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November 12, 2013

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

*Re: Proposal to Require Alternative Trading Systems to Report Volume Information to FINRA and to Use Unique Market Participant Identifiers (File No. SR-FINRA-2013-042)*

Dear Ms. Murphy:

The Investment Company Institute<sup>1</sup> is writing to respond to the FINRA proposal to require alternative trading systems (“ATS”) to report volume information to FINRA and to use unique market participant identifiers.<sup>2</sup>

ICI members and their shareholders have a strong interest in ensuring that the financial markets are highly transparent and that the regulatory structure that governs the financial markets encourages such transparency. Consistent with these goals, we have strongly supported efforts to increase transparency of market information and have long advocated for appropriate regulatory changes in this area. As discussed further below, we therefore support FINRA’s proposal. In addition, described below are our comments and recommendations on several aspects of the proposal.

### **FINRA Proposal to Increase ATS Transparency**

FINRA is proposing to adopt new Rule 4552 to require each ATS to report to FINRA volume information regarding transactions within the ATS in securities subject to FINRA trade reporting obligations. Specifically, each ATS would be required to report to FINRA the aggregate weekly volume

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<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$15.7 trillion and serve more than 90 million shareholders.

<sup>2</sup> Securities Exchange Act Release No. 70676 (October 11, 2013), 78 FR 62862 (October 22, 2013) (“Release”).

of transactions and the number of trades within the ATS by security. FINRA will then make the reported information for equity securities publicly available on a delayed basis.

*ICI Supports Increased Transparency with Appropriate Delays in Publication of Information*

ICI supports increasing transparency of information about transactions in ATSs. As investors, transparency of market information is vital to making informed investment decisions; a robust transparency regime provides investors with access to information about current trading opportunities, facilitates price formation, and assists firms in providing best execution to their clients. FINRA's proposal should facilitate this process.

We also believe it is important that regulators have access to accurate, timely and detailed information regarding ATS transactions and have a reporting regime and/or means of accessing such information. To the extent that the volume information reported by each ATS will enhance FINRA's ability to surveil for compliance with the requirements of Regulation ATS, or that the proposal will help ensure that ATSs are publishing complete and standardized transaction statistics, the proposal should benefit the markets overall.

At the same time, we believe there are limits to the benefits of increased transparency in certain situations. While information regarding trades taking place in ATSs should be transparent to the public, regulators should closely examine the potential unintended consequences of increasing transparency of certain trade information, particularly the impact of the premature disclosure of critical information about fund orders in ATSs. As we have stated in several letters to the SEC, the confidentiality of information regarding fund trades is of significant importance to ICI members. Any premature or improper disclosure of this information can lead to frontrunning of a fund's trades, adversely impacting the price of the stock that the fund is buying or selling.

We therefore support the proposal to initially publish the information reported to FINRA on a delayed basis on FINRA's website; specifically a two-week delay before publishing the reported data on Tier 1 NMS stocks and a four-week delay for all other NMS stocks and OTC Equity Securities. We agree with FINRA's statement in the Release that these delays are appropriate and are adequate to prevent potential information leakage regarding sensitive trading activity, particularly in more illiquid securities.<sup>3</sup>

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<sup>3</sup> When the SEC proposed requiring the real-time disclosure of the identity of dark pools on trade reports, ICI supported the goal of increasing post-trade transparency for dark pools. We expressed concerns, however, about several unintended consequences for funds. Specifically, the real-time disclosure of the identity of the specific dark pool where non-excepted trades were executed would have revealed too much information about fund orders, would have provided another crucial "piece of the puzzle" to those who intend to prey off the orders of funds, and had the potential to facilitate the frontrunning of funds' security positions. While we did not support the real-time disclosure of individual dark pools, we did support such

### *Scope of Proposal*

The proposal's reporting obligations would apply to any NMS stock, OTC Equity Security, or any debt security subject to FINRA's Trade Reporting and Compliance Engine ("TRACE") rules ("TRACE-Eligible Securities"). The Release notes that while ATs that trade TRACE-Eligible Securities would be subject to the self-reporting obligations, FINRA does not intend to begin publishing self-reported data for TRACE-Eligible Securities until it has had the opportunity to evaluate the data received from such ATs and the differences between the existing trade reporting regimes applicable to equity and debt securities. ICI supports FINRA's decision to delay publication of data for TRACE-Eligible Securities and believes it is prudent for FINRA to further examine the data received from ATs prior to requiring publication of such data.

The Release also requests comment on expanding the scope of the proposed rule change to include other, non-ATS over-the-counter trading information of broker-dealers. ICI supports applying the proposed rule change beyond ATs to require trading information for other over-the-counter executions of FINRA broker-dealers and making this information public in the same manner as is proposed for ATS trade information. As the Release notes, this other over-the-counter execution information could include broker-dealer internalized executions, trades executed in the over-the-counter market by wholesale market makers trading with order entry brokers, and executions on broker crossing systems that have not filed a Form ATS with the Commission. We also support applying the proposal to other non-displayed executions, regardless of the type of entity providing such execution, in the same manner as proposed for ATS trade information.

### *Fees Associated with Proposal*

The Release states that FINRA intends to establish a fee to recover costs that may be incurred in providing the reported information to professional users of the data; non-professional users, however, could receive the data free of charge.<sup>4</sup>

In addition to requiring market data to be reliable and timely, ICI believes it is important for such data to be available at a reasonable cost and at a cost that encourages the use of market data. ICI recommends that FINRA clarify the specific costs surrounding receiving and accessing the reported information under the proposal. Given the significance of the reported information, particularly to

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disclosure on a delayed basis. *See* Letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated February 22, 2010.

<sup>4</sup> The Release adds that FINRA anticipates establishing a flat, monthly subscription fee (with a yearly commitment term) for professional subscribers to access the published reports on an enterprise license basis.

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investors navigating the current wide range of choices among trading venues, we also recommend that FINRA reconsider charging a fee for use of the reported information by professional users, at least for the basic trading volume information available on FINRA's website.

### **Requirement to Use Unique MPID**

Our comment letter focuses on the proposal's requirements relating to reporting volume information. In addition to the reporting requirements, the proposal also requires that a FINRA member operating an ATS obtain for each such ATS a single, unique MPID that is designated for exclusive use for reporting each ATS's transactions. To the extent that requiring each ATS to use a single, unique MPID for reporting information to FINRA will enhance FINRA's ability to surveil for compliance with the requirements of Regulation ATS as well as other rules, we support this aspect of the proposal. We recognize that some issues have been raised by other commenters regarding the operation of the MPID. We encourage the SEC to work with market participants to minimize any operational burdens associated with the MPID requirements.

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If you have any questions on our comment letter, please feel free to contact me directly at (202) 371-5408 or at [aburstein@ici.org](mailto:aburstein@ici.org).

Sincerely,

/s/ Ari Burstein

Ari Burstein  
Senior Counsel

cc: The Honorable Mary Jo White  
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The Honorable Kara M. Stein

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