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FINRA

Ms Marcia E. Asquith
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1506

via e-mail (pubcom@finra.org)

26 February 2015

Comments on Regulatory Notice 14-51 Equity Trading Initiatives: OATS and ATS Reporting Requirements

Dear Ms Asquith

UBS Securities LLC ("UBS") respectfully submits this letter in response to the request for comment on proposed amendments to the OATS rules described in FINRA Regulatory Notice 14-51 (the "Notice"). The Notice discusses proposed rules that would require Alternative Trading Systems ("ATs") to provide FINRA with additional order book information using existing OATS interfaces.¹

The UBS View

UBS supports the underlying goals of this and other FINRA initiatives that are designed to improve transparency for market participants and regulators. To the extent that data provided by brokers, ATs and other participants can provide meaningful insight into automated trading activities, and is practical and not overly burdensome to produce, UBS agrees that it should be made available to regulators and, where appropriate, to the investing public.

The Notice prompts two fundamental questions: (i) will the additional order information reported by ATs ("ATS Data") achieve FINRA's stated objectives, and (ii) will the associated burden of producing and processing the ATS Data be justified by the benefits realized², especially in light of other regulatory initiatives?

¹ The Notice also contains proposed amendments to the OATS rules to require members to identify non-member broker-dealers, but UBS is not commenting on that portion of the Notice.

² In the Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking, FINRA cites the importance of "analysis, including assumptions and risks, as to why the proposal is necessary and how it best achieves its stated goal(s)".

Based upon a careful review of the Notice with our internal subject matter experts, UBS believes the proposed approach *requires thoughtful modifications*. The creation of a new feed for order events and use of OATS as the platform for reporting those events pose significant challenges, and, in our opinion, are not the most effective methods to realize FINRA's goals.

Areas of Concern and Recommendations

1. **The complexities of ATS rulebooks mean a simple price/time priority view of an ATS order book may not provide meaningful information.**

FINRA seeks the ATS Data primarily because "FINRA is not able to use existing OATS data to fully reconstruct an ATS order book for surveillance purposes."

ATSs in many cases have sophisticated order types that mean matching is not carried out in strict price/time priority sequence. The UBS ATS, for example, has multiple crossing restrictions and Source Categories³ that factor into its matching algorithm. Given this complexity, it is difficult to see how FINRA could adequately embed these varied rulesets into its evaluation of an ATS orderbook solely built from the requested order event information.

UBS questions whether a partial recreation of an ATS order book will in practice provide FINRA with sufficient information to perform effective surveillance.

2. **Alternatives to a feed of order events should be explored. Not all ATSs "repriced" pegged orders. Book recreation may be partially achievable through use of detailed order attributes.**

Modelled after the data feeds that it receives from exchanges, FINRA seeks data representing all events and order attributes that would change the number of shares or price at which an order within an ATS could execute.⁴ In reality, an ATS that neither displays nor publishes order information to any external party does not have a need to capture or store this type of 'book' feed. Furthermore, FINRA appears to assume that pegged orders in ATSs are "repriced". Orders in the UBS ATS book, including pegged orders, are evaluated for marketability based upon peg instructions, limit price constraints and crossing restrictions, but are not explicitly repriced. The requirements outlined in the Notice may therefore require an ATS to generate order state events that do not currently exist, solely for the purpose of reporting the data to FINRA. This requirement would require extensive re-engineering of matching engine technology components, which would add risk and complexity to these mission-critical systems.

FINRA should explore whether certain additional information concerning order types (special handling codes) on an OATS order receipt event could better facilitate surveillance without requiring ATSs to provide voluminous and frequent price/size updates based on market data or execution events.

³ Please see UBS ATS' Form ATS, available at www.ubs.com/ats, for the definition of Source Category as well as further details in respect of its matching methodology.

⁴ See Notice footnote 12: "FINRA already receives these data elements in the order book information provided to FINRA by its exchange clients under Regulatory Services Agreements."

3. OATS is not the best platform to receive the proposed feed.

If FINRA determines that the order event feed is the appropriate mechanism for capture of the information it requires, FINRA should revisit the concept of using OATS as the vehicle to receive the feed. Currently most firms report to OATS in a batch processing mode after the end of the trading day. The window for OATS report submission is generally sufficient to allow even high volume ATs to handle OATS processing.

Based upon our preliminary analysis, UBS projects that new reporting as proposed under the Notice would increase the overall submission of UBS OATS records by at least a factor of 10. The effect of this massive increase in reporting would most likely mean that UBS would modify its reporting to an intra-day process. That type of change also would require a significant technology investment. As a result, storage costs for ATs will increase substantially.

