FINANCIAL INFORMATION FORUM
5 Hanover Square
New York, New York 10004
212-422-8568

Via Electronic Delivery

March 21, 2016

Mr. Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: SR-FINRA-2015-047; Release No. 34-77218

Dear Mr. Errett,

On behalf of Financial Information Forum ("FIF")[1] non-exchange industry members, I am writing to request further consideration of Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change to Adopt FINRA Rule 6191(a) to Implement the Quoting and Trading Requirements of the Regulation NMS Plan to Implement A Tick Size Pilot Program. We wish to take this opportunity to discuss the manner in which certain language in the Plan and the proposed rules is being interpreted, and also highlight several key points as the industry moves forward with implementation of the Pilot and as the effective date draws near.

The focus of our concern is on the Tick Size Pilot quoting and trading requirements specifically related to the Trade-at Prohibition. FIF's comment letter of February 18, 2016 to the Commission in reference to Release No. 34-76971[2] included trading scenarios that are common practice today, which our members believe should be permitted going forward under the Tick Size Pilot Plan. The feedback FIF recently received on several of the scenarios has heightened our concerns regarding the differences in interpretation of the basic definition of "trade-at" and the lack of clarity and understanding, industry-wide, of the mechanics of the trade-at provision.

The first example in the aforementioned comment letter[3] described a trade in a Pilot Security in Test Group Three where customer orders are crossed "at the inside"; that is, a customer sell order is filled in a principal capacity at the offer, and subsequently a customer buy order is filled at the same price, in a riskless capacity.[4] While our example relied on a block exemption, FIF

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact financial services and technology firms. 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 to arrive at productive solutions to meet the requirements of new regulations, technology developments, and other industry changes.
[2] FIF Comment Letter, February 18, 2016. https://www.sec.gov/comments/sr-nyse-2015-46/nyse201546-6.pdf
[3] FIF Comment Letter, pg.3.
[4] In practice, the sequence in which the orders are filled should not be relevant; the buy order may be the first filled, followed by the sell order.

members assert that absent any exemption from the Trade-at provision, the first principal leg of this transaction would be permissible under the Plan without the need to send a "Trade-at ISO".

FIF members' rationale for this position is based on the definition of "trade at" as stated in the Plan: "the execution by a trading center of a *sell order* for a Pilot Security at the *price of a protected bid* or the execution of a *buy order* for a Pilot Security at the *price of a protected offer.*" and FINRA rule 6191(a)(6)(D)(i): "absent any of the exceptions listed in subparagraph (D)(ii) below, no member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours ("Trade-at Prohibition")."

Because in our example the customer *sell order* is being executed at the *offer* (a price more favorable than the *best protected bid* price being displayed at the time the order is received) there is no guarantee that the customer order can be filled on an exchange. However, in this example, the trading center is willing to fill the order in a principal capacity with significant price improvement, in particular by giving a customer the "benefit of the spread". The second leg (the customer order to buy the Test Group Three Pilot Security) would then be filled at the offer price in a riskless principal capacity, in accordance with FINRA Rule 5320.

Similarly, the second example in the previous FIF comment letter[5] described a cross "at the inside" executed in an agency capacity. Each of the examples are based on FIF members' understanding of the plain meaning of "trade-at" as defined in the Plan ; that is, sell orders may be filled at the offer and buy orders may be filled at the bid, without being subject to the Trade-at requirement.

We believe FIF members' reading of the definition of "trade-at" is the only reading that is consistent with the plain language of the Plan and is also in keeping with one of the primary goals of the JOBS Act; that is, providing support for small firms' access to capital. To establish new requirements under the Tick Size Pilot that would not permit the behavior described above would be counter-productive to the goal of increasing liquidity. Enabling a trading center to fill a customer order to buy at the bid would increase liquidity, in contrast to requiring that trading center to send a Trade-at ISO to complete the transaction, which would subject the trading center unnecessarily to added risk he may not be willing to accept. The net result would be orders posted to exchanges that could remain unexecuted and reduced liquidity in the Pilot Security.

To be clear, FIF members believe that under the Tick Size Pilot Plan and rules as they have been proposed, broker dealers should be able to cross orders at the protected bid or the protected offer ("inside crosses"), without being subject to the Trade-at requirement. We believe this is in alignment with the definition of "trade-at" as written, as well as best execution requirements and FINRA Rule 5320[6]. If this is not the case, the existing definition of "trade-at" in the Plan and the proposed rules is ambiguous and misleading, and in retrospect industry participants were not fully given the opportunity to comment on the Tick Size Pilot Plan Trade At

[5] FIF Comment Letter. pg.4.

[6] FINRA Rule 5320 .07 Order Handling Procedures. A member must make every effort to execute a marketable customer order that it receives fully and promptly. A member that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the member on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the member and that is consistent with the terms of the orders.

Prohibition because the Participant's interpretation of the definition of "Trade At" contradicts what was stated in plain English.

“Inside crosses” in either a riskless principal capacity or an agency capacity, are routine in today’s trading practices. As Tick Size Pilot requirements deviate further from the baseline of Regulation NMS Rule 611 requirements and existing practices, implementation becomes more complex. This translates to longer implementation timelines, higher implementation costs, and greater implementation risks as non-Pilot securities on existing trading systems may be impacted where implementations have been rushed or the requirements not well thought-out. For these reasons, we urge the regulators to carefully consider the requirements and guidance provided to be as closely aligned to Rule 611 implementations and interpretations as possible.

Generally, there is an industry-wide lack of understanding of the trade-at provisions such as the differences between an “ISO” and “Trade-at ISO”, and which order type should be used under various conditions. There is also a lack of technical support (additional fields in message protocols) for the new “Trade-at ISO” order type that must be accommodated by all trading centers, exchanges, ATSs, as well as FINRA’s TRFs and OATS reporting systems. We require the details of the new order type including technical specifications for communication of a “Trade-at ISO” as well as any changes to OATS or TRF trade modifiers that may be necessary. It is imperative that regulators and all market participants impacted by Tick Size Pilot have a common understanding of the requirements and a consistent, standardized implementation.

With little more than six months until the effective date for the Tick Size Pilot, we remind the regulators that the industry must move quickly to establish a clear definition of the requirements, resolve the open issues, publish explanatory FAQs and issue final specifications for order routing and reporting.

Thank you for the opportunity to provide comment on these time-critical and important industry issues. Please do not hesitate to contact me with questions or to arrange follow-up discussions.

Regards,

Mary Lou Von Kaenel

Mary Lou Von Kaenel
Managing Director
Financial Information Forum

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
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets