



January 24, 2008

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Securities Exchange Act Release No. 57020 (File No. SR-FINRA-2007-12);  
Proposal to Amend Trade Reporting Rules to Require Related Market Center  
Indicator on Certain Non-Tape Reports Submitted to FINRA

Dear Ms. Morris:

The Securities Industry and Financial Markets Association<sup>1</sup> (“SIFMA”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) proposed amendments to its trade reporting rules that would require member firms to identify the trade reporting market for associated trades on certain non-tape reports. As discussed further below, we believe there are a number of practical issues presented by FINRA’s proposal that require further consideration. Moreover, our member firms believe consideration of the proposed rule should be delayed given the regulatory harmonization efforts currently underway, and question whether the benefits of the proposed rule change outweigh the various costs that will have to be incurred by FINRA members if the proposed rule is adopted.

### **Non-Tape Trade Reporting Proposal**

FINRA proposes to amend its trade reporting rules to require that, on any non-tape report<sup>2</sup> submitted to a FINRA trade reporting facility<sup>3</sup> associated with a previously executed

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington, D.C., and London, and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. (More information about SIFMA is available at: [www.sifma.org](http://www.sifma.org).)

<sup>2</sup> Certain transactions may be reported to FINRA for purposes other than reporting to the Consolidated Tape. A “non-tape, non-clearing” transaction may be reported to FINRA solely for regulatory purposes. A “clearing only” transaction is submitted to FINRA for clearing (and perhaps regulatory) purposes. See NASD Rule 4632(d)(3)(B).

<sup>3</sup> Such trades might be reported either to the Alternative Display Facility (“ADF”), a FINRA Trade Reporting Facility (“TRF”), or the OTC Reporting Facility (“ORF”).

trade that was not reported to that same FINRA facility, members identify the facility or market where the associated trade was reported. For example, riskless principal transactions may be reported either as a single trade or as two separate trade reports. Under the latter approach, a member would submit: (1) a tape report reflecting the original leg of the riskless principal trade, and (2) a non-tape report for the offsetting or riskless portion of the trade. Currently, where the initial leg of a riskless principal transaction is executed in a market center other than the over-the-counter market, FINRA members are permitted but not required to submit an offsetting non-tape report to FINRA. Non-tape reports currently contain no information pertaining to a related tape report.<sup>4</sup> The proposed rule would modify this by requiring that any non-tape report associated with a previously executed trade not reported to the same FINRA trade reporting facility identify the facility or market where the associated trade was reported. Under the proposal, FINRA members would have to retain and produce to FINRA, upon request, documentation relating to the associated trade.

Firms have noted several difficulties associated with this proposal. For example, the proposal does not take into consideration that riskless principal trades often involve executions and reports on multiple markets. In such transactions, firms accumulate a position through multiple street-side trades and then execute the accumulated position with a customer as riskless principal. As a result, many firms think it will be impossible, or at best extremely difficult, to comply with the proposed rule and still be able to execute a block-sized transaction across various venues and generate a single riskless principal trade report for the total block size. Instead, each print on a venue would require a corresponding riskless principal report indicating the venue where the initial leg was reported. A firm would either have to execute its orders on a print-by-print basis, or generate matching prints after an accumulation, indicating for each the market where the initial leg was executed. Otherwise, the firm would not be able to report blocks on a riskless principal basis.<sup>5</sup>

As a more general matter, it often is difficult for an order-sending firm to know where the initial leg of a riskless principal trade ultimately will be printed. For instance, under Regulation NMS an order may be routed to a specific market center but that market center may be required to route that order elsewhere to satisfy better-priced, protected quotations at other market centers. Similarly, firms use a variety of “smart order” routing strategies and order types pursuant to which the order-sending firm does not know the ultimate execution destination. In some instances, these order types and strategies are offered by market centers to which an order may be routed originally.<sup>6</sup>

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<sup>4</sup> FINRA Regulatory Notice 07-46, OTC Trade Reporting (Sept. 2007).

<sup>5</sup> These issues are similar to those SIFMA already has described in its comment letter on FINRA’s proposed amendments to over-the-counter (“OTC”) trade reporting requirements for equity securities. *See* Letter from Ann L. Vlcek, Managing Director and Associate General Counsel, SIFMA, to FINRA (Nov. 16, 2007)(“SIFMA OTC Letter”).