FINRA should consider the ability of the existing FINRA OATS infrastructure to support this new reporting volume. Increasing the volume of records submitted by some of its largest participants by a factor of 10 will pose significant challenges to FINRA, as well as the submitting firms and ATs. The cost of this infrastructure investment will be borne indirectly by the industry, which is also facing a series of costly new initiatives such as the Consolidated Audit Trail, FINRA CARDS and Regulation SCI.

If FINRA proceeds to the rulemaking stage, it should be incumbent upon FINRA to conduct a thorough analysis of the cost implications on the OATS system and estimated impact. Importantly, FINRA should more explicitly justify the investment in significant storage and processing for OATS given the impending implementation of Consolidated Audit Trail with its extensive data processing infrastructure.

Additionally, UBS notes that the reporting requirements outlined in the Notice have certain open-ended descriptions in the reporting layout, such as "(L) any other information as specified by FINRA or the SEC." It is not possible to provide meaningful feedback on such an open ended definition. We suggest FINRA further refine with specificity the reporting requirements.

4. Revising the proposal to require additional order attributes on existing OATS records may address concerns.

As noted above, we believe FINRA could achieve its objectives in a more cost-effective way by expanding the OATS attributes required for ATs OATS reports. This incremental but highly effective approach would eliminate the extensive re-engineering work required by ATs matching engines, storage and capacity concerns for participants and FINRA, as well as process re-engineering requirements for moving to intra-day reporting. The enhanced OATS attributes could facilitate an intelligent recreation of ATs order book data by FINRA based on the order attributes in combination with market data feeds FINRA already maintains.

Conclusion

UBS supports the underlying goals stated in the Notice to enhance the transparency of the US equity securities markets. However, efforts to strengthen our markets should be both effective and not overly burdensome.

ATs serve an important function in the US equity markets, and their advent was driven by client demand for execution alternatives. ATs offer meaningful price improvement and reduced market impact costs to investors,



and often allow interaction with more natural order flow. Furthermore, certain ATs provide additional liquidity opportunities, particularly for those institutional clients that prefer to work their orders away from lit markets. Onerous reporting requirements imposed on ATs could stifle innovation, or more significantly, create sufficient operational burdens or barriers to entry that will cause them to cease operating. The ultimate result of this contraction would be to limit or suppress the execution choices of buy-side investors, meaning investors will have less ability to effectively manage their trading strategies, and will have diminished opportunities to seek better execution, lower transaction costs and achieve price improvement and investment performance. As a result, the end clients of institutional investors - which include retail investors, individual retirement account and fund holders - would likely be impacted.

We respectfully request that FINRA work closely with the industry to further refine the approach set forth in the Notice to create a framework that is best designed to enhance transparency and preserve the execution choices of investors and enable broker-dealers to serve the evolving needs of clients with innovative execution offerings. Thank you for the opportunity to comment on the Notice. Should you have questions regarding the views of UBS, please do not hesitate to contact me.

Yours sincerely

UBS Securities LLC

A handwritten signature in black ink that reads "Mark Holder". The signature is written in a cursive style and is underlined with a single horizontal line.

Mark Holder
Managing Director
Global Co-Head, Direct Execution Services

cc: Richard G. Ketchum, Chairman and Chief Executive Officer
Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy
Shelly Bohlin, Vice President, Market Analysis and Audit Trail Group, Market Regulation
Andrew Madar, Associate General Counsel, Office of General Counsel



February 24, 2015

Via Electronic Mail (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 14-51: Proposal Requiring the Identification of Non-Member Broker-Dealers in Order Audit Trail System Reports and the Reporting of Additional Order Information by Alternative Trading Systems

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to comment on the above-referenced Regulatory Notice published by the Financial Industry Regulatory Authority (“FINRA”). In the Regulatory Notice, FINRA requests comment on a proposal to amend the Order Audit Trail System (“OATS”) rules to require members to identify non-member broker-dealers when reporting orders received from those entities. FINRA is also proposing to require Alternative Trading Systems (“ATs”) to provide FINRA with additional order book information using existing OATS interfaces. The proposal is one of seven FINRA initiatives relating to equity market structure and automated trading activities.

For many years, SIFMA and its members have been vocal advocates and thought leaders on equity market structure issues. The U.S. equity markets are the deepest, most liquid and most efficient in the world, with investors enjoying extraordinarily low transaction costs, narrow spreads, and fast execution speeds. Nevertheless, SIFMA believes there are aspects of market structure that could be enhanced through steps designed to decrease unnecessary market complexity, increase transparency of market information, and promote fairness in access. To sharpen the focus on these important issues, SIFMA’s Board of Directors convened a broad-based task force in 2014 of members from across the country and across the industry, including retail and institutional dealers and asset managers, to develop a series of tangible and actionable

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>.

