

Marcia Asquith
Senior Vice President and
Corporate Secretary

Direct: (202) 728-8831
Fax: (202) 728-8075

December 20, 2013

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

**Re: File No. 4-668 (Proposed National Market System Plan Governing
the Process of Selecting a Plan Processor and Developing a Plan for
the Consolidated Audit Trail)**

Dear Ms. Murphy:

This letter is being submitted by Financial Industry Regulatory Authority, Inc. (“FINRA”) regarding the above-referenced NMS Plan (“Proposal”).¹ Generally, FINRA supports the proposed selection process as set forth in the Proposal, and as a potential Bidder,² appreciates the additional transparency that the Proposal provides regarding the CAT RFP and selection process. While FINRA believes that the process of developing the CAT NMS Plan and selecting a Plan Processor should proceed expeditiously, we also believe it is critical that Bidders have a full understanding of the final RFP selection process prior to submitting their Bids, as the scope and content

¹ See Securities Exchange Act Release No. 70892 (November 15, 2013), 78 FR 69910 (November 21, 2013) (File No. 4-668).

FINRA has two independent roles with respect to the development of a Consolidated Audit Trail (“CAT”). Specifically, FINRA is involved in developing the Proposal, promulgating the CAT NMS Plan, issuing the CAT request for proposal (“RFP”), reviewing Bids, and ultimately selecting the Plan Processor (“SRO Side”). FINRA also has announced its intention to submit a Bid in response to the RFP to be selected as the CAT processor (“Bid Side”). Given its dual roles, FINRA has implemented a communications firewall between the SRO Side and the Bid Side, including policies and procedures designed to prevent the members of the SRO Side and the Bid Side from communicating with one another about non-public matters regarding CAT. This comment letter is being submitted by the Bid Side, and is subject to such restrictions.

² The Proposal defines a Bid as “a proposal submitted by a Bidder in response to the RFP”, and a Bidder as “any entity, or any combination of separate entities, submitting a Bid.”

of Bid submissions is dependent upon the ultimate approach and timing of the RFP selection process.

Given the importance of having a complete understanding of the RFP and selection process, FINRA has questions and concerns about certain aspects of the Proposal for which it seeks clarification. These primarily relate to voting review standards, permissible revisions to Bids and information sharing. FINRA also has provided specific recommendations that we believe will enhance the fairness and transparency of the selection process. These points are discussed below.

I. Standards for Review of Bids

The Proposal sets forth a detailed process by which Bids that are deemed “Qualified Bids” shall be voted on and selected to be “Shortlisted Bids.”³ In general, the Proposal requires the designated Voting Senior Officers to select and rank from among the Qualified Bids to determine which should be Shortlisted Bids. Similarly, the Proposal provides that there shall be two rounds of voting by the Selection Committee to select the Plan Processor from among the Shortlisted Bids. In the first round, each Voting Senior Officer shall select a first and second choice, and, in the second round, each Voting Senior Officer shall vote for one Shortlisted Bid.

The Proposal, however, does not state the criteria that the Voting Senior Officer shall employ when reviewing and ranking Bids throughout the selection process. FINRA believes further clarification on the criteria to be employed both when selecting Shortlisted Bids from the Qualified Bids, and when selecting the Plan Processor from the Shortlisted Bids, will provide potential Bidders with important information regarding the selection process and result in more informed and relevant Bids.

II. Revision of Bids

The Proposal states that Shortlisted Bids may be revised, upon a majority vote of the Selection Committee, if “revisions are necessary or appropriate in light of the content of the Shortlisted Bidder’s initial Bid and the provisions in the approved CAT NMS Plan.” In communications with Bidders, the SROs indicated that they only

³ The Proposal defines a Qualified Bid as a Bid “that is deemed by the Selection Committee to include sufficient information regarding the Bidder’s ability to provide the necessary capabilities to create, implement, and maintain a consolidated audit trail so that such Bid can be effectively evaluated by the Selection Committee”, and a Qualified Bidder as a Bidder “that has submitted a Qualified Bid.”

The Proposal defines a Shortlisted Bid as a “Bid submitted by a Qualified Bidder and selected as a Shortlisted Bid by the Selection Committee” pursuant to the Proposal, and a Shortlisted Bidder as a “Qualified Bidder that has submitted a Bid selected as a Shortlisted Bid.”

expect to allow the revision of bids that are “reasonably close” to the solution contemplated by the approved CAT NMS Plan to minimize the concern of disclosure of commercially sensitive information through the NMS Plan, and the potential appropriation of a Bidder’s proprietary information by competing Bidders through the Bid revision process.⁴

FINRA appreciates that, given that SEC approval of the CAT NMS Plan is necessary before the exact requirements of the CAT (and what is expected of potential Bids) are final, the underlying requirements for the CAT may change from the original RFP. However, FINRA also believes that allowing revisions to the initial RFP responses could materially impact the depth and breadth of information that Bidders provide. In the extreme, by permitting Qualified Bidders to revise their original responses and submit a new Bid, Bidders essentially will not be bound by their original Bid. Bidders will not have a strong incentive to put forth their best ideas, processes, systems and methods in response to the initial RFP, but only sufficient information to meet the Qualified Bidder threshold. In fact, allowing changes to Bids may provide a disincentive to do so, as submission of information beyond the minimum to “qualify” will provide a potential roadmap to other Shortlisted Bidders to revise their responses during later stages of the selection process.

