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July 9, 2012

Submitted Via Email to Rule-Comments@SEC.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE., Washington, DC 20549–1090

Re: File No. SR-FINRA-2012-025

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is pleased to respond to the Securities and Exchange Commission's (the "SEC" or the "Commission") request for comment to SR-FINRA-2012-025 (the "Proposal")[2], as amended, that would codify the FINRA's amended Front Running Policy into new Rule 5270 and related Supplementary Material.

I. INTRODUCTION

The present Proposal follows extensive comment by SIFMA in respect of FINRA's predecessor proposal.[3] FINRA has now responded to the 2009 Comment Letter in a manner that leaves the predecessor proposal largely unchanged. While SIFMA continues to find itself concerned regarding many of the issues raised in the 2009 Comment Letter, SIFMA seeks to use this opportunity to focus FINRA and the Commission on what SIFMA believes to be the most important flaw in the Proposal, namely that the barriers to resumption of trading in the applicable security or related financial instrument may interfere with broker-dealers' risk management activities, and may create a barrier to providing liquidity to the market.

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[1] SIFMA brings together the shared interests of hundreds of securities firms, bank 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 ("GFMA"). For more information, visit www.sifma.org.

[2] The Proposal can be found at "Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 5270 (Front Running of Block Transactions) in the Consolidated FINRA Rulebook", SEC Release 34-67079 (May 30, 2012) (the "Proposing Release").

[3] In this regard, please see SIFMA's 2009 letter regarding the Proposal, currently available at: http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p118100.pdf (the "2009 Comment Letter").

SIFMA is therefore writing this letter to request revisions and clarifications that seek to ensure, first, that broker-dealers retain the ability to engage in risk management and liquidity providing activities, both with respect to the specific transaction, and on a portfolio or similar basis, without violation of the proposed rule, and second, that firms have sufficient understanding of the Proposal, and of the manner by which the proposed rule will coexist with related regulation and interpretive guidance. Finally, SIFMA requests a greater implementation period in order to commence and complete the required modifications and related implementation of the proposed rule.

II. SPECIFIC COMMENT REGARDING THE PROPOSAL

2.1 The proposed provisions of FINRA Rule 5270 should be revised so that the transfer of risk from the customer serves as the trigger for lifting trading restrictions.

Currently, the proposed rule allows a broker-dealer to resume trading in the security or related financial instrument when the information concerning the block transaction "has been made publicly available or otherwise has become stale or obsolete." The 2009 Comment Letter described in detail certain of SIFMA's concerns in respect of this standard, and in its response to comments FINRA has clarified but largely left intact the "stale or obsolete" standard.

The purpose underlying the proposed rule is, as noted in the Proposing Release, that "firms should not use their knowledge of imminent block transactions to benefit themselves at the expense of their customers."[4] Given this underlying purpose, SIFMA's view is that the proposed rule be revised to incorporate a "transfer of risk" standard. Specifically, trading restrictions under the proposed rule should be lifted once the risk of the transaction has been transferred from the customer through execution of the applicable order.

In the context of a block transaction that a member executes as principal, the member has assumed the risk of the transaction. Providing liquidity to the market through the assumption of risk is a valuable service to customers and the market, and one that satisfies the proposed rule's purpose that the interests of the customer should be placed ahead of the interests of the member. Once the risk has passed to the member, the member is trading in the applicable security or related financial instrument for its own account.

Similarly, in the context of a block transaction where a member executes as agent, the execution of the transaction eliminates the opportunity for the member to trade ahead of the customer, or more generally, to put its interests ahead of its customers' interests by trading ahead of the execution of the customer order.

Our market structure does not provide for real-time trade reporting across products. Accordingly, undue reliance on a "staleness" threshold that incorporates delays by current construction – such as waiting for public dissemination – could prevent a dealer from performing necessary risk management activities, and provides no additional benefit to the customer. By comparison,

[4] *See, e.g.*, the Proposing Release at pages 16-17.

determining that trading is permitted at the time that the risk of the transaction has been transferred from the customer creates a standard that is both objective and definite.

SIFMA therefore requests confirmation that execution of the block transaction by the member as principal or agent will:

- Constitute fulfillment of the block order in accordance with Supplemental Material .04(b), or alternatively be deemed to render the non-public information stale and obsolete for the purposes of front running the customer; and

- Permit the broker-dealer to transact in the security or related financial instrument, subject to other existing law and regulation, even if the applicable principal transaction between the member and the customer, or the transaction by the member on behalf of the customer, has not become public.

A change to a risk transfer standard does not, of course obviate other existing obligations to act in a manner consistent with just and equitable principles of trade, to timely submit for transaction reporting and to comply with other similar rules designed to provide customer and market protections

2.2 Clarification of the relationship to other guidance, and implementation.

NASD Notice to Members 05-51 and NYSE Information Memorandum 05-52 (the "Interpretive Guidance"), and FINRA Rule 5320 create obligations that are related to the proposed rule. SIFMA is concerned that these overlapping rules create a web of obligations and exceptions that could be difficult to manage in practice. However, these overlapping obligations can be read consistently, and SIFMA seeks the concurrence of FINRA and the SEC that such obligations will, wherever possible, be interpreted in a consistent manner. As such, and for example, SIFMA therefore requests clarification that:

- The negative consent letter described at proposed Rule 5270.04 satisfies the "duty to refrain and disclose" described in the Interpretive Guidance; and,

- the duty to refrain and disclose described in the Interpretive Guidance arises on the basis of the same analysis as the obligations under proposed Rule 5270.

Such clarification will permit member firms to create parallel compliance systems for Rule 5270 as they have for the Interpretive Guidance.

2.3 Additional technology changes are required to comply with the proposed provisions of FINRA Rule 5270, and as such, additional time should be allotted in order to implement those changes.

The Proposing Release provides that the proposed rule will become effective no later than 90 days following publication of a *Regulatory Notice* announcing Commission approval. The breadth of the Proposal, including its expansion to fixed-income and OTC products, will in many cases require modification to technology and systems. Further, in other cases the expansion of surveillance and supervision will also need to be coordinated with training and related implementation of internal procedures that could be difficult to manage within the 90-day time frame envisioned in the Proposing Release. SIFMA therefore respectfully requests an implementation period of 180 days following the publication of the applicable Regulatory Notice.

III. CONCLUSION

SIFMA appreciates very much this opportunity to comment further on the Proposal. If you have any questions or require additional information, please do not hesitate to contact the undersigned at (212) 313-1118, or our counsel in this matter, Russell D. Sacks of Shearman & Sterling LLP, at (212) 848-7585.

Sincerely,

Managing Director, Corporate Credit Markets Division
Securities Industry and Financial Markets Association

cc: Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA
Brant Brown, Associate General Counsel, FINRA
Robert Colby, Chief Legal Officer, FINRA
Robert Cook, Director of Trading and Markets, SEC