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market structure reforms. Through this task force, SIFMA has developed more than a dozen specific recommendations for addressing equity market structure.²

SIFMA supports FINRA's goal of enhancing its ability to conduct automated surveillance and monitoring of trading activity on ATSS. However, we believe the data collection requirements of the proposal would not serve FINRA's goal because the requirements do not sufficiently account for the unique and customized trading functionalities that each ATS provides. In their current form, the proposed data collection requirements would impose unworkable operational burdens and FINRA has not sufficiently explained how this additional information would enhance its surveillance efforts. Before FINRA files the initiative with the Securities and Exchange Commission ("SEC") as a proposed rule change, we urge FINRA to work directly with SIFMA and its members to refine the proposal, with a goal of providing FINRA with workable data elements that would not impose unnecessarily excessive costs or risks to implement.

I. Reporting of Additional Order Information by ATSS

The Regulatory Notice states that the goal of the proposal is to enhance FINRA's ability to surveil activity occurring within an ATS, and by extension electronic and algorithmic trading more generally across markets. Under FINRA's proposal, ATSS exceeding a volume requirement would be required to report all events and order attributes that would change the ATS's system quantity (the number of shares of an order, whether displayed or undisplayed, that can currently execute within the ATS), the displayed quantity, the highest (buy orders) or lowest (sell orders) price at which the order can currently execute within the ATS, and the displayed price for an order. In addition, ATSS would be required to provide, for every order, the ATS book sequence identifier and the associated OATS identifier, which would link information about that order to the related information and full lifecycle reported to OATS. At the heart of the proposal is a goal of allowing FINRA to use OATS data to fully reconstruct an ATS order book for surveillance purposes.

In addition to the overall concern that the proposal would impose a significant operational burden without furthering FINRA's goal of enhanced surveillance, SIFMA members have a number of concerns with the specific aspects of the proposal. First, the proposal's one-size-fits-all reporting requirement does not take into account the variation of business models and trading functionalities across ATSS. For example, ATSS differentiate among themselves through sophisticated and individualized trading functionalities, which do not line up with standardized reporting models the way that traditional exchange trading models do. In addition, compliance with the proposal would require ATSS to carry out extremely significant systems changes, which would introduce unnecessary operational and systemic risk to the market.

² See SIFMA Equity Market Structure Recommendations (July 10, 2014), available at <http://www.sifma.org/workarea/downloadasset.aspx?id=8589949840>.

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More specifically, the set of data elements that FINRA would require ATSs to collect and report reflect an incorrect assumption that every ATS's business model and matching protocol is the same, and that all ATSs function the same as an exchange. In fact, the business models of ATSs vary significantly because, by their very nature, each ATS seeks to provide a unique, "alternative" order handling and execution methodology. Not all ATSs follow a price/time priority methodology and rather differentiate themselves to meet the specific trading needs of a subset of market participants, for example by placing importance on size of transaction or investor type. Further, an ATS may provide its subscribers with the ability to place various restrictions (*e.g.* counterparty, size) on their orders which may result, by the subscriber's choice, in an otherwise available contra-side order being bypassed.

Several data elements stand out as examples of information that some ATSs do not maintain and would have to begin collecting solely for these requirements. In these cases, ATSs would have to capture, store and report brand new fields that are not otherwise required to be recorded and may have no relation to the ATS's business model, with no corresponding explanation of how the information would enhance FINRA's surveillance efforts.

- The proposal would require each ATS to record whether each order "was marketable on arrival" and whether the order "was not marketable and was placed on the book." However, some ATSs do not record whether or not incoming orders are marketable. In addition, depending on the subscriber's instructions a marketable order might not be executed right away and a non-marketable order might not be placed on an order book.
- The proposal would require ATSs to track the highest (for buy orders) or lowest (for sell orders) price at which an order can currently execute. However, some ATSs do not track this information for every incoming order because it may not be relevant to the matching logic of the trading system.

In addition, the complexity of the proposed data elements would unnecessarily increase operational risk to the market. Each ATS in scope would need to change multiple systems in order to operate in compliance with the proposed requirements, resulting in multiple ATSs making multiple systems changes at the same time. Any systems change, no matter how thoroughly prepared and tested, creates a risk of error and negative impact to the market. The proposed data collection requirements would result in a significant number of systems changes by ATSs with substantial market presence. Any mistake resulting from all of those systems changes could cause systemic problems.

