FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

August 16, 2016

Mr. David Shillman
Associate Director, Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Tick Size Pilot – FIF Concerns with Publication of Disaggregated B.I. and B.II Statistics

Dear Mr. Shillman,

On behalf of Financial Information Forum ("FIF")[1] non-exchange industry members (for purposes of this letter, referred to as "FIF members" or "members"), I am writing to request that the Commission reconsider current plans to publish B.I. and B.II. calculations for Tick Size Pilot securities' orders and executions in a disaggregated form. Our members have serious concerns that certain data will be made public on a transaction-by-transaction basis, and the proposed disaggregated format will allow the identity of trading centers and specific trading strategies to be reverse-engineered with relative ease.

FIF highlighted similar concerns in our comment letter of December 16, 2015, in response to the filing of SR-FINRA-2015-048.[2] At that time, FIF explicitly requested that "*the industry be invited to assist in defining the form and content of the data that will be made publicly available…"*

The Commission referenced FIF's concerns in its approval of FINRA 2015-048[3] and delayed the first publication of pre-Pilot statistics specifically to allow Participants time to assess whether additional measures should be taken to "prevent the disclosure of attributed Trading Center data." To date, FIF has not been consulted on the specifics of this public disclosure; FIF members do not believe that proper measures are being taken to prevent such disclosure.

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[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] https://www.sec.gov/comments/sr-finra-2015-048/finra2015048-1.pdf; p. 3 "With respect to data made publicly available by FINRA or other SROS, Trading Centers have concerns regarding publication of *disaggregated* data. Because some of these securities trade infrequently and there may be a limited number of market participants and trading centers that provide liquidity, even if unattributed, the data may be reverse-engineered to identify the counterparties. FAQ 24 indicates that "anonymity will be established through *aggregation* of the data as described in the Plan"."

[3] Release No. 34–77164; File No. SR–FINRA– 2015–048 http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-048-approval-order.pdf

The approach currently planned for publication of disaggregated data is based on an interpretation of the Plan and FINRA's rule filing[4] which states: "As set forth in Section VII of the Plan (Collection of Pilot Data), proposed Rule 6191(b)(2)(B) provides that FINRA shall transmit this data collected by Trading Centers required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2)(A), to the SEC in a pipe delimited format on a disaggregated basis by Trading Center within 30 calendar days following month end. FINRA also shall make such data publicly available on the FINRA website on a monthly basis at no charge and will not identify the Trading Center that generated the data."[5]

FIF members find this language ambiguous. While the Plan's requirement to provide disaggregated data to the SEC is definitive, the sentence that follows indicates that FINRA must make data available on its website, but "will not identify the trading center that generated the data". The language is not explicit with respect to the required form or format of the data, nor does it require a trading center to be identified or referenced in any manner.

Thus, FIF members take issue with: a) the fact the public data will be *disaggregated*; and, b) the concept and method of "masking" that has been proposed by FINRA to conceal the identities of the non-exchange trading centers. If the intent truly is to provide the data anonymously, FIF believes the masking approach fails to achieve that objective. If it is *not* the intent of FINRA or the Commission to anonymize this data, then we believe it to be a "first", as we are unaware of any other instance where regulators have provided the public with individual transaction details of this nature. FIF would be extremely uncomfortable with this precedent-setting model and its unintended consequences.

We wish to take this opportunity to provide several examples of situations where identification of non-exchange trading centers, and leakage of firms' intellectual property (IP) and/or customer trading strategies could cause harm. We also offer several alternatives we believe will thwart attempts at reverse-engineering, while fulfilling the goals of the Pilot.

First, we wish to emphasize that the Commission will receive all transactional data with a level of granularity and trading center attribution that will support thorough analysis by Commission staff. FIF's objection is to the public availability of this detailed data, where its use and application is beyond all control. While the goal of free accessibility for purposes of constructive and thoughtful analysis is commendable, we cannot be sure that the data will not be used to discover proprietary strategies or place market participants at a competitive disadvantage. Broad access could ultimately cause harm to all constituents including broker-dealers, customers and the issuers themselves, as market participants' strategies can easily be derived using disaggregated data (even if masked in the proposed manner). Moreover, public dissemination of this data could lead to market manipulation. Additionally, lack of anonymity could cause firms to become wary of trading Tick Size Pilot securities for fear of leaking IP, and undermine the goals of the Pilot.

Because the majority of Pilot stocks are relatively illiquid, specific transactions will be easy to identify, and a "masked" MPID will not prevent a viewer from establishing the identity of a particular trading center and its "dummy ID" that will be used consistently throughout the Pilot. For example, the identification of a trading center can be accomplished with knowledge of a

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[4] SR-FINRA-2015-048

[5] Member firms also confirm that based on discussions with FINRA staff, FINRA intends to publish the disaggregated data on its website, using "dummy IDs" which will not change throughout the course of the pilot.

single transaction, or comparisons to 605 reports, or using FINRA's publication of OTC volumes. Once that trading center linkage is determined, all future trades associated with that dummy ID can be tracked order-by-order, symbol-by-symbol, and trading strategies can be reverse-engineered.

Broadly, the granularity of the data being published will allow investors' strategies and those of the broker-dealers entrusted with their orders to be plainly recognized, to the detriment of the investor, the broker-dealer and the issuer.

