

## FINRA To Propose Market Structure Actions

September 30, 2014

On September 19, 2014, the Financial Industry Regulatory Authority (“**FINRA**”) **announced** that its Board of Governors (the “**Board**”) approved a series of regulatory initiatives primarily focused on equity and fixed income market structure issues. This is a direct response by FINRA to two important speeches this summer by SEC Chair Mary Jo White, in which she articulated an ambitious agenda of market structure reforms.<sup>1</sup>

The Board authorized FINRA staff to prepare Regulatory Notices soliciting comments or issuing guidance on the following:

### Market Structure Initiatives

#### Equity Markets

- **Registration of Algorithm Strategy Associated Persons.** FINRA will solicit comment on a proposal to establish new registration requirements for associated persons who are responsible for the development of algorithmic trading strategies and their supervisors. FINRA’s announcement does not indicate what specific activities would trigger registration or how extensive or burdensome the proposed registration requirements would be on members or associated persons. This requirement may prove to be controversial with FINRA members, depending upon the scope of persons covered, the nature of any prerequisites (such as testing) for registration and the extent of any “grandfathering” of existing personnel.
- **Supervision of Algorithmic Trading Strategies.** FINRA will provide additional guidance to member firms on the application of existing supervisory obligations to the development and use of algorithmic trading strategies. The guidance will outline member firms’ responsibilities relating to effective controls and practices regarding the use of such trading strategies and obligations to monitor for and prevent potential adverse impacts on the market. The guidance will also suggest supervisory and control practices concerning algorithmic trading strategies.
- **Expansion of Off-Exchange Trading Transparency.** FINRA will solicit comment on a proposal to expand its new alternative trading system (“**ATS**”) transparency rule to include the reporting and publication of the remaining equity volume executed over-the-counter (“**OTC**”), such as through broker-dealer internalization. The expansion of the current rule is meant to capture each market participant’s non-ATS OTC volume reported to FINRA’s equity trade reporting facilities based on trades in which the market participant is the executing party. FINRA will propose delayed publication of this information, consistent with the two to four week delayed basis currently applicable to ATSs.
- **Clock Synchronization.** FINRA will solicit comment on a proposal to require member firms to synchronize their computer system business clocks—those that generate electronic timestamps—to the National Institute of Standards and Technology atomic clock within an allowable drift of between 50 to 200 milliseconds, down from the current one second standard. Notably, Rule 613 of Regulation NMS requires FINRA, together with the exchanges, to propose clock synchronization and drift standards as part of the implementation of the Consolidated Audit Trail.

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<sup>1</sup> SEC Chair White’s June 2014 speeches on market structure are available [here](#) and [here](#).

## Fixed Income Markets

- **Fixed Income Mark-Up/Mark-Down Disclosure.** FINRA will solicit comment on a proposal to require firms to disclose on customer confirmations, for trades involving 100 bonds or less, information relating to the price of the firm and customer legs of the transaction, when the firm and customer legs of the transaction occur within the same trading day.
- **Fixed Income Quotation Information.** FINRA will solicit comment on a proposal to require ATSS to report to FINRA information concerning the quotations displayed to their general subscriber base for corporate bonds and agency debt securities. This information—which would include the identity of the party submitting the quotation as well as the price—would only be used by FINRA for regulatory purposes and would not be published, although FINRA will seek comment on whether it should be made public.

## Other Initiatives

- **Recruitment Practices.** FINRA will solicit comment on a proposal to require a firm that hires a representative from another firm to provide a FINRA-created educational communication to former retail customers of the transferring representative who are considering transferring assets to the representative's new firm. The FINRA-created educational communication will highlight potential implications of the asset transfer and provide suggested questions to help the customer make an informed decision.
- **Securities Trader and Securities Trader Principal Registration Categories.** FINRA will file a proposal with the SEC to establish a new registration category of Securities Trader (which will replace the Equity Trader registration category) and a new Securities Trader Principal category.

FINRA will also solicit comments on proposals concerning the identification of out-of-sequence OTC trades, the submissions to FINRA of ATS order book information and the reporting of the identity of non-member broker-dealers to OATS. FINRA will also file with the SEC a proposal to require members to identify transactions with non-member affiliates in TRACE reports and a proposal to modify FINRA's Gross Income Assessment methodology, which is a component of FINRA's regulatory pricing structure.

FINRA has not set a timeline for issuing Regulatory Notices for these actions. Once it does, firms will have an opportunity to provide comment to FINRA concerning any proposed rulemakings. Any rule changes would not become effective until filed with and approved by the SEC, following an SEC comment period.

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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