Moreover, the proposal would result in ATSs being required to collect and transmit massive amounts of data. As an example, the proposal would require ATSs to track, record, and transmit extensive data for all price and size changes of each order. Taking aside the fact that some ATSs do not track this information to begin with, for each order that an ATS receives – which can be millions per day given millisecond trading speeds – ATSs would have to collect and record a multiple of those millions to track each theoretical price or size change and the

Marcia E. Asquith, Financial Industry Regulatory Authority
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reason for each price and size change, among many other factors. Implementing these aspects of the proposal would require a significant amount of resources to accommodate the enormous increase in data required to be collected, transmitted, and retained.

In addition, FINRA's justification for the proposal is based in part on the incorrect predicate that ATSS should provide the same type of surveillance activity as exchanges. In this regard, FINRA states that it already receives these data elements in the order book information provided to FINRA by its exchange clients under Regulatory Services Agreements ("RSAs"), and this additional information would allow FINRA to have comparable information for both ATSS and exchanges. However, as SIFMA has noted before,³ exchanges serve a specific statutory role as self-regulatory organizations, under which they are responsible for regulating their member firms and enforcing compliance with the federal securities laws. In this regard, it is important to point out that FINRA's exchange clients provide order book information to FINRA *voluntarily*, under RSAs that they elect to negotiate and enter into pursuant to their own choice to outsource their regulatory functions to FINRA. If an exchange experiences issues with transmitting information to FINRA, the two parties resolve the matter as part of their business arrangement. Under the proposed rule, ATSS would be *required* to collect and provide data to a primary regulator as part of a regulatory requirement. If an ATSS were to experience issues with transmitting information required by the proposed rule to FINRA, it would then be subject to enforcement penalties and fines, even after the ATSS resolves the issue.

Taking all of these factors together, we believe FINRA can accomplish its goal of enhanced surveillance in a much less burdensome manner by narrowing the scope of the required data elements. SIFMA and its members stand ready to work with FINRA to find a workable solution.

II. Identification of Non-Member Broker-Dealers to OATS

SIFMA supports FINRA's proposal to require a reporting member that is reporting an order received from a broker-dealer that is not a FINRA member (non-member broker-dealer) to identify the non-member broker-dealer as part of their OATS reports. FINRA notes in the proposal that members would identify the non-member broker-dealer by including a unique non-member identifier on the OATS report that will allow FINRA to obtain the identity of the non-member broker-dealer. Specifically, this identifier would either be an existing Self-Regulatory Organization (SRO)-assigned identifier, such as a market participant identifier (MPID), or if a non-member broker-dealer does not have an SRO-assigned identifier that is available to FINRA, the Central Registration Depository (CRD) number of the non-member broker-dealer.⁴ However, FINRA does not address how member firms should identify non-U.S. broker-dealers, which do not have CRD numbers or MPIDs. For those cases, FINRA should clarify how non-

³ See Letter from Theodore R. Lazo, Managing Direct and Associate General Counsel, SIFMA to Mary Jo White, Chair, Securities and Exchange Commission dated July 31, 2013.

⁴ See FINRA Regulatory Notice 14-51.

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U.S. broker-dealers should be identified and what specific identifier should be used in the OATS report.

* * *

SIFMA looks forward to discussing the proposal further with FINRA in order to refine the scope of the requirements. We will be in touch shortly to arrange a meeting. In the meantime, 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,

A handwritten signature in blue ink, appearing to read "Theodore R. Lazo", with a long horizontal flourish extending to the right.

Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: Stephanie Dumont/FINRA

FINANCIAL INFORMATION FORUM

5 Hanover Square
New York, New York 10004

212-422-8568

Via Electronic Delivery

February 20, 2015

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K St. NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-51 - Identification of Non-Member Broker-Dealers in OATS and the Reporting of Additional Order Information by ATSS

Dear Ms. Asquith,

The Financial Information Forum (FIF)¹ would like to take this opportunity to comment on Regulatory Notice 14-51 - Identification of Non-Member Broker-Dealers in OATS and the Reporting of Additional Order Information by ATSS (the “proposal”). We appreciate the extension of the comment period which has allowed for a thorough review of the proposal. As written, we believe the proposal will have a significant impact on implementation and we look forward to continued conversations with FINRA to achieve their regulatory goals in a more efficient manner.

Identification of Non-Member Broker-Dealers in OATS

In order to facilitate the identification of non-member broker dealers in OATS, FIF recommends that FINRA augment existing MPID directories² to include MPIDs for non-member broker dealers. We understand that not all non-FINRA members have MPIDs but believe that the FINRA MPID program could be expanded in a manner similar to the provision of MPIDs for NYSE floor brokers as part of the OATS for NMS expansion. Firms would look to this list in order to validate whether an MPID would be required for OATS identification processes.