Accordingly, FINRA requests further clarification on the criteria governing the revision of Bids and how it will be applied. For example, FINRA seeks clarification on whether the Selection Committee will impose limitations on the kinds of revisions that could be made, such as revisions relating to cost, approach, architecture, operations, or staffing. More broadly, FINRA believes that the most effective means of minimizing the concerns set forth above is to limit the ability of Bidders to revise their Bids. Specifically, FINRA recommends that the Selection Committee should only permit revised Bids (1) after the first round of voting on the Shortlisted Bidders, at which time the list of Bidders would be narrowed to two Bidders, and (2) only for the purposes of confirming that the final two Bidders have proposals that meet the requirements of the approved NMS Plan. In addition, in the event such revisions would require material changes to the Bid of either of the final two Shortlisted Bidders, FINRA recommends that both Bidders be permitted to revise their Bids.

III. Confidentiality and Information Sharing

The Proposal states that the Selection Committee may consult with the Advisory Committee established pursuant to Rule 613(b)(7) when reviewing Shortlisted Bids and any revisions. FINRA requests clarification as to whether the

⁴ The Proposal states that the Selection Committee shall review the Shortlisted Bids “to identify optimal proposed solutions for the consolidated audit trail and provide descriptions of such proposed solutions for inclusion in the CAT NMS Plan.” FINRA assumes this means that, in formulating the CAT NMS Plan, the Participants may extract items from multiple Bids, but would appreciate confirmation on that point.

Advisory Committee will be subject to a non-disclosure agreement (“NDA”). Similarly, the SROs have indicated to Bidders that if the SROs determine there is a need to share confidential information with the CAT Development Advisory Group (“DAG”), the SROs will require the relevant DAG members to sign NDAs.

FINRA strongly supports a framework whereby the Advisory Committee or DAG are consulted as part of the Selection Process and are in a position to provide meaningful input on the Bids that are submitted as part of the RFP process. If the SROs determine that the sharing of a Bidder’s confidential information with the Advisory Committee or the DAG is appropriate, FINRA recommends that the SROs consider requiring additional safeguards by Advisory Committee or DAG members, such as internal information barriers, to guard against the potential misuse of a Bidder’s confidential information, particularly if a member of the Committee is affiliated or associated with a Bidder. FINRA believes that imposing additional safeguards on Advisory Committee or DAG members will guard against the potential misuse of a Bidder’s confidential information while continuing to allow the Advisory Committee or DAG to play a significant role in the selection process.

FINRA also notes that the Proposal requires a “Bidding Participant”⁵ to establish functional separation of its legal and/or regulatory functions from its market operations and other business or commercial objectives. However, FINRA notes that the sensitivities surrounding a Bidder’s confidential information could apply to all Participants insofar as the potential exists for any Participant to benefit from a Bidder’s proprietary information in connection with that Participant’s commercial operations. FINRA therefore believes that the SROs should amend the Proposal or the NDA that the Bidders were requested to execute, as applicable, to require the functional separation of employees representing the SRO for purpose of the Selection Process and its business or commercial functions in order to safeguard against misuse of Bidders’ confidential information.

Finally, FINRA believes it is important that all the Bidders have uniform access to information relating to the development and ultimate requirements of the CAT. As part of the CAT NMS Plan development process, the SROs formed the DAG to advise the SROs on various aspects of the CAT, including impact upon CAT participant firms and the broader industry.⁶ It is FINRA’s understanding that some Bidders may be affiliated or associated with members of the DAG and may have access to information relating to DAG discussions that other Bidders do not. In the interest of formulating Bids that are as comprehensive and responsive as possible, FINRA believes that it is important that all Bidders have uniform information relating

⁵ The Proposal defines a Bidding Participant as a Participant that (1) submits a Bid; (2) is an affiliate of an entity that submits a Bid; or (3) is included as a Material Subcontractor to a Bid, or is an affiliate of an entity that is so included.

⁶ See “SROs Announce Members of CAT Development Advisory Group,” dated March 25, 2013, at www.catnmsplan.com.

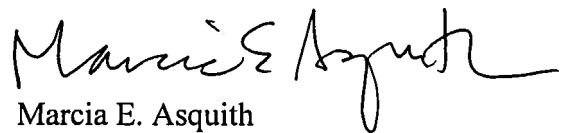
Elizabeth M. Murphy
December 20, 2013
Page 5 of 5

to DAG discussions and recommends that a formal process be established under which the SROs disseminate information to all Bidders relating to DAG discussions that are relevant to the bidding process. FINRA believes this will provide the appropriate transparency and uniformity with respect to the sharing of information relating to the DAG, so that all Bidders receive the same information.

* * * * *

FINRA appreciates the opportunity to comment on the Proposal, and believes that clarification on the points discussed above, and adoption of its recommendations, will increase the fairness and transparency of the selection process set forth in the Proposal without unduly delaying the process for selecting a Plan Processor or developing the CAT NMS Plan. Please contact Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, at (202) 728-8176 if you would like to discuss FINRA's comments or have any questions.

Very truly yours,



Marcia E. Asquith
Senior Vice President and
Corporate Secretary