

FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

November 9, 2018

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

RE: Regulatory Notice 18-28 – OTC Equity Trading Volume

Dear Ms. Asquith,

The Financial Information Forum¹ (“FIF”) on behalf of its member firms, respectfully requests further clarity and guidance on the regulatory intent of Regulatory Notice 18-28, expanding OTC Equity Trading Volume Data Published on FINRA’s Website (“Proposed Rule”).

In FIF’s view, the Proposed Rule, in its current form, provides industry members and investors with insufficient guidance regarding the regulatory purpose and the benefit to the market and investors of publishing data executed on a Single Dealer Platform (“SDP”). Specifically, FIF member firms believe that the information that would be provided to the market under the Proposed Rule does not provide additional transparency in the marketplace as non-ATS information is currently reported through Trade Reporting Facilities (“TRFs”), through the Order Audit Trail System (“OATS”), and soon through the Consolidated Audit Trail (“CAT”). Additionally, the Proposed Rule does not clearly specify how and to what degree investors will benefit from the publication of non-ATS data and data derived from orders executed on an SDP.

In addition, industry members believe that the term “Single Dealer Platform” is insufficiently defined and thus does not adequately inform industry members whether a particular trading system is subject to the proposed rule. As will be explained below, *the term SDP should be more clearly defined prior to adoption of the Proposed Rule.*

Furthermore, the Proposed Rule suggests that the cost to implement its requirements will be small and born only by the SDP operators.² However, the rule proposal fails to recognize the significance of the cost to order flow providers (especially retail broker-dealers), as well as the SDP operators, of adding a new MPID.

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities 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 As noted in Regulatory Notice 18-28, “FINRA does not believe that there would be any direct costs associated with the proposal – to firms, investors, or data consumers.”

In sum, due to the ambiguous benefit to investors, unclear definitional components (*i.e.* SDP), and understated cost, FIF respectfully requests that FINRA provide additional detail and analysis regarding the expected benefit the rule proposal will provide investors and to issue further guidance regarding the definition of which trading platforms fall under the intended definition of a Single Dealer Platform.

Regulatory Ambiguity

FIF recognizes the need for regulatory transparency in the marketplace and supports FINRA's many initiatives designed to provide investors with a greater transparency into the markets. However, FIF strongly emphasizes that in any regulatory mandate that requires the allocation of additional resources and costs onto industry participants, regulators should define clear objectives that will provide regulators, market participants, and investors with corresponding value. A rule proposal should also be sufficiently well-defined to enable market participants to adequately assess the potential aggregate impact of the Proposed Rule's requirements.

FIF members believe that in its current form, there is a lack of a clear objective in the Proposed Rule. The rationale for the publication of non-ATS block size trading data currently does not bear a valid relationship to the costs and risk associated with the proposal, especially given the fact that the data to be reported under the rule is already reported through TRFs. While FINRA cites that the objective of the Proposed Rule is that "non-ATS block size data would be beneficial to firms and the general public and that it will provide interested parties with more detailed information on non-ATS trading activity..." FIF believes that these conclusory statements do not demonstrate how the publication of electronically communicated non-ATS block size trades would benefit investors, the market, regulators, or other interested parties, nor how such parties would use this data. Therefore, FIF respectfully requests that FINRA provide participants with greater detail regarding the objectives and benefits of the Proposed Rule to investors.

Definition of Single Dealer Platform

Pursuant to the Proposed Rule, FINRA will publish/publicly disclose information of trades executed on a firm's SDP. To gather SDP data, FINRA is proposing to require that firms that operate an SDP obtain and use a unique MPID for reporting trades executed on the SDP to FINRA for publication on FINRA's website. To date, the term "Single Dealer Platform" is not sufficiently defined in an analogous rule requirement.³ Thus, industry members believe that the definition of an SDP is broad and could encompass many of a firm's existing business(es), making it difficult for a firm to assess whether it operates one or more SDP and determine the full scope of the Proposed Rule's requirements in obtaining one or more new MPID(s). Specifically, because the term "SDP" has not been sufficiently defined in another FINRA rule, industry members believe that SDPs can be comprised of several trading platforms and applications in which the Proposed Rule is not intended to cover. Therefore, to properly assess whether a firm's trading platforms meet the intended definition of an SDP, FIF strongly urges FINRA to clearly define the intended meaning of an SDP.

³ Reg ATS defines a single dealer as "such systems [that] automate the order routing and execution mechanisms of a single market maker and guarantee that the market maker will execute orders submitted to it as its own posted quotation for the security or, for example, at the inside price quote on Nasdaq."

Additional MPID to Segregate SDP Activity

As stated above, the Proposed Rule would require firms that operate an SDP to register for and obtain an additional MPID to separately report SDP activity to FINRA. FIF believes that the proposed requirement of obtaining an additional MPID to separately report SDP activities is redundant given that non-ATS OTC block-size data is currently reported to FINRA through TRFs and *could* be observed using a firm's primary MPID through the requirement of a separate reporting tag. FIF requests that the transparency benefits to investors of segregating SDP activity outside of what is currently reported through TRFs be assessed and communicated to industry members in a subsequent rule proposal.

FIF strongly emphasizes that requiring firms to use a separate MPID (*i.e.* a separate identity) to achieve FINRA's stated goal of separately identifying SDP transactions that could be attained through other regulatory reporting requirements (*i.e.* segregating SDP activity through separate reporting tags tied to TRFs and later the Consolidated Audit Trail). Further, FIF believes that using tape data is not the best or a necessary source for accessing the desired data. Within current regulatory reporting regimes (*i.e.* OATS/TRFs), trades can likely be identified as having been originated from an SDP through tags, without introducing the unnecessary complexities of a separate MPID. Adding a further dependency or complexity in tape reporting is contrary to the purposes of (and large investment in) the establishment of CAT.

Furthermore, MPIDs are currently leveraged for many uses, including internally at firms to meet regulatory reporting responsibilities. Splitting out a subset of transactions (*i.e.* the reporting of trades executed on an SDP) through the creation of a new MPID(s) introduces many challenges to the marketplace. First, the management of entity-related data is already a difficult and costly exercise. Breaking the current relationship model of one MPID to another by creating what will effectively be a "sub-MPID" of a "whole" MPID entity will create difficulties in ensuring relationships are correctly maintained. Second, there is the potential that firms/FINRA will double count activity, or incorrectly attribute activity, given the current reporting requirements within the OATS infrastructure, as well as the routing of orders dependent upon MPIDs.

FIF believes that further fragmentation of the MPID infrastructure for the singular purpose of separately reporting trades executed on an SDP counters recent regulatory initiatives of identifying entities, institutions, and other parties (*i.e.* efforts led by the FSB, CPMI-IOSCO, and the G20 recommendations on entity and natural person identification), as well as basic data governance principles. Obtaining a new MPID may have potential long-term costs in operational errors, fragmentation, and poor data quality resulting in greater negative impact than the added transparency benefits the Proposed Rule is seeking to gain.

Changing the MPID of the SDP will require all parties to reconfigure or replace existing trading interfaces, and the reporting and clearing instructions associated with them. Further, changing the MPID of the SDP, which often holds a very large book of Good-Til-Canceled orders received from retail brokers, will require both the SDP and the retail order originators to cancel and re-enter all of those orders, due to the constraints of OATS reporting. This will impose a very significant effort for many retail brokers.

Redundancy with CAT

Firms are currently in the throes of planning for the implementation of the Consolidated Audit Trail, which will begin testing on August 15th, 2019 and will go live on November 15, 2019. Resource allocation associated with CAT implementation began in earnest after the final CAT Technical Specification was published on October 30, 2018. Costs associated with CAT implementation will likely exceed tens of millions of dollars for many large Broker-Dealers. Since CAT will be capturing OTC trading data, FIF believes that the requirements of Regulatory Notice 18-28 are redundant with CAT and is therefore imposing additional and duplicative regulatory reporting requirements that CAT was intended to relieve.

Conclusion

While FIF supports FINRA's various transparency initiatives that are intended to provide a net benefit to the investor community, we believe that it is imperative that any regulatory mandate that imposes additional costs and complexity onto industry members should state a clear objective and be implemented in a manner that imposes the least amount of regulatory burden upon the impacted firms. FIF believes that the regulatory benefit of the Proposed Rule should be more clearly stated so that industry members may more adequately assess the benefits of the Proposed Rule versus the burden of implementation, fragmentation and reporting, especially considering the cost and limited resources firms have for additional system changes caused by the need to implement and comply with CAT. Furthermore, we have consistently urged regulators to fully assess alternatives to various regulatory requirements to reduce the costs of implementation and avoid duplicative mandates. Here, FIF views the requirements imbedded within the rule proposal (*i.e.* requiring firms to obtain an MPID) as redundant and unnecessary given that firms already report the data requested in the Proposed Rule through TRFs and other means.

Therefore, FIF respectfully requests that FINRA consider providing industry members with greater detail regarding the intent of the Proposed Rule, re-assess the complexity and costs involved, and further consider alternatives to access non-ATS OTC block-size data and SDP activity. In that regard, we look forward to providing additional substantive comments once the purpose and detail of the Proposed Rule has been clarified.

FIF welcomes the opportunity to discuss the considerations raised in this letter at FINRA's earliest convenience. Please feel free to contact me directly at 212-652-4485 or chris.bok@fif.com

Regards,



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Financial Information Forum

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