FIF also evaluated the use of the CRD number, recognizing that all U.S. registered broker dealers have a CRD number. We believe an MPID-based approach is better because current OATS

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² Specifically many firms rely on the MPID list available here:
<ftp://ftp.nasdaqtrader.com/symboldirectory/mpidlist.txt>

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identification is based on the MPID. Implementation using an existing MPID directory would allow firms to leverage existing workflows and ease implementation costs. Additionally, CRD numbers may be associated with multiple firm names for the same firm. Reconciling firm names with CRD numbers may prove challenging. It is worth noting that with the implementation of CAT and the corresponding CAT Reporter ID, this issue will be addressed. Rather than interim measures to improve OATS, FIF respectfully suggests that FINRA work diligently with the other SROs towards driving CAT forward.

Reporting of Additional Order Information by ATSS

The proposal states that “ATSS exceeding the volume requirement would be required to report all events and order attributes that would change the ATSS’s system quantity (the number of shares of an order, whether displayed or undisplayed, that can currently execute within the ATSS), the displayed quantity, the highest (buy orders) or lowest (sell orders) price at which the order can currently execute within the ATSS, and the displayed price for an order.” In the proposal, the volume requirement is set at thresholds based on SEC proposal, [S7-27-09](#), that was never adopted. Rather than introduce new thresholds for ATSS to monitor, FIF recommends using an existing threshold based on either the fair access threshold of Reg ATSS or the SCI ATSS thresholds established in Reg SCI.

For those ATSS that would be subject to the proposal, FIF has several concerns about the implementation impact if the proposal were adopted in its current form. The implementation concerns are as follows:

- The proposal would require ATSS to log events that they do not currently log. The logging of such events may impact the latency of ATSS matching engines, and would require significant reengineering of trading infrastructure to comply. It would be very difficult for firms to develop separate processes to re-run market data against ATSS order information in order to produce these records. It is questionable if such an approach would produce reliable results since it would require re-sequencing market data against an order stream retroactively. Additionally, this would likely be a more cumbersome process.
- The number of additional OATS records would be significant; depending on implementation specifics FIF members estimate this would range from 10 to 100 times what is sent to OATS today. Many firms that currently generate OATS via an end of day batch process may be required to create a real-time OATS generation process given the sheer volume of submissions that would be required. Additionally, FIF members are concerned with the costs associated with accommodating this volume on the OATS platform and the downstream impact this would have on industry costs associated with supporting OATS.
- If FINRA is looking for ATSS to generate the equivalent of an order book feed, OATS is not suited for this purpose.
- Unlike exchanges, ATSS may not re-price orders with every movement in market data. Often, re-pricing occurs only if there is a contra-order in the ATSS. Other times, re-pricing is dependent on whether the order is marketable, e.g., a pegged limit order that is not

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marketable will not generate any re-pricing events. FINRA has indicated that they are not looking for ATSs to manufacture events but it is unclear under what circumstances an OATS submission would be required for an ATS that does not re-price all orders.

FIF believes that further discussions between FINRA and ATSs are required in order to ensure that FINRA has an in-depth understanding of the relevance of their regulatory objectives especially with respect to ATSs that do not route out and do not display orders. It is our understanding that surveillance objectives as they relate to identifying spoofing or layering activity depend on orders being displayed and routable which is not the case in many ATSs. The proposal assumes that ATSs operate in a manner similar to exchanges which may not be true for all ATSs. ATSs, in conformance with their Form ATS, may offer different execution models and client functionality including priority that is not strictly based on price/time and options for subscribers to opt-out of trading with certain counterparties. Additionally, ATSs may enhance their functionality on a regular basis. Without a thorough evaluation of an ATS's Form ATS, FINRA will not have a complete picture of an ATS's order/execution model even with the additional order information that the proposal is requesting.

While FIF questions the benefits of providing the additional order information requested in the proposal, we do believe there are benefits to ATS transparency. The recent implementation of the MPID amendments along with the associated ATS OATS and Trade Reporting guidance³ will provide new trade reporting and order audit trail information to FINRA to support their regulatory goals. Additionally, FINRA could explore additional special handling codes to capture various pegging and other market data-dependent order types. To this end, FIF members have expressed a willingness to continue the dialogue with FINRA to determine how best to capture additional data as part of the order audit trail.

