rather than weekly basis, and made available to the public and industry participants following a four-week delayed basis, as currently provided under FINRA Rule 4552(b)(2).[4]

Despite our suggestions, FINRA has not made any changes to the type or timing of disclosure from what it proposed in its Regulatory Notice. Rather, FINRA states that it "considered the potential for information leakage in developing its proposal and believes that it has taken adequate steps to mitigate that potential by, among other things, proposing to publish non-ATS volume information on the same delayed basis that is used for ATS volume data, as well as at the firm, rather than MPID, level and not further segregating volume information by trading capacity or trading desk." In addition, FINRA states that "firms have not come to FINRA with any complaints regarding information leakage since FINRA began publishing ATS volume information."

However, the risk of information leakage is not minimized or nonexistent due to the current lack of complaints about ATS volume information, as there is a fundamental difference

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[2] *See* SIFMA Equity Market Structure Recommendations (July 10, 2014), available at http://www.sifma.org/workarea/downloadasset.aspx?id=8589949840.

[3] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Marcia E. Asquith, Financial Industry Regulatory Authority dated February 20, 2015.

[4] *See* FINRA Rule 4552(b).

between publishing an ATS's volume information and disclosing a market participant's OTC trading activity. Within an ATS, the counterparties to a trade are not published publically or privately. Rather, the only identifiable information provided is the aggregate volume information by security and ATS (total trades and shares executed). The current proposal would provide, in many cases, the identity of the specific counterparty, *i.e.*, the member firm. In cases where the firm is an active market maker or is trading a large position on behalf of a customer – especially in less liquid stocks – the two-week publication timeframe and weekly aggregation disclosure could allow reverse engineering of trading published pursuant to the proposal. Accordingly, we are concerned that the proposed one-week aggregation and two-week publication timeframe may still result in information leakage, particularly for block positioners or market participants that engage in trading activity that requires the buildup or unwinding of large positions.

To mitigate the risk of information leakage, SIFMA proposes as an alternative that OTC volume information pertaining to a market participant's trading activity in specific securities be aggregated on a monthly rather than weekly basis, and made available to the public and industry participants following a four-week delayed basis, as currently provided under FINRA Rule 4552(b)(2).[5] SIFMA believes the risk of information leakage will be significantly reduced under this scenario.

Sunsetting of ATS Reporting Requirement

As we stated previously in Regulatory Notice 14-48, FINRA should eliminate the current requirement for ATSs to report volume information to FINRA. Under FINRA rules, each ATS is currently required to report its weekly trading volume, by security, to FINRA. As of February 2, 2015, each ATS must use a unique market participant identifier ("MPID") for reporting order and trade information to FINRA.[6] Accordingly, FINRA now has access through its own systems to all of the ATS volume information without the need for a separate reporting requirement.

FINRA notes in the proposal that the elimination of the ATS volume reporting requirement will be addressed in a separate proposed rule change by FINRA.[7] SIFMA believes that this should be done without delay, as now that the MPID requirement is effective and functioning, the regulatory need for the self-reporting has been fully obviated, which is further reflected by the fact that the current proposal would not require broker-dealers to separately report their OTC volumes to FINRA.

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[5] In this regard, we note that order execution reports published pursuant to SEC Rule 605 provide standardized, monthly reports of statistical information concerning order executions, and such reports are made available within one month after the end of the month addressed in the report.

[6] *See* Securities Exchange Act Release No. 73340 (October 10, 2014), 79 FR 62500 (October 17, 2014).

[7] *See* 80 FR at 39467.

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SIFMA would be pleased to discuss these comments in greater detail. If you have any questions, please contact either me (at [redacted] or [redacted]) or Timothy Cummings (at [redacted] or [redacted]).

Sincerely,

Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets