

March 5, 2013

By E-mail (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SR-FINRA-2013-013

Dear Ms. Murphy:

On behalf of our client, GFI Securities LLC (“GFI”), we appreciate this opportunity to comment on the proposed Financial Industry Regulatory Authority Inc. (“FINRA”) rule change to require members to report over-the-counter (“OTC”) transactions in NMS stocks¹ and OTC equity securities² within ten seconds of execution (the “Proposed Rule”).³ As discussed in greater detail below, we urge the Securities and Exchange Commission (“SEC”) to initiate proceedings to determine whether the Proposed Rule should be disapproved. The Proposed Rule is inconsistent with the requirements of Section 15A of the Securities Exchange Act of 1934, as amended (the “Act”),⁴ as it poses an unnecessary and inappropriate burden on competition that is not overcome by any perceived benefit of its adoption.

As a preliminary matter, GFI fully supports FINRA’s efforts to foster transparent and efficient markets. Further, GFI agrees with FINRA that timely trade reporting is critical in today’s fast-moving markets. However, as the statistics identified by FINRA make quite clear, virtually all transactions in equity securities are already reported within ten seconds. Reducing the required reporting period to ten seconds will place an insurmountable burden

¹ See 17 CFR 242.600(b)(47).

² See FINRA Rule 6420.

³ Notice of proposed rule change was published in Exchange Act Release No. 68842 (February 6, 2013), 78 FR 9963 (February 12, 2013)(the “Notice”).

⁴ 15 U.S.C. 78o-3.

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on firms, such as GFI, that accept orders that are not electronically entered into an order management system (including orders received via telephone or instant message) (“manual orders”) or negotiate complicated, multi-party transactions. In light of the information provided in the Notice regarding the number of transactions that are already reported within ten seconds, this burden on competition cannot be justified.

The disproportionate impact of the Proposed Rule on firms that manually enter trade details into order management systems or execute manually negotiated transactions is inconsistent with the requirements of the Act. Among other things, Section 15A(b)(9) of the Act requires registered securities associations to have rules that “do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.”⁵ As discussed below, the Proposed Rule will effectively prevent broker-dealers from entering or negotiating and executing transactions manually. This is not simply a technological issue. Even for relatively uncomplicated manual orders, it could reasonably take more than ten seconds to manually enter all of the information required to report a transaction, including, but not limited to, price, symbol, side of the market, reporting flags and contra party. For complicated, multi-party (and multi-product) transactions, it would be next to impossible to input all of the required trade details within ten seconds. Of course, the flip side of effectively prohibiting broker dealers from reporting transactions that result from manual orders is cutting off institutional customers’ access to these services, potentially prohibiting by rule an entire category of otherwise appropriate transactions. The cost of the Proposed Rule is clearly not outweighed by any perceived benefit that may result from its adoption. While the alleged benefits of the Proposed Rule are attractive on paper, in practice, the actual benefits, if any, will be minimal and could, in large part, be achieved through other, less anticompetitive, means.

FINRA describes the benefits of the Proposed Rule in the Notice as follows:

The proposed rule change will enhance market transparency and price discovery, promote more consistent trade reporting by members and facilitate implementation and further the goals of the Single Stock Circuit Breaker trading pause rules and the NMS Plan to Address Extraordinary Market Volatility.⁶

We do not dispute that faster trade reporting would generally achieve all of these goals. We also do not dispute that the stated goals are appropriate and reasonable. What we

⁵ 15 U.S.C. §78o-3(b)(9).

⁶ See Notice, 78 FR at 9965.

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do dispute, however, is what the actual benefit will be, given the industry's current trade reporting practices.

In the Notice, FINRA refers to a study that it conducted of the speed with which members currently report transactions in last-sale eligible equity securities. According to FINRA, 99.96% of all OTC transactions are already reported within ten seconds.⁷ FINRA also alludes to the possibility that some members may program their systems to report transactions after they are executed, but prior to the expiration of the current 30-second window permitted for trade reporting. While it isn't clear what percentage of the .04% of transactions that are not currently reported within ten seconds FINRA believes are due to members programming their systems to report in that manner, FINRA has proposed another change that will address this issue. The Proposed Rule adds the requirement that transactions be reported "as soon as practicable." This new text would make it clear that trades are required to be reported as promptly as possible and would render clearly impermissible the practice commonly known as "holding a print."