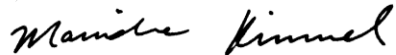
Given that OATS will be retired as part of the Consolidated Audit Trail (CAT), FIF recommends that rather than enhancing OATS for the short-term, any requirements to come out of further discussions should become functional requirements of CAT. Requiring significant changes at both firms and FINRA to accommodate this proposal would be short-sighted in light of CAT. We acknowledge FINRA's concerns with the timing of CAT but believe that given their role as both a member of the SRO CAT consortium as well as a bidder for the CAT processor, they are uniquely positioned to drive CAT forward in a timely manner. In its current form, a significant effort will be required on the part of impacted firms to implement this proposal. The implementation time required for the re-engineering efforts described above is not trivial. Requiring firms to make enhancements to OATS in parallel with CAT implementation will drain internal resources and strain CAT implementation timelines. We are hopeful that FINRA will amend this proposal and consider CAT as part of any future rule-making in this area.

³ Available at http://www.finra.org/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=P598513

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We appreciate the opportunity to comment on these impactful proposals and look forward to identifying solutions that better meet FINRA's interest in achieving their regulatory goals in an effective and efficient manner.

Regards,



Manisha Kimmel
Managing Director
Financial Information Forum

cc: Richard G. Ketchum, Chairman and Chief Executive Officer
Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy
Shelly Bohlin, Vice President, Market Analysis and Audit Trail Group, Market Regulation
Andrew Madar, Associate General Counsel, Office of General Counsel (OGC)

Stephen Luparello, Director, Division of Trading and Markets, Securities and Exchange Commission

Gary Goldsholle, Deputy Director, Division of Trading and Markets, Securities and Exchange Commission

David S. Shillman, Associate Director, Division of Trading and Markets, Securities and Exchange Commission



February 20, 2015

Via Electronic Mail (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-51: FINRA Request for Comment on Proposed Rules Requiring the Identification of Non-Member Broker-Dealers in Order Audit Trail System (OATS) Reports and the Reporting of Additional Order Information by Alternative Trading Systems (ATS)

Dear Ms. Asquith:

KCG Holdings, Inc. (KCG) respectfully submits this letter in response Regulatory Notice 14-51 (RN 14-51 or the Notice) issued by the Financial Industry Regulatory Authority (FINRA). KCG appreciates the opportunity to comment on the Notice and commends FINRA generally on its recent series of initiatives relating to market structure and automated trading activities.

RN 14-51 requests comment on proposed rule amendments that would require member firms to report additional information to OATS. The proposal has two primary components: (1) identification of non-member broker-dealers to OATS; and (2) reporting of additional order information by ATs. KCG supports FINRA's goal of improving its ability to support cross-market surveillance and monitor trading activity in the over-the-counter (OTC) market. However, as discussed in more detail below, we recommend that FINRA consider revising its proposal in several respects prior to filing it as a proposed rule change with the U.S. Securities and Exchange Commission (Commission).

I. Background

KCG is a global financial services firm that offers investors a range of services designed to address their trading needs across asset classes, product types and time



zones. As an independent, electronic market maker, KCG combines advanced technology with exceptional client service to deliver greater liquidity, lower transaction costs, improve pricing, and provide execution choices. KCG is a registered market maker on numerous U.S. cash equity and options exchanges, including a DMM and Supplemental Liquidity Provider on the New York Stock Exchange (NYSE), and a Lead Market Maker on NYSE Arca. As a market maker, KCG commits its capital to facilitate trades by buyers and sellers on exchanges, ATSS, and directly to our clients.

KCG offers clients multiple opportunities to interact with our market making operations. In addition, KCG's institutional clients have access to algorithms and experienced trading desks to access liquidity, maintain anonymity and minimize market impact. KCG also operates two Commission-registered ATSS.

II. Discussion

A. Identification of non-member broker-dealers to OATS

FINRA is proposing to require that a FINRA member (Reporting Member) that is reporting an order received from a non-member broker-dealer to identify the non-member broker-dealer as part of its OATS report. Currently, FINRA is able to identify with specificity the trading activity of FINRA member broker-dealers across market centers through the use of OATS reports and data provided to FINRA by the exchanges. FINRA is unable, however, to consistently identify the trading activity of non-member broker-dealers across market centers. Although Reporting Members do report to OATS orders they receive from non-member broker-dealers, these reports do not contain the identity of the non-member broker-dealer.

Under the proposal, a FINRA member receiving an order from a non-member broker-dealer would be required to reference a unique non-member identifier when reporting the order to OATS that would allow FINRA to identify the non-member broker-dealer. FINRA noted this identifier would either be an existing SRO-assigned identifier such as a market participant identifier (MPID) or the Central Registry Depository (CRD) number for non-member broker-dealer that does not have an SRO-assigned identifier. FINRA believes the inclusion of non-member broker-dealer



identities will significantly improve its ability to support cross-market surveillance and better monitor OTC trading activity.

