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KCG

February 20, 2015

Via Electronic Mail (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-46: FINRA Request for Comment on Proposal to Identify OTC Equity Trades Reported More than Two Seconds After Execution as "Out of Sequence" and Not Last Sale Eligible

Dear Ms. Asquith:

KCG Holdings, Inc. (KCG) respectfully submits this letter in response to Regulatory Notice 14-46 (RN 14-46 or the Notice) issued by the Financial Industry Regulatory Authority (FINRA). KCG appreciates the opportunity to comment on the Notice and commends FINRA generally on its recent series of initiatives relating to market structure and automated trading activities.

RN 14-46 requests comment on a proposal to identify over-the-counter (OTC) trades in NMS stocks reported more than two seconds following trade execution as "out of sequence" and not last sale eligible for public dissemination purposes. FINRA is also proposing amendments to Supplementary Material of FINRA Rule 6380A to provide further guidance on the "as soon as practicable" requirement under the trade reporting rules. KCG supports FINRA's goal of increasing the reliability of the reporting stream and providing investors with a better ability to understand prevailing market conditions. However, as discussed in more detail below, we recommend that FINRA consider revising its proposal in several respects prior to filing it as a proposed rule change with the U.S. Securities and Exchange Commission (Commission).

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I. Background

KCG is a global financial services firm that offers investors a range of services designed to address their trading needs across asset classes, product types and time zones. As an independent, electronic market maker, KCG combines advanced technology with exceptional client service to deliver greater liquidity, lower transaction costs, improve pricing, and provide execution choices. KCG is a registered market maker on numerous U.S. cash equity and options exchanges, including a DMM and Supplemental Liquidity Provider on the New York Stock Exchange (NYSE), and a Lead Market Maker on NYSE Arca. As a market maker, KCG commits its capital to facilitate trades by buyers and sellers on exchanges, ATSs, and directly to our clients.

KCG offers clients multiple opportunities to interact with our market making operations. In addition, KCG's institutional clients have access to algorithms and experienced trading desks to access liquidity, maintain anonymity and minimize market impact. KCG also operates two Commission-registered ATSs.

II. Discussion

A. Reduction of Last Sale Eligibility Timeframe

FINRA is proposing to reduce the timeframe within which trades must be reported for last sale eligibility purposes from 10 seconds to 2 seconds. Currently, under FINRA Rule 6380A (Transaction Reporting), OTC trades in NMS stocks must be reported as soon as practicable, but no later than 10 seconds, following trade execution. Trades reported more than 10 seconds following trade execution are considered to be "late" and are not "last sale" eligible for dissemination purposes.

Under the proposal, FINRA would identify OTC trades in NMS stocks reported more than two seconds following trade execution as "out of sequence" and therefore not last sale eligible for public dissemination purposes. Although such trades would not be last sale eligible, they would, however, only be considered "late" if reported beyond the current 10 second deadline following trade execution. In other words, the current 10 second reporting timeframe under FINRA rules will remain unchanged.

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KCG generally supports initiatives designed to increase the reliability of the transaction reporting stream and provide investors with a better ability to understand prevailing market conditions. However, KCG believes the proposal to identify out of sequence trades should account for differences between very liquid and thinly-traded symbols and that FINRA should consider creating a separate construct for thinly traded symbols.

B. Supplementary Material

FINRA is also proposing to amend the Supplementary Material contained in .02(a) of FINRA Rule 6380A to indicate that it interprets the "as soon as practicable" requirement of the rule to also require that firms not disseminate executed trade information sooner than the trade is reported to FINRA. Specifically, RN 14-46 provides:

> ... FINRA plans to interpret the "as soon as practicable requirement" to also require that firms not disseminate executed trade information sooner than the trade is reported to FINRA. Thus, for example, an ATS cannot commence the process of disseminating trade information to its subscribers any faster than it commences the process of reporting the trade to FINRA for dissemination purposes. This would also prohibit an ATS from reporting back execution information to the subscriber on whose behalf the trade was executed sooner than it reports the information to FINRA.[1]

KCG believes this language is ambiguous and requests that FINRA clarify the proposed amendment to the Supplementary Material in several respects. First, the language should be revised to recognize that many members do not report trade information directly to FINRA but rather to NASDAQ or NYSE - the operators of the FINRA/NASDAQ and FINRA/NYSE Trade Reporting Facilities (TRFs) referenced in FINRA's trade reporting rules – and the TRFs in turn provide the information to FINRA. Firms do not control when trade information is ultimately "reported to FINRA" by the TRFs. Second, FINRA should confirm that members will be in compliance with the "as soon as practicable" requirement if the members have

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[1] *See* FINRA Regulatory Notice 14-46 (Equity Trading Initiatives: OTC Trade Sequencing) at 4.

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designed their systems to generally transmit trade information contemporaneously to market participants – including clients and the TRFs – regardless of when such trade information is actually received by them. Third, FINRA should work with the TRF operators to address throttling issues. In particular, a TRF operator may place limits on the number of messages per second it accepts from a member that may result in trade information receipt time delays both at the TRF and FINRA, which is not the fault of the reporting member.

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KCG recommends that FINRA consider our comments and suggestions and revise its proposal accordingly prior to filing it as a proposed rule change with the Commission.

III. Conclusion

KCG appreciates this opportunity to comment on FINRA Regulatory Notice 14-46. Please do not hesitate to contact me at 646-428-1615 if you have questions regarding any of the comments provided in this letter.

Sincerely,

John A. McCarthy
General Counsel

cc: Robert Colby, Chief Legal Officer, FINRA