



February 20, 2015

**Via Electronic Mail ([pubcom@finra.org](mailto:pubcom@finra.org))**

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

Re: FINRA Regulatory Notice 14-48: Proposal to Publish OTC Equity Volume Executed Outside Alternative Trading Systems

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to comment on the above-referenced proposal by the Financial Industry Regulatory Authority (“FINRA”). Under the proposal, FINRA would expand its alternative trading system (“ATS”) transparency initiative to publish the remaining equity volume executed over-the-counter (“OTC”), including non-ATS electronic trading systems and internalized trades. SIFMA supports the proposal, with some suggestions to avoid unnecessary operational friction.

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

SIFMA generally supports FINRA’s proposal, consistent with its recommendations on transparency & disclosure. However, some of the specifics of the proposal raise the possibility of

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<sup>1</sup> 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>.

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

operational concerns that FINRA should address before this initiative is filed with the Securities and Exchange Commission (“SEC”) as a proposed rule change. Specifically, our comments fall into three areas: (1) the potential for information leakage; (2) FINRA’s fee to access Alternative Trading System (ATS) / Over-The-Counter (OTC) volume information; and (3) the need to sunset the current ATS reporting requirement under FINRA Rule 4552.

### ***Information Leakage and Scope of OTC Information***

Under the proposal, FINRA would publish OTC volume data in the same format and on the same schedule that it uses for ATS volume data, which is to publish weekly aggregated information, on either a two or four week delayed basis depending on the security type.<sup>3</sup> We are concerned that the two-week publication timeframe may result in unintended information leakage. In particular, the current proposal would include disclosure of large institutional trades done OTC, which could enable reverse engineering of those trades if they are published within two weeks. For the OTC volume disclosure, we believe the volume information should be aggregated on a monthly rather than weekly basis, and made available to the public and industry participants following a four-week delayed basis, as currently provided under FINRA Rule 4552(b)(2).<sup>4</sup>

### ***FINRA Fee to Access ATS/OTC Volume Information***

SIFMA has previously expressed opposition to FINRA’s fee structure for access to ATS Volume information, and that opposition applies equally for this proposal. In the proposal, FINRA notes that, “[f]or fee purposes, [the OTC volume] data may be combined with the ATS data that is currently available and for which subscribers are charged under Rule 4553.” SIFMA continues to oppose FINRA charging a fee to access the data and the fact that only a limited scope of information is available for free on the FINRA website.<sup>5</sup> As we have noted before, non-professional, non-subscriber users have access only to four weeks of ATS volume data, and only in a viewable, non-downloadable format. Any person who wants access to more extensive information, or to any downloadable information, whether professional or non-professional, must pay at least \$12,000 for an annual subscription for that data. Moreover, professional users are not permitted even to access the limited website information unless they also are subscribers.

FINRA’s fee structure for access to this information calls into question how the benefits of market transparency are furthered by providing members of the public with only a limited snapshot of ATS Data unless they pay a significant fee to FINRA. FINRA should make available to the public all ATS and OTC volume data for free in a downloadable format. Such

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<sup>3</sup> See FINRA Rule 4552(b).

<sup>4</sup> In this regard, we note that order execution reports published pursuant to SEC Rule 605 provide standardized, monthly reports of statistical information concerning order executions, and such reports are made available within one month after the end of the month addressed in the report.

<sup>5</sup> See e.g. Letter from Theodore R. Lazo, Managing Direct and Associate General Counsel, SIFMA to Securities and Exchange Commission dated May 29, 2014.

an approach would be analogous to the SEC's Market Structure website, which provides all individuals with the opportunity to view and download key metrics and certain market data produced from the Market Information Data and Analytics System. This approach also is consistent with public access to information that is provided by market centers pursuant to Rule 605 of Regulation NMS. SIFMA continues to believe that increased transparency will benefit all market participants, and we can see no reason why FINRA would not make all of the ATS Data available to the public at large for free in a downloadable format.

### ***Sunsetting of ATS Reporting Requirement***

As we noted previously, FINRA should eliminate the current requirement for ATSs to report volume information to FINRA. Under FINRA rules, each ATS is currently required to report its weekly trading volume, by security, to FINRA. As of February 2, 2015, each ATS must use a unique market participant identifier ("MPID") for reporting order and trade information to FINRA.<sup>6</sup> Accordingly, FINRA now has access through its own systems to all of the ATS volume information without the need for a separate reporting requirement. Now that the MPID requirement is effective and functioning, the regulatory need for the self-reporting has been fully obviated, which is further reflected in the fact that the current proposal would not require broker-dealers to separately report their OTC volumes to FINRA.

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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 202-962-7383 or [tlazo@sifma.org](mailto:tlazo@sifma.org)) or Timothy Cummings (at 212-313-1239 or [tcummings@sifma.org](mailto:tcummings@sifma.org)).

Sincerely,

A handwritten signature in blue ink, appearing to read "Theodore R. Lazo", with a stylized flourish at the end.

Theodore R. Lazo  
Managing Director and  
Associate General Counsel

cc: Stephanie Dumont/FINRA

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<sup>6</sup> See Securities Exchange Act Release No. 73340 (October 10, 2014), 79 FR 62500 (October 17, 2014)