KCG supports FINRA's proposal to better identify non-member trading activity across markets. We do, however, have several suggestions to improve the proposal. First, FINRA should compile a table (FINRA Table) that includes the preferred non-member identifier – whether an MPID, CRD, or some other identifier - to be relied upon by Reporting Members for identifying all non-member broker-dealers to OATS. FINRA should update the FINRA Table regularly and ensure it is readily available to all Reporting Members. Second, Reporting Members should only be required to report to OATS identifying information for non-member broker-dealers appearing on the FINRA Table. In other words, if a Reporting Member receives an order from a non-member broker-dealer that does not appear on the FINRA Table at the time of order receipt, the Reporting Member should not be required to provide any identifying information regarding the non-member broker-dealer to OATS. These revisions to the proposal will allow FINRA to perform appropriate cross-market surveillance while ensuring that Reporting Members identify non-members to FINRA in a consistent manner.

B. Reporting of additional order information by ATSS

FINRA is proposing to require ATSS that exceed a certain volume threshold¹ to report to FINRA through OATS 'additional order information' to supplement the order information ATSS currently report to OATS. FINRA noted that several data elements "are not required to be report to OATS, such as order re-pricing events (e.g., an order that is pegged to the National Best Bid or Offer) ... and [b]ecause these components of, or changes to, an ATSS order book are not reported, FINRA is not able to use existing OATS data to fully reconstruct an ATS order book for surveillance purposes." Under the proposal, an ATS would be required to report all events and order attributes that would change the ATS's system quantity (number of shares of an order, whether displayed or undisplayed, that can currently execute within the ATS), the displayed quantity, the highest (buy orders) or lowest (sell orders) price at which the order can currently execute within the ATS, and the displayed price for an order.

¹ The order reporting requirements would apply to any ATS that accounts for more than 0.25 percent of consolidated market share in any security over a one-month period.



One reason cited by FINRA in support of requiring additional information from ATSs is to allow FINRA to receive comparable information to the information it already receives from exchanges. While we applaud FINRA's efforts to better understand ATS operations, we believe this rationale reflects a fundamental misunderstanding about the meaningful differences between the operation of exchange matching engines and ATS matching engines. KCG believes that the proposal needs to be modified to recognize the real distinctions between exchanges and ATSs. Without such modifications, FINRA will be placing an undue burden on ATS operators to comply with a new requirement that provides FINRA with an enormous amount of supplemental data that will be of limited use towards FINRA's goal of reconstructing ATS order books for automated surveillance.

There are many examples of the differences between ATS and exchange operations, which are a result of markedly different business models and reflected in their respective matching engines. For example – unlike exchanges - ATSs do not necessarily re-price open orders with every movement in the market. While changes in the national best bid and offer (NBBO) impact the prices at which an ATS may potentially execute an order, these NBBO changes may not result in a re-pricing or other event. ATSs that do not display or route orders to other market centers may not re-price orders unless there is a contra-side order in the ATS, if at all. Also, an exchange must accept and execute all orders according to universal protocols based around price/time priority whereas an ATS may or may not use protocols based around price/time priority or may be designed to cater to certain preferences (order size, investor type, etc.). In addition, an ATS may allow for segmentation among subscribers, providing choice as to the types of counterparties with whom subscribers interact on the ATS based upon various categorizations (agency vs. principal; retail, institutional, electronic market maker; or based upon quantitative metrics such as liquidity profiles). As a result, ATSs may permit blocking and filtering among subscribers – such “opt-out” functionality is not permitted on exchanges – that may result in ATS orders that do not execute against what may appear to be otherwise available contra-side interest.

In addition to providing an incomplete view of ATS order books, KCG believes the proposal will manufacture a substantial number of additional new OATS records. On average, KCG currently generates and sends approximately 60 million OATS records



each day related to ATS activities. We estimate that implementation of the proposal will require us to generate and send anywhere from 15 to 30 times the amount of records we currently generate and send to OATS. Other ATS operators are also likely to face a similar surge in the volume of data they will need to generate and send to OATS. In addition, ATSs will also have to store this massive amount of new data to be generated by the additional records requirement. All of this will place a significant burden on ATS operators as they will be required to invest not only in substantial technology development time but also in ongoing hardware, storage and other infrastructure costs.

