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March 18, 2013

<u>Via Electronic Mail (rule-comments@sec.gov)</u>

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: <u>File No. SR–FINRA–2013–013: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Require Members To Report OTC Equity Transactions as Soon As Practicable, But No Later Than 10 Seconds, Following Execution</u>

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the above-referenced proposed rule change filed by the Financial Industry Regulatory Authority ("FINRA") with the Securities and Exchange Commission ("Commission"). Under the proposed rule change, FINRA would amend its trade reporting rules to require that members report over-the-counter ("OTC") transactions in NMS stocks and OTC Equity Securities, and cancellations of such transactions, to FINRA as soon as practicable, but no later than 10 seconds following execution (or cancellation, as applicable).[2] For the reasons set forth below, SIFMA believes the Commission should not approve the proposed rule change unless FINRA provides additional information, including an economic analysis, to justify the need for the proposal in light of the substantial systems changes that members would have to make to comply with the new reporting requirements.

FINRA's current trade reporting rules provide that members must report OTC transactions in NMS stocks and OTC Equity Securities within 30 seconds of execution during the hours that the FINRA Facilities are open.[3] Under the proposed rule change, FINRA would

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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.

2 *See* Securities Exchange Act Release No. 68842 (February 6, 2013), 78 FR 9963 (February 12, 2013).

3 *Id.*

reduce the reporting time for OTC trades in NMS stocks and OTC Equities to no later than 10 seconds after execution.[4]

In its filing, FINRA argues that 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. FINRA also maintains that the proposed rule change will not have an economic impact as the vast majority of firms that engage in equities transactions have automated their systems, and that it will not have a competitive impact on smaller members given that their infrequent instances of trade reporting likely would never rise to the level of a pattern and practice of late reporting.[5]

SIFMA believes that FINRA member firms would be required to make substantial systems changes to assure compliance with the new requirements. Further, member firms that enter trades manually will be required to develop and implement a systemic solution. These systems changes will impose costs on member firms, and FINRA has not explained the regulatory imperative that would justify those costs. FINRA member firms are regularly faced with devoting resources and funds to implement systems changes in order to comply with increasingly complicated regulatory requirements. In SIFMA's view, FINRA should not receive the Commission's approval to add to that dedication of resources and funds without a specific regulatory justification and a thoughtful economic analysis.

SIFMA is also concerned that there may be periods of extraordinary market volatility in which firms would be unable to satisfy the reduced timing requirements, even with systems changes in place. We appreciate FINRA's statement that it took extraordinary market volatility into consideration when drafting the proposed rule change, particularly that FINRA staff reviewed members' compliance on the date of Russell index rebalancing in 2012 and determined that there was no appreciable decrease in the percentage of trades reported within 10 seconds. However, SIFMA is concerned that during more regularly occurring periods of high trading volume, such as the daily market close or during highly subscribed IPOs, some firms may in good faith be unable to report within 10 seconds and could face a FINRA finding of a pattern and practice of late reporting.

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4 *Id.*

5 FINRA states in its proposal that it "understands that there will be isolated instances where a member is unable to report trades within the time period prescribed by rule, and FINRA will continue to look for a pattern and practice of unexcused late trade reporting before taking action against a member."

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SIFMA greatly appreciates the Commission's consideration of the issues raised above in connection with FINRA's proposed rule change. SIFMA would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions, please contact either me (at 202-962-7383 or tlazo@sifma.org) or Timothy Cummings (at 212-313-1239 or tcummings@sifma.org).

Sincerely,

Theodore R. Lazo
Managing Director and
Associate General Counsel

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