



June 26, 2012

**Via Electronic Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Securities Exchange Act Release No. 34-67085 (File No. SR-FINRA-2012-026);  
Notice of Filing of Proposed Rule Change Relating to the Handling of Stop and  
Stop Limit Orders

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) proposed Rule 5350, as described in Securities and Exchange Commission’s (“SEC”) Release No. 34-67085.<sup>2</sup> In its proposal, FINRA would retain the current transaction-based trigger for activating “stop” and “stop limit” orders that is set forth in existing FINRA Rule 6140, but also would permit members to offer an alternative trigger to activate a market or limit order, so long as such alternative order type is clearly distinguishable from a stop order or a stop limit order. For example, FINRA suggests that an alternative stop order type that leverages a quotation-based trigger could be used and labeled a “stop quotation order.” As discussed below, SIFMA advocates the use of disclosures, rather than a new order type, to avoid investor confusion if FINRA were to permit the triggering of stop orders based on multiple events (e.g., transactions, quotations or otherwise).

As FINRA accurately notes in its rule filing, “[a]lthough Rule 6140(h) provides that a stop order is triggered by a transaction, FINRA understands that certain firms and their customers prefer alternative triggers for activating a stop or stop limit order. For example, some members have noted that using quotations may be preferable because, for some securities,

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> See Exchange Act Release No. 67085 (May 31, 2012) (Notice of Filing of Proposed Rule Change Relating to the Handling of Stop and Stop Limit Orders).

quotations serve as a better indicator of the current price than transactions . . . Conversely, some members have indicated that customers could be disadvantaged by the triggering of a stop order on a quotation because doing so may result in an execution at a price that the stock had never traded at that day—an outcome that may be considered undesirable for an investor placing a stop order.”<sup>3</sup> As a result, certain SIFMA members would like flexibility in choosing the applicable trigger point, while others would prefer one established trigger point, either based on a transaction or a quotation. SIFMA members are in agreement, however, that, if FINRA were to provide for flexibility within its rules, FINRA should not do so by introducing a new order type. Instead, SIFMA would advocate the use of investor disclosures to clarify the applicable trigger points for investors.

SIFMA believes that the costs and burdens of creating a new order type for stop and stop limit orders in order to use non-transaction based triggers will outweigh any benefits of such a rule. For example, SIFMA believes that the introduction of a new stop order type is likely to cause confusion among investors, thereby impairing the appropriate handling of their orders. Given the established market practices with regard to stop orders, significant investor education would be required to ensure that the proper use of the new order type is not inconsistent with clients’ intentions and previous experiences. Moreover, SIFMA believes that the creation of a new order type will impose unnecessary technical and other implementation costs on firms already overburdened with other systems development tasks related to new regulatory requirements. For instance, some firms’ existing systems are programmed to provide a standard FIX tag to indicate a stop order/stop limit order, and it is unclear at this time whether the proposed rule will ultimately require extensive changes or not to the FIX tag(s). Other firms believe that this proposed rule would require a major overhaul of their order entry and recordkeeping systems, and at a time when they are already faced with other large scale projects due to recent regulatory actions. Therefore, SIFMA firms are concerned that, without significant changes to many market participants’ systems, the proposed new order type might not be properly processed in accordance with its terms.

If FINRA were to introduce multiple possible trigger points for stop orders into its rules, whether such trigger points were based on a transaction, a quotation or otherwise, SIFMA would advocate the use of a disclosure method, rather than a new order type, to address the possibility for investor confusion. Under such a disclosure approach, a firm would be required to disclose how the stop or stop limit order would be triggered, thereby providing the customer with clarity as to how their order instructions would be facilitated. If the customer does not object to the disclosed method of triggering stop orders, the member may reasonably conclude that such customer has consented to the member’s stated method of handling stop and stop limit orders. Such a disclosure method would provide appropriate investor protection without imposing unnecessary costs on the industry.

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<sup>3</sup> Id.

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SIFMA appreciates the opportunity to comment on the proposed modifications to FINRA Rule 6140 and the proposed Rule 5350. We look forward to discussing the Proposed Rules and our comments with the Commission and its staff. If you have any comments or questions, please do not hesitate to contact T.R. Lazo, who is replacing me at SIFMA as of June 27, 2012, at [TLazo@sifma.org](mailto:TLazo@sifma.org).

Sincerely,

/s/ Ann L. Vlcek

Ann L. Vlcek  
Managing Director and  
Associate General Counsel

cc: Mary L. Schapiro, Chairman  
Luis A. Aguilar, Commissioner  
Troy A. Paredes, Commissioner  
Elisse B. Walter, Commissioner  
Daniel J. Gallagher, Commissioner  
Robert W. Cook, Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Markets