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Comments on Regulatory Notice 14-51 Equity Trading Initiatives: OATS and ATS Reporting Requirements

Dear Ms Asquith

UBS Securities LLC ("UBS") respectfully submits this letter in response to the request for comment on proposed amendments to the OATS rules described in FINRA Regulatory Notice 14-51 (the "Notice"). The Notice discusses proposed rules that would require Alternative Trading Systems ("ATs") to provide FINRA with additional order book information using existing OATS interfaces.¹

The UBS View

UBS supports the underlying goals of this and other FINRA initiatives that are designed to improve transparency for market participants and regulators. To the extent that data provided by brokers, ATs and other participants can provide meaningful insight into automated trading activities, and is practical and not overly burdensome to produce, UBS agrees that it should be made available to regulators and, where appropriate, to the investing public.

The Notice prompts two fundamental questions: (i) will the additional order information reported by ATs ("ATS Data") achieve FINRA's stated objectives, and (ii) will the associated burden of producing and processing the ATS Data be justified by the benefits realized², especially in light of other regulatory initiatives?

¹ The Notice also contains proposed amendments to the OATS rules to require members to identify non-member broker-dealers, but UBS is not commenting on that portion of the Notice.

² In the Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking, FINRA cites the importance of "analysis, including assumptions and risks, as to why the proposal is necessary and how it best achieves its stated goal(s)".

Based upon a careful review of the Notice with our internal subject matter experts, UBS believes the proposed approach *requires thoughtful modifications*. The creation of a new feed for order events and use of OATS as the platform for reporting those events pose significant challenges, and, in our opinion, are not the most effective methods to realize FINRA's goals.

Areas of Concern and Recommendations

1. **The complexities of ATS rulebooks mean a simple price/time priority view of an ATS order book may not provide meaningful information.**

FINRA seeks the ATS Data primarily because "FINRA is not able to use existing OATS data to fully reconstruct an ATS order book for surveillance purposes."

ATSs in many cases have sophisticated order types that mean matching is not carried out in strict price/time priority sequence. The UBS ATS, for example, has multiple crossing restrictions and Source Categories³ that factor into its matching algorithm. Given this complexity, it is difficult to see how FINRA could adequately embed these varied rulesets into its evaluation of an ATS orderbook solely built from the requested order event information.

UBS questions whether a partial recreation of an ATS order book will in practice provide FINRA with sufficient information to perform effective surveillance.

2. **Alternatives to a feed of order events should be explored. Not all ATSs "reprice" pegged orders. Book recreation may be partially achievable through use of detailed order attributes.**

Modelled after the data feeds that it receives from exchanges, FINRA seeks data representing all events and order attributes that would change the number of shares or price at which an order within an ATS could execute.⁴ In reality, an ATS that neither displays nor publishes order information to any external party does not have a need to capture or store this type of 'book' feed. Furthermore, FINRA appears to assume that pegged orders in ATSs are "repriced". Orders in the UBS ATS book, including pegged orders, are evaluated for marketability based upon peg instructions, limit price constraints and crossing restrictions, but are not explicitly repriced. The requirements outlined in the Notice may therefore require an ATS to generate order state events that do not currently exist, solely for the purpose of reporting the data to FINRA. This requirement would require extensive re-engineering of matching engine technology components, which would add risk and complexity to these mission-critical systems.

FINRA should explore whether certain additional information concerning order types (special handling codes) on an OATS order receipt event could better facilitate surveillance without requiring ATSs to provide voluminous and frequent price/size updates based on market data or execution events.

³ Please see UBS ATS' Form ATS, available at www.ubs.com/ats, for the definition of Source Category as well as further details in respect of its matching methodology.

⁴ See Notice footnote 12: "FINRA already receives these data elements in the order book information provided to FINRA by its exchange clients under Regulatory Services Agreements."

3. OATS is not the best platform to receive the proposed feed.

If FINRA determines that the order event feed is the appropriate mechanism for capture of the information it requires, FINRA should revisit the concept of using OATS as the vehicle to receive the feed. Currently most firms report to OATS in a batch processing mode after the end of the trading day. The window for OATS report submission is generally sufficient to allow even high volume ATs to handle OATS processing.

Based upon our preliminary analysis, UBS projects that new reporting as proposed under the Notice would increase the overall submission of UBS OATS records by at least a factor of 10. The effect of this massive increase in reporting would most likely mean that UBS would modify its reporting to an intra-day process. That type of change also would require a significant technology investment. As a result, storage costs for ATs will increase substantially.

FINRA should consider the ability of the existing FINRA OATS infrastructure to support this new reporting volume. Increasing the volume of records submitted by some of its largest participants by a factor of 10 will pose significant challenges to FINRA, as well as the submitting firms and ATs. The cost of this infrastructure investment will be borne indirectly by the industry, which is also facing a series of costly new initiatives such as the Consolidated Audit Trail, FINRA CARDS and Regulation SCI.

If FINRA proceeds to the rulemaking stage, it should be incumbent upon FINRA to conduct a thorough analysis of the cost implications on the OATS system and estimated impact. Importantly, FINRA should more explicitly justify the investment in significant storage and processing for OATS given the impending implementation of Consolidated Audit Trail with its extensive data processing infrastructure.

Additionally, UBS notes that the reporting requirements outlined in the Notice have certain open-ended descriptions in the reporting layout, such as "(L) any other information as specified by FINRA or the SEC." It is not possible to provide meaningful feedback on such an open ended definition. We suggest FINRA further refine with specificity the reporting requirements.

4. Revising the proposal to require additional order attributes on existing OATS records may address concerns.

As noted above, we believe FINRA could achieve its objectives in a more cost-effective way by expanding the OATS attributes required for ATs OATS reports. This incremental but highly effective approach would eliminate the extensive re-engineering work required by ATs matching engines, storage and capacity concerns for participants and FINRA, as well as process re-engineering requirements for moving to intra-day reporting. The enhanced OATS attributes could facilitate an intelligent recreation of ATs order book data by FINRA based on the order attributes in combination with market data feeds FINRA already maintains.

Conclusion

UBS supports the underlying goals stated in the Notice to enhance the transparency of the US equity securities markets. However, efforts to strengthen our markets should be both effective and not overly burdensome.

ATs serve an important function in the US equity markets, and their advent was driven by client demand for execution alternatives. ATs offer meaningful price improvement and reduced market impact costs to investors,

and often allow interaction with more natural order flow. Furthermore, certain ATs provide additional liquidity opportunities, particularly for those institutional clients that prefer to work their orders away from lit markets. Onerous reporting requirements imposed on ATs could stifle innovation, or more significantly, create sufficient operational burdens or barriers to entry that will cause them to cease operating. The ultimate result of this contraction would be to limit or suppress the execution choices of buy-side investors, meaning investors will have less ability to effectively manage their trading strategies, and will have diminished opportunities to seek better execution, lower transaction costs and achieve price improvement and investment performance. As a result, the end clients of institutional investors - which include retail investors, individual retirement account and fund holders - would likely be impacted.

We respectfully request that FINRA work closely with the industry to further refine the approach set forth in the Notice to create a framework that is best designed to enhance transparency and preserve the execution choices of investors and enable broker-dealers to serve the evolving needs of clients with innovative execution offerings. Thank you for the opportunity to comment on the Notice. Should you have questions regarding the views of UBS, please do not hesitate to contact me.

Yours sincerely

UBS Securities LLC



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cc: Richard G. Ketchum, Chairman and Chief Executive Officer
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