Currently, many ATS operators generate OATS reports by running an end-of-day batch process. The additional records requirement may necessitate that firms revamp their processes in order to meet their OATS reporting obligations. Specifically, the volume of new records that must be incorporated into ATS OATS workflows and may require the creation of real-time OATS generation process in order to meet this new requirement. The reason for the need to create real-time processes is largely due to existing time to process the overnight batch. Without significant modifications, batch processing times would likely exceed the requirements of delivery to FINRA by 8:00 AM on T+1, which will cause firms to experience breaks in OATS reporting.

KCG believes FINRA should meet with ATS operators and industry groups to discuss their operations with a view towards developing a standardized set of special handling codes to be used by ATS operators in OATS reports and which will account for opt-out features that result in otherwise executable contra-side orders not interacting.

* * *

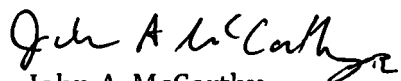
KCG recommends that FINRA consider our comments and suggestions and revise its proposal accordingly prior to filing it as a proposed rule change with the Commission.



III. Conclusion

KCG appreciates this opportunity to comment on FINRA Regulatory Notice 14-51. Please do not hesitate to contact me at 646-428-1615 if you have questions regarding any of the comments provided in this letter.

Sincerely,


John A. McCarthy
General Counsel

cc: Robert Colby, Chief Legal Officer, FINRA

February 20, 2015

By Email

pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-51; Equity Trading Initiatives: OATS and ATS reporting Requirements

Dear Ms. Asquith,

Liquidnet, Inc. (Liquidnet) appreciates the opportunity to comment on Regulatory Notice 14-51 (the Regulatory Notice) published by the Financial Industry Regulatory Authority (FINRA).

Liquidnet is a broker-dealer registered with the Securities and Exchange Commission (SEC) and a member of FINRA. Liquidnet operates two SEC-registered alternative trading systems (ATSs): the Liquidnet Negotiation ATS, which executes negotiated transactions; and the Liquidnet H2O ATS, which provides for automated execution of orders at the mid-point of the national best bid and offer (NBBO). All orders in the Liquidnet H2O ATS are pegged to the mid-point of the NBBO (mid-peg orders). Based on Rule 605 data filed with the SEC, during 2014 Liquidnet generated average price improvement of 93.90% for covered orders for the Liquidnet H2O ATS, as compared with 9.32% average price improvement for the industry as a whole.¹

Identification of non-member broker-dealers to OATS

FINRA proposes that a reporting FINRA member, when reporting through OATS an order received from a non-member broker-dealer, identify the non-member broker-dealer. FINRA provides that the identifier for the non-member broker-dealer would either be an existing SRO-assigned identifier, such as a market participant identifier (MPID), or the Central Registration Depository (CRD) number of the non-member broker-dealer.

Liquidnet will seek guidance from FINRA as to whether this requirement applies for orders received by Liquidnet from its non-US affiliates. These non-US affiliates are registered securities dealers in other jurisdictions. They do not have SRO-assigned identifiers or CRD numbers.

¹ Data available by subscription to VistaOne Regulatory Services.

Reporting of additional order information by ATs

FINRA proposes to require ATs that exceed a specified volume threshold to report additional order information to supplement the information currently reported to OATS. All Liquidnet ATS executions involve either a negotiation process or the execution of a mid-peg order. Liquidnet will seek guidance from FINRA as to how the proposed additional reporting requirements apply to negotiated and mid-peg orders and executions. For example, Liquidnet will seek guidance as to whether FINRA would consider a negotiated order to have a displayed quantity.

Liquidnet also requests clarification on the requirement to report order re-pricing events. As noted above, all orders in the Liquidnet H2O ATS are mid-peg orders. Having to report every time that the mid-peg price changes as a result of a change in the NBBO would create a significant reporting burden for Liquidnet; at the same time, this information would provide limited value to FINRA as FINRA already has access to NBBO data. Mid-peg orders that our customers submit always have an explicit limit price (or a limit price imputed by Liquidnet where the customer fails to indicate a limit price). In either case, Liquidnet reports this limit price to FINRA through OATS, along with any updates to the limit price, as instructed by the customer. A less onerous alternative would be to require that an ATS, in connection with reporting the execution of a mid-peg order, report the best bid and best offer prices that the ATS referenced to derive the execution price.

Effective date

There should be a sufficient time period between FINRA's publication of functional specifications for the new reporting requirements and effectiveness of the rule to enable Liquidnet and other ATs to seek and obtain guidance from FINRA on the new reporting requirements.

Conclusion

Liquidnet appreciates the opportunity to comment on the rule proposals set forth in the Regulatory Notice. Please contact me at (646) 674-2044 if you would like clarification on any of our comments.

Very truly yours,



Howard Meyerson, General Counsel