<sup>6</sup> *See, e.g.*, NASDAQ Reference Guide, Order Types and Routing Strategies, *available at* [http://www.nasdaqtrader.com/trader/tradingservices/productservices/productdescriptions/inet/rash\\_strategy.pdf](http://www.nasdaqtrader.com/trader/tradingservices/productservices/productdescriptions/inet/rash_strategy.pdf)

In addition, and even if the executing market center is known, under the new Uniform Service Bureau/Executing Broker Agreement (“USBEBBA”), an executing broker can print a trade to any of the TRFs to which it has access. Thus, an order-sending firm might send an order on a riskless principal basis to an executing broker and, while the executing broker ordinarily may print to NASDAQ, the executing broker may determine in any given instance to send the trade to the NYSE TRF or another trade reporting facility. The order-sending firm will not know in any particular case where a trade was reported, making it difficult, if not impossible, to comply with the rule.<sup>7</sup>

Given the difficulties this proposal raises for firms, SIFMA seriously questions whether it will provide sufficient benefits warranting its adoption. The proposal will require firms to incur significant time and resources to reprogram their systems to establish a very large matrix of programming instructions in order to provide the information required under the proposal.<sup>8</sup> In addition, the proposal will generate market-wide costs to create, for instance, a new messaging standard for all market centers to follow in submitting information concerning the market center where an associated trade was reported. SIFMA also notes that firms already are being required to make a number of systems and technology changes in 2008, including, for example, changes to implement new requirements for OATS, NYSE Rule 92, NYSE Daily Program Trading Reports, and NASDAQ symbology, to which firms have had to allocate significant resources.

SIFMA notes that the difficulty of identifying the execution market on confirmations and certain reports given changes in the markets has been recognized recently in similar contexts. For example, FINRA and the NYSE recently eliminated the requirement under NYSE Rule 409(f) that dual member firms disclose the name of the securities market on which a transaction was effected.<sup>9</sup> FINRA recognized that the Order Protection Rule under Regulation NMS could lead to orders receiving executions in multiple market centers. As a result, FINRA explained, dual members faced an operational challenge in trying to capture the name of the executing market on a timely basis to include that information on transaction confirmations as required by NYSE Rule 409(f).<sup>10</sup> As discussed above, SIFMA believes that the difficulties recognized by

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<sup>7</sup> Various ECNs routinely print to different TRFs, which further complicates this scenario for order-routing firms.

<sup>8</sup> SIFMA would be pleased to provide additional information concerning cost and time estimates for implementation of this proposal should FINRA find it helpful.

<sup>9</sup> See NYSE Information Memo 07-119 (Dec. 2007); FINRA Regulatory Notice 07-65 (Dec. 2007) (“FINRA 07-65”). NYSE Rule 409(f) required firms to disclose on a customer confirmation the venue on which a client order for a security admitted to dealings on the NYSE was executed. On March 20, 2007, the NYSE granted temporary relief from Rule 409(f) until September 30, 2007 (extended by FINRA and the NYSE until January 1, 2008). FINRA subsequently filed a rule amendment for immediate effectiveness to make this relief permanent as of January 1, 2008. See Exchange Act Rel. No. 57045 (Dec. 27, 2007), 73 FR 529 (Jan. 3, 2008). NYSE filed a similar rule amendment to conform NYSE’s version of NYSE Rule 409 to FINRA’s proposed amendments. See Exchange Act Rel. No. 57046 (Dec. 27, 2007), 73 FR 533 (Jan. 3, 2008).

<sup>10</sup> FINRA 07-65 at 2.

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FINRA and the NYSE which prompted the rescission of NYSE Rule 409(f) are equally at issue in FINRA's current proposal (and in fact are exacerbated given the alternatives described above for reporting trades through different TRFs).

## Conclusion

SIFMA appreciates this opportunity to address the issues raised by FINRA's proposal, and looks forward to working with FINRA on them. SIFMA believes that the proposed identification of the facility or market where the associated trade was reported would create significant difficulties for firms seeking to conduct business effectively, particularly with respect to riskless principal trades. In addition, SIFMA believes the proposal will require a great amount of time and resources for firms and market centers to implement, without providing consequent benefits. Also, as SIFMA has discussed in its comments to FINRA on other trade reporting initiatives, SIFMA continues to believe in the benefits of working toward a more integrated, market-wide trade reporting structure, and thinks that the industry rule harmonization process currently underway will be hindered, rather than helped, by the implementation of additional individual market trade reporting rules.<sup>11</sup> Therefore, SIFMA respectfully requests that FINRA defer consideration of the proposal until the trade reporting harmonization process has substantially moved forward.

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If you have any comments or questions, please do not hesitate to contact me at 202.962.7300.

Sincerely,



Ann L. Vlcek  
Managing Director and Associate  
General Counsel  
SIFMA

cc: Thomas Gira, FINRA  
Peter Santori, FINRA  
Stephanie Dumont, FINRA  
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Robert L.D. Colby, Securities and Exchange Commission  
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<sup>11</sup> See SIFMA OTC Letter.