As an interim measure, we respectfully suggest that FINRA implement the "as soon as practicable" standard, but leave members with the ability to report transactions within 30 seconds when circumstances make it impracticable to report more quickly. Before the SEC permits FINRA to change the overall permissible time period to report a transaction to ten seconds and effectively prevents its members from accepting and executing manual orders, FINRA should be required to investigate the potential impact of such a change more comprehensively. FINRA does not appear to have conducted any analysis at all of the speed at which members are able to manually input trade details. At the very least, FINRA should evaluate the impact of the Proposed Rule on such members before the rule is implemented.

FINRA's efforts to evaluate the impact of the Proposed Rule were narrow and did not consider the impact of the Proposed Rule on members that have to manually enter trade details on a regular basis. To support their basis for the Proposed Rule, FINRA conducted a one-week study where it evaluated how long member firms took to report transactions in last sale eligible securities. In the Notice, FINRA discusses its findings and states that, during its test period, 22 member firms were unable to report at least 50% of their last sale eligible trades within ten seconds. While FINRA did contact "more than half" of the 22 firms, the majority of those firms were not in the business of executing transactions in equity securities and the rest did "not trade equities frequently." It would have been a relatively simple matter for FINRA to identify and contact GFI and other inter-dealer brokers that regularly enter trade details manually and/or execute complex, multi-party (and potentially multi-security) transactions manually. For whatever reason, FINRA does not appear to have done that. Instead, FINRA elected to contact firms where the failure to report within ten seconds did not

⁷ *Id.* at 9964.

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reflect any real issue and, in doing so, concluded that “the burden of the proposed rule change should be minimal.”⁸ This simply isn’t the case.

The Proposed Rule will have a disproportionate adverse impact on firms that accept and execute manual orders. While the majority of the transactions that GFI effects on behalf of its customers are received and executed electronically and reported promptly, GFI also has transactions where it enters certain trade details manually. GFI also handles “high touch” orders that are received and handled manually and cannot be reported as quickly. For example, GFI executes large block transactions among multiple parties. Once the terms and conditions of these transactions are agreed, GFI’s broker-dealer contra parties record the trade as done. GFI personnel then have to enter the trade details into their systems and report the transaction. With two or more parties to a trade, multiple symbols, and multiple prices, it is difficult, if not impossible, to key in the trade details and report these transactions within ten seconds. GFI also handles transactions involving multiple products and multiple parties. Complex transactions such as these are also unlikely to be reported within ten seconds.

The proposed Supplementary Material, which clarifies that where a member has “reasonably designed policies, procedures and systems in place, the member generally will not be viewed as violating the ‘as soon as practicable’ requirement,” does not remedy this problem. There is no policy that GFI and other similarly situated members can adopt that can change the nature of these manual and/or complex transactions and enable firms to report them within ten seconds. Further, FINRA also notes that members that engage in a “pattern and practice” of unexcused late reporting (*i.e.*, reporting later than ten seconds after execution) may still be charged with violating FINRA rules, notwithstanding any policies and procedures they have in place.

For the reasons discussed above, we respectfully request that FINRA withdraw the Proposed Rule to evaluate its impact on member firms that manually enter trade details and/or execute complex transactions as a part of their regular business and consider whether an exception for manually reported transactions is appropriate. In the alternative, we ask that the SEC institute proceedings to determine whether the proposed rule should be disapproved because it poses an unnecessary and inappropriate burden on competition in violation of Section 15A(b)(9) of the Act.

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⁸ *Id.*

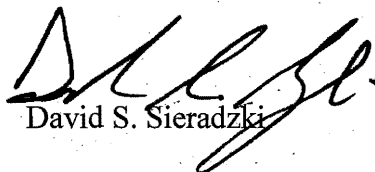
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We thank you in advance for your consideration. If you have any questions or require further information, please contact me.

Very truly yours,

Bracewell & Giuliani LLP



David S. Sieradzki