



April 1, 2016

Via Electronic Mail (rule-comments@sec.gov)

Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2016-010: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 4554 (Alternative Trading Systems—Recording and Reporting Requirements of Order and Execution Information for NMS Stocks)

Dear Secretary:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter 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 proposal, FINRA would require Alternative Trading Systems (“ATs”) to report additional order and execution information to FINRA’s Order Audit Trail System (“OATS”).

SIFMA commented on an earlier version of this proposal,² which FINRA published in Regulatory Notice 14-51. At that time, we expressed support for FINRA’s goal of enhancing its surveillance capabilities with additional ATS order and execution data, but we also expressed concern that the proposed data collection requirements would impose unworkable operational burdens. We appreciate FINRA’s efforts to refine the proposal to reflect the feedback received in response to Regulatory Notice 14-51.

As described below, SIFMA believes FINRA should amend the current proposal to: (1) eliminate the requirement to submit National Best Bid and Offer (“NBBO”) timestamp information to OATS; and (2) eliminate the requirement to submit order type information to OATS and the corresponding requirement for ATs to provide FINRA with advance notice of

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 Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Marcia E. Asquith, Office of the Corporate Secretary, Financial Industry Regulatory Authority dated February 24, 2015.

order types and changes. In addition, we have comments on two technical aspects of the proposal.

NBBO Timestamping Requirements

Under the proposal, FINRA would require ATSS to submit NBBO information to OATS with respect to the time of order receipt and order execution. More specifically, ATSS would be required to report the NBBO (or relevant reference price) in effect at the time of order receipt and order execution and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price) for both order receipt and execution. SIFMA understands this requirement to mean that ATSS would be required to report the time that the matching engine took the action to evaluate the NBBO after the order was received in order to determine how to handle the order, and similarly when the matching engine determined to execute the order. It is our understanding that the proposal would not require an ATS to report the time it actually received the NBBO. FINRA should clarify this point before the Commission takes action on the proposal.

We raise this point because SIFMA believes ATSS should not be required to report the time that it actually receives the NBBO. As background, market data feeds that provide NBBO information generally include two main components: price changes and volume changes. In practice, price changes to the NBBO happen far less frequently than volume changes. For example, the NBBO in a particular security may stay constant for “longer” periods of time (*e.g.*, seconds or minutes) with the volume available at that price changing thousands of times during that period. For that reason, many ATS matching engines receive only the price changes in the NBBO because taking in all of the data for the volume changes could result in unnecessary trading latency. The ultimate result is that, under the FINRA proposal, a comparison of the time of order receipt or execution to the time the NBBO was received could show a significant time lag between the time of the NBBO and the order receipt or execution. This time lag could give FINRA the impression that an ATS is not regularly updating its quote for seconds or minutes at a time when in fact the NBBO being used is current but has only changed in volume, not price, in the period between receipt of the NBBO and the order receipt or execution.

In addition, with regard to the proposed requirement to provide “[i]dentification of the market data feed used by the ATS to record the NBBO (or other reference price)”, we believe FINRA should specify a list of market data feed types that should be used to populate the field. SIFMA believes the best approach would be to designate general categories, such as “SIP”, “direct”, “hybrid”, and “third party vendor.”

Disclosure of Order Type Information

Under the proposal, FINRA would require ATSS to report to OATS a unique identifier representing specific order types other than market and limit orders that have no other special handling instructions. In this regard, FINRA also would require ATSS to provide FINRA with a list of all of its order types twenty days before such order types become effective and, if the ATS

makes any subsequent changes to its order types, twenty days before such changes become effective. FINRA provides a number of reasons for including the order type requirements in this proposal. For example, FINRA states that it currently requires ATSS to associate its order types with one of FINRA's existing special handling codes, but that the association is not perfect because the conditions on a specific order type offered by an ATS may differ from the approximately 70 special handling codes identified in OATS. In our view, these technical reasons do not support using the OATS system to impose a new order-type reporting regime.

The Commission is in the process of considering substantial new regulations on the operations of ATSS,³ and FINRA should not use this proposal to get ahead of the Commission's final action in that regard. We note a particular statement in FINRA's filing that:

Pursuant to Section 19(b)(1) of the [Exchange] Act and Rule 19b-4 thereunder, exchanges have to file with the [Commission] when they intend to eliminate, amend and add to the existing order types, modifiers and related references. The proposed rule change introduces similar pre-use reporting requirements for ATSS which currently have no such reporting requirements to FINRA, and hence would impose comparable obligations between execution venues as it relates to the introduction of new order types.⁴

This is a confusing statement in the context of a proposal on OATS reporting. It is the Commission's role, not FINRA's, to determine the appropriate regulatory balance between exchanges and ATSS. As FINRA notes, the Commission has proposed new requirements on the regulation of ATSS that trade NMS stocks. Among other things, the Commission's proposal would require ATSS to provide advance notice of material changes to the operation of an ATS, which the Commission has stated would include changes to order types. While the Commission's proposal is still under consideration, and has attracted a significant amount of substantive comments, SIFMA supports the concept of ATSS disclosing order types through Form ATS-N.⁵ But that regulatory requirement should come from the Commission, not through a FINRA rule change on OATS reporting. If FINRA is determined to adopt its own order type reporting requirements on ATSS, it should engage in a separate proposed rule change to be evaluated on its own merits.

Technical Matters

Counterparty Restrictions

³ See Securities Exchange Act Release No. 34-76474 (November 18, 2015), 80 FR 80998 (December 28, 2015).

⁴ See Securities Exchange Act Release No. 34-77269 (March 1, 2016), 81 FR 11851, 11854 (March 7, 2016).

⁵ See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Brent J. Fields, Secretary, Securities and Exchange Commission dated March 7, 2016.

Under the proposal, ATSs would be required to report for each order whether there are any counterparty restrictions on the order. SIFMA reads this to be a yes/no requirement and that ATSs would not be required to report the specific counterparty restriction to OATS. Many ATSs use numerous, customized counterparty restrictions that are not necessarily uniform across member firms. A requirement for ATSs to report all of those specific types of restrictions through OATS would create unnecessary operational burdens without enhancing FINRA's surveillance capabilities. If FINRA intends this requirement to be more than a yes/no response, then it should amend the proposal to clarify that fact and allow additional opportunity for public comment.

Sequence Numbers

Under the proposal, an ATS would be required to provide OATS with the sequence number assigned to each order event by the ATS's matching engine. SIFMA understands this to mean that each ATS would report the specific number (or other alpha-numeric character) that its matching engine assigns. In this regard, we note that ATSs do not have a uniform system for assigning sequence numbers. Some ATSs assign sequence numbers by symbol, others assign them across all symbols. And some ATSs assign sequence numbers with numeric characters, while others use alphabetic characters. A requirement for ATSs to adopt a uniform method of assigning sequence numbers to report through OATS would create unnecessary operational burdens without enhancing FINRA's surveillance capabilities. As we noted on counterparty restrictions, if FINRA intends to require a uniform method of assigning sequence numbers, then it should amend the proposal to clarify that fact and allow additional opportunity for public comment.

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SIFMA would be pleased to discuss these comments in greater detail. If you have any questions, please contact either me (at [REDACTED] or [REDACTED]) or Timothy Cummings (at [REDACTED] or [REDACTED]).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel

Secretary, Securities and Exchange Commission
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cc: The Honorable Mary Jo White, Chair
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
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