The following are simple examples where each of the market participants could be negatively impacted.

- Harm to Investors - To our knowledge, this would be the only public source of unexecuted order information. This could create a scenario that would cause harm to investors. If there are specific investors that trade in illiquid names, often with the same dealers, large sized orders to sell that are not completely executed would leave those clients' illiquid positions exposed.

- Harm to Issuers - In a corporate buy-back scenario, where it is commonly known that a particular issuer deals with a specific bank, sophisticated traders could track the buy-back program and potentially even manipulate the stock to take advantage of this information.

- Harm to Broker-dealers - Publication of these reports equates to "beta testing" the new statistics, new order types, and other new concepts in a public forum, and there could be unusual results. Trades could easily be taken out of context, given many of these stocks are illiquid and the nature of the Pilot will cause significant changes in trading patterns. Broker-dealers could face reputational risk if their published trades look unusual and counterparties draw erroneous conclusions. Furthermore, given the identity of a trading center will be discernable even with a dummy ID; where a trading center is publicly traded, reporting this activity will give insight into potential revenue streams prior to earnings and thus could constitute disclosure of material non-public information.

- All market participants will be harmed and the goals of the Pilot will be undermined if the risk of information leakage, particularly with the least liquid Pilot stocks, deters firms from trading the securities. Should more firms decide not to trade particular names, any results that might be extracted will be further corrupted/distorted.

FIF members offer for consideration what we believe to be practical alternatives to the current plan to publicly disclose complete order-by-order, symbol-by-symbol transaction information, that still achieve what we believe to be the goals of the Pilot:

- FIF members' first preference is for FINRA to publish only <u>aggregated data</u>, <u>without attribution</u> (no ID of any kind, masked or otherwise), and <u>without a timestamp</u>. The combination of trading center ID and timestamp provides key information that will easily allow the identification of a trading center and determination of a trading strategy.

- Given the illiquid nature of the pilot securities, a timestamp on each transaction, even without a trading center ID, will provide sufficient information to allow an algorithmic strategy to be discovered. Alternatively, to prevent information leakage and maintain the integrity of the Pilot program, FIF members suggest that only aggregated reports be widely published; and, the disaggregated data (properly masked) may be provided only to those who sign a non-disclosure agreement or offer similar protection of confidentiality, and submit an application with a description of how the data will be applied.

- Use of different IDs on a daily basis rather than consistent use of a dummy ID to identify a trading center could reduce the negative effects, although not entirely as a trading strategy could be discerned over the course of a single trading day. Similarly, changing IDs from symbol to symbol could also help mask a trading center's identity, but will not prevent reverse-engineering of an investor's trading strategy.

- Decoupling the use of a dummy ID in the transaction level statistics from the aggregate statistics will make it slightly more difficult to identify a trading center.

- Knowledge of the specific trading center should not be required to analyze trading behavior and the effects of quoting and trading restrictions on the securities in the various test groups. If the *type* of trading center is considered a factor for analytic purposes, then categories of trading centers (e.g. exchange, ATS, broker-dealer, etc.) could be established with an indication of a trading center's category code on each transaction, rather than a unique identifier linked to a specific trading center.

The Commission, in its Approval Order[6] of FINRA 2015-048, acknowledged FIF's concerns with respect to publication of disaggregated data: "The Commission notes that this could give Participants the opportunity to evaluate the data to determine whether the FIF's concerns related to the disclosure of the identity of Trading Centers exist, and if so, whether additional measures are necessary to prevent the disclosure of attributed Trading Center data."

Trading Centers have now had an opportunity to review pre-Pilot data and non-exchange trading centers are very uncomfortable with the plan to publish that data on August 30, 2016. These concerns may intensify once the Pilot takes effect and trading in certain symbols is impacted by restrictions in each test group.

We believe the Commission's comment in the Approval Order provides an opportunity to alter the proposal to publish disaggregated data, as well as the approach being taken to "not identify the Trading Center that generated the data". If at this time FINRA is unable to implement an alternative that non-exchange trading centers believe would provide the additional confidentiality and anonymity that they and their customers seek (e.g. aggregation without attribution), we respectfully request that publication in the disaggregated form and "masked" in the manner as proposed be delayed until the Tick Size Pilot has been fully implemented. This would enable the SEC, FINRA and trading centers to view the actual trading data prior to publication to determine if their concerns are either unwarranted or well-founded. If there are remaining concerns at that point, we would hope to work with FINRA to find methods that will alleviate our non-exchange FIF members' issues.

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[6] Release No. 34–77164; File No. SR–FINRA– 2015–048 http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-048-approval-order.pdf

FIF urges the Commission to carefully weigh the benefit of disaggregated, thinly-veiled public disclosures against the potential costs. We also ask that you seriously consider the alternatives outlined above, which we believe will both satisfy the need for thorough analysis and meet the objectives of the Tick Size Pilot program.

Thank you in advance for carefully considering our members' concerns. 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: Stephen Luparello, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission
Brendon Weiss, Intercontinental Exchange, Chair, Tick Size Pilot Plan Participants Operating Committee
Robert Colby, Chief Legal Officer, Financial Industry Regulatory Authority
Stephanie Dumont, Senior Vice President, Director of Capital Markets Policy, Financial Industry Regulatory Authority