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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2023 - * 009
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA's Trading Activity Fee

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Faisal Last Name * Sheikh

Title * Assistant General Counsel

E-mail * faisal.sheikh@finra.org

Telephone * (202) 728-8379 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 06/23/2023

By Racquel Russell
(Name *)

(Title *)
Senior Vice President and Director of Capital M

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Racquel Russell
Digitally signed by Racquel Russell
Date: 2023.06.23 15:16:48 -04'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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FINRA-2023-009 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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FINRA-2023-009 Exhibit 2a - Reg Noti
FINRA-2023-009 Exhibit 2b Comment

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐ Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐ Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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FINRA-2023-009 - Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act," "Act" or "SEA"),[1] the Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Section 1(b) of Schedule A to the FINRA By-Laws to exempt from the Trading Activity Fee ("TAF") any transaction by a proprietary trading firm that occurs on an exchange of which the proprietary trading firm is a member. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice. The implementation date will be no earlier than the date of adoption of the Commission's amendments to SEA Rule 15b9-1 eliminating the de minimis allowance and no later than the effective date of any such amendments.[2]

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1 15 U.S.C. 78s(b)(1).

2 See infra note 8.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

As a general matter, the most significant sources of FINRA's funding are three core regulatory fees: the Gross Income Assessment; the TAF; and the Personnel Assessment.[3] These regulatory fees are used to substantially fund FINRA's regulatory activities, including examinations, financial monitoring, and FINRA's policymaking, rulemaking, and enforcement activities.[4] As discussed in FINRA's prior Regulatory Notices, FINRA is proposing an exemption from one of FINRA's regulatory fees—the TAF—for transactions by "proprietary trading firms," which FINRA understands would include firms currently operating in compliance with existing SEA Rule 15b9-1 and that would be required to become FINRA members in light of the SEC's proposed amendments to SEA Rule 15b9-1, as further discussed below.[5] In this regard, FINRA proposes to define "proprietary trading firm" as a member that (i) trades exclusively its own capital; (ii) does not have "customers," which shall include any person, other than a broker or dealer, with whom the member engages, or within the past six months has

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3 See FINRA By-Laws, Schedule A, Section 1.

4 See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-032).

5 FINRA believes that proprietary trading firms currently operating in compliance with existing SEA Rule 15b9-1 that would join FINRA due to the SEC's proposed amendments to SEA Rule 15b9-1 would meet the proposed definition of "proprietary trading firm" and would qualify for the proposed exemption (assuming no changes to their business models that would alter their eligibility), as well as current FINRA members that meet the proposed definition. See also infra notes 35 and 37.

engaged, in securities activities; and (iii) conducts all trading through the firm's accounts by traders that are owners of, employees of, or contractors to the firm, or employees of an affiliate of the firm.

Under the Exchange Act, a registered broker-dealer must become a member of a national securities association (currently, FINRA is the sole national securities association) unless the broker-dealer effects transactions in securities solely on a national securities exchange of which it is a member.[6] SEA Rule 15b9-1 provides an exemption to the requirement that a broker-dealer become a member of a national securities association if the broker-dealer (i) is a member of a national securities exchange, (ii) carries no customer accounts, and (iii) has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $1,000 (the $1,000 limitation is known as the "de minimis allowance").[7] The $1,000 gross income limitation does not apply to income derived from transactions for the dealer's own account with or through another registered broker or dealer. Thus, for example, income derived from over-the-counter trades through an alternative trading system does not count toward the $1,000 threshold. On July 29, 2022, the SEC proposed amendments to SEA Rule 15b9-1 to narrow the exemption from association membership.[8]

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6 15 U.S.C. 78o(b)(8).

7 17 CFR 240.15b9-1.

8 See Securities Exchange Act Release No. 95388 (July 29, 2022), 87 FR 49930 (August 12, 2022) ("Proposing Release"). The SEC previously proposed to amend SEA Rule 15b9-1 in 2015. See Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015) (File No. S7-05-15) ("2015 Proposal").

As discussed in the Proposing Release, the securities markets have evolved dramatically since the adoption of SEA Rule 15b9-1 and, today, the de minimis allowance is relied upon by proprietary trading firms that, in some cases, engage in substantial cross-exchange and off-exchange trading activity, yet they are not subject to FINRA oversight.[9] The SEC therefore proposed to eliminate the de minimis allowance and instead provide that a broker-dealer may effect transactions otherwise than on a national securities exchange of which it is a member in only two narrow circumstances: (i) transactions that result solely from orders routed by the exchange of which the firm is a member to prevent trade-throughs consistent with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Cross Market Plan; and (ii) transactions that are solely for the purpose of executing the stock leg of a stock-option order, subject to specified conditions.[10]

The SEC estimates that the proposed amendments to SEA Rule 15b9-1 would impact approximately 65 broker dealers that are not currently FINRA members.[11] Thus, if adopted, the proposed amendments to SEA Rule 15b9-1 would require additional broker-dealers to become a member of FINRA (unless they limit their activities to the contours of the amended exemption from membership in a national securities association), and such member firms would become subject to FINRA regulatory fees, among other requirements.

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9 See Proposing Release, supra note 8, 87 FR 49930, 49931.

10 See Proposing Release, supra note 8.

11 See Proposing Release , supra note 8, 87 FR 49930, 49954.

Proprietary trading firms that potentially could become members of FINRA have expressed concern about the TAF in particular. FINRA notes that there currently are several exemptions from the TAF, including for transactions by floor brokers and for market making transactions subject to Section 11(a) of the Act.[12] However, proprietary trading firms do not function as floor brokers and may only be registered market makers in some, but not all, of the securities that they trade. As a result, if the proposed amendments to SEA Rule 15b9-1 are adopted by the SEC, those proprietary trading firms that would become FINRA members would be subject to the TAF for much of their trading activity, including transactions on exchanges of which they are a member. The SEC noted specifically when proposing the amendments to SEA Rule 15b9-1 that FINRA may want to "evaluate its TAF to ensure that it appropriately reflects the activities of, and regulatory responsibilities towards, broker-dealer proprietary trading firms that would be required to join FINRA if the proposed amendments to [SEA] Rule 15b9-1 are adopted."[13] In light of the SEC's proposed amendments to SEA Rule 15b9-1, FINRA has considered the application and potential impact of the TAF to proprietary trading firms and has concluded that it is appropriate to provide an exemption from the TAF for all proprietary trading firms for transactions executed on an exchange of which the

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12 FINRA By-Laws, Schedule A, Section 1(b)(2)(F) and (G).

13 See Proposing Release, supra note 8, 87 FR 49930, 49943. In the 2015 Proposal, the SEC made a similar comment: "FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, in order to assure that it is fairly and equitably applied to many of the [non-FINRA member firms] that, as a result of the amendments to [SEA] Rule 15b9-1, may join FINRA." See 2015 Proposal, supra note 8, 80 FR 18036, 18044 n.95.

proprietary trading firm is a member.[14] As FINRA regularly evaluates its fees to ensure appropriate funding for its regulatory mission, FINRA expects to evaluate the TAF—including with respect to proprietary trading firms—more broadly in the future.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice. The implementation date will be no earlier than the date of adoption of the Commission's amendments to SEA Rule 15b9-1 eliminating the de minimis allowance and no later than the effective date of any such amendments.[15]

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[16] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed TAF exemption will result in an equitable allocation of fees to proprietary trading firms in accord with their activities and the regulatory resources to oversee them with respect to their trading activity on an exchange of which they are a member.

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14 FINRA notes that, in addition to any other applicable FINRA fees, proprietary trading firms would incur a TAF obligation on transactions executed otherwise than on an exchange and on transactions executed on an exchange of which the firm is not a member. These transactions would be subject to the TAF under the existing fee structure and at existing rates.

15 See supra note 8.

16 15 U.S.C. 78o-3(b)(5).

FINRA believes it is reasonable to propose this amendment in view of the fact that regulatory costs for firms that do not have customers are expected to be less than the cost to oversee the activity of firms with customers. FINRA also believes that it is appropriate to proceed with an exemption for proprietary trading firms with respect to their transactions on an exchange of which they are a member because FINRA anticipates that regulatory costs largely will relate to overseeing such firms' activity over the counter or across exchanges.

Under the proposal, proprietary trading firms (as defined in the proposed rule) that are current FINRA members would experience a reduction in their TAF assessments to the extent they conduct non-market making transactions executed on exchanges of which they are members. Proprietary trading firms that become FINRA members would incur a smaller TAF assessment than they otherwise would pay absent the proposal. Finally, FINRA believes that the proposal is reasonable in that the proposed exemption is clear, simple, and cost effective for firms to implement.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

A. Regulatory Need

As discussed above, the SEC is proposing to amend SEA Rule 15b9-1 to narrow the scope of the exemption from FINRA membership. The proposed amendments to SEA Rule 15b9-1, if adopted, would generally require proprietary trading firms to

become FINRA members if