

FINANCIAL INFORMATION FORUM

marketable will not generate any re-pricing events. FINRA has indicated that they are not looking for ATSs to manufacture events but it is unclear under what circumstances an OATS submission would be required for an ATS that does not re-price all orders.

FIF believes that further discussions between FINRA and ATSs are required in order to ensure that FINRA has an in-depth understanding of the relevance of their regulatory objectives especially with respect to ATSs that do not route out and do not display orders. It is our understanding that surveillance objectives as they relate to identifying spoofing or layering activity depend on orders being displayed and routable which is not the case in many ATSs. The proposal assumes that ATSs operate in a manner similar to exchanges which may not be true for all ATSs. ATSs, in conformance with their Form ATS, may offer different execution models and client functionality including priority that is not strictly based on price/time and options for subscribers to opt-out of trading with certain counterparties. Additionally, ATSs may enhance their functionality on a regular basis. Without a thorough evaluation of an ATS's Form ATS, FINRA will not have a complete picture of an ATS's order/execution model even with the additional order information that the proposal is requesting.

While FIF questions the benefits of providing the additional order information requested in the proposal, we do believe there are benefits to ATS transparency. The recent implementation of the MPID amendments along with the associated ATS OATS and Trade Reporting guidance³ will provide new trade reporting and order audit trail information to FINRA to support their regulatory goals. Additionally, FINRA could explore additional special handling codes to capture various pegging and other market data-dependent order types. To this end, FIF members have expressed a willingness to continue the dialogue with FINRA to determine how best to capture additional data as part of the order audit trail.

Given that OATS will be retired as part of the Consolidated Audit Trail (CAT), FIF recommends that rather than enhancing OATS for the short-term, any requirements to come out of further discussions should become functional requirements of CAT. Requiring significant changes at both firms and FINRA to accommodate this proposal would be short-sighted in light of CAT. We acknowledge FINRA's concerns with the timing of CAT but believe that given their role as both a member of the SRO CAT consortium as well as a bidder for the CAT processor, they are uniquely positioned to drive CAT forward in a timely manner. In its current form, a significant effort will be required on the part of impacted firms to implement this proposal. The implementation time required for the re-engineering efforts described above is not trivial. Requiring firms to make enhancements to OATS in parallel with CAT implementation will drain internal resources and strain CAT implementation timelines. We are hopeful that FINRA will amend this proposal and consider CAT as part of any future rule-making in this area.

³ Available at http://www.finra.org/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=P598513

