June 22, 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: FINRA Regulatory Notice 15-13: Proposed Exemption to the Trading Activity Fee for Proprietary Trading Firms

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] submits this letter to comment on the above-referenced proposal by the Financial Industry Regulatory Authority ("FINRA") to amend its Trading Activity Fee ("TAF"). Under the proposal, FINRA would adopt an exemption from the TAF for on-exchange trading by "proprietary trading firms."[2] FINRA developed this proposal in light of the recent rulemaking proposal by the Securities and Exchange Commission ("Commission") that would effectively require all broker-dealers doing business in the off-exchange securities markets to become FINRA members. SIFMA supports FINRA's consideration of adjusting its fees to correspond to the actual cost of the regulation related to the activities generating the fees. In this instance, however, FINRA should go further and exempt all on-exchange trading that any of its members execute in a principal capacity. In addition, FINRA should review its fees more broadly to align the amount of fees it charges with its actual cost of regulation.

I. The TAF Exemption Should be Based on the Type of Trading Activity

In amending the TAF, FINRA should exempt all members' on-exchange trading executed in a principal capacity. FINRA notes that its current proposal is in response to the Commission's proposed amendments to Rule 15b9-1 under the Securities Exchange Act of 1934 ("Exchange Act"), which, if adopted, would require proprietary trading firms to join FINRA if they engage in

[1] The Securities Industry and Financial Markets Association (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 (GFMA). For more information, visit http://www.sifma.org.

[2] In the Regulatory Notice, FINRA proposed a definition of the term "Proprietary Trading Firm." We believe the definition would require clarification before being implemented. However, we are not addressing the proposed definition in detail because, as discussed below, we are requesting that the proposed exemption from the TAF apply to the same activity at all member firms, not just proprietary trading firms.

the business of off-exchange trading.[3] The TAF generally applies to a member firm's securities transactions regardless of where they are executed, and applying the TAF to all of the trading activity of a proprietary trading firm could result in a TAF obligation disproportionate to FINRA's anticipated costs associated with the financial monitoring and trading surveillance of these firms. FINRA states that the disproportionate obligation would arise in large part because proprietary trading firms do not have customers. However, the focus of the cost of regulation in these cases should be on the actual activity – *i.e.*, proprietary on-exchange trading – and so the exemption should be similarly applied to all member firms.

For proprietary on-exchange transactions, the burden of regulation falls to the exchanges, which remain self-regulatory organizations themselves. To the extent that FINRA conducts regulation of on-exchange trading, it is paid by the exchanges through regulatory services agreements ("RSAs"), and the exchanges fund those RSAs through regulatory fees that they charge directly to member firms. Member firms with customers fund the relevant regulation through the TAF they pay on their customer transactions, whether executed on-exchange or off-exchange.

As such, there is no need for FINRA to charge the TAF on any principal transactions executed on exchanges of which the firm is a member, regardless of the type of firm. In this regard, SIFMA suggests the following revisions to FINRA's proposed rule language (additions ***italicized***):

> "(L) Transactions by a ~~Proprietary Trading~~ ***FINRA*** Member Firm effected ***in a principal capacity*** on a national securities exchange of which the ~~Proprietary Trading~~ Firm is a member. ~~For purposes of this paragraph, a "Proprietary Trading Firm" shall mean a member that trades its own capital and that does not have "customers," as that term is defined in FINRA Rule 0160(b)(4). The funds used by a Proprietary Trading Firm must be exclusively firm funds, and all trading must be in the firm's accounts. Traders must be owners of, employees of, or contractors to the firm.~~

II. FINRA's Regulatory Fees Must be Reviewed to Ensure that they are Reasonably and Equitably Allocated

Instead of the piecemeal approach taken in its proposal, FINRA should review its fees more broadly to align the amount of fees it charges with its actual cost of regulation, and ensure that the fees are equitably and reasonably allocated. FINRA is a non-profit, regulatory organization, funded by its member firms, which are required by statute to join FINRA. If the Commission adopts the amendments to Rule 15b9-1, FINRA will receive an increase in revenue

[3] Rule 15b9-1 provides a regulatory exemption from the statutory requirement under Section 15(b)(8) of the Exchange Act that a broker-dealer must be a member of a registered national securities association. On March 25th, 2015 the SEC proposed amendments to Rule 1b9-1 which would significantly narrow the regulatory exemption that currently allows a broker-dealer to engage in off-exchange trading for its own account as an exchange member without becoming a FINRA member. *See* Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015).

through the increase in its mandatory membership base. Under Section 15A of the Exchange Act, FINRA's rules must provide for the "equitable allocation of reasonable dues, fees, and other charges among members." In this regard, FINRA's fees should not be duplicative of revenue that FINRA receives from exchanges through RSAs. Moreover, as we have noted previously, there is virtually no public information currently available about how FINRA specifically uses the revenues it receives from its fees and other income. FINRA should provide detailed public disclosure as to how it allocates the revenue it receives from its various fees and other sources of income.

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SIFMA would be pleased to discuss these comments in greater detail. If you have any questions, please contact either me (at 202-962-7383 or tlazo@sifma.org) or Timothy Cummings (at 212-313-1239 or tcummings@sifma.org).

Sincerely,

Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: Brant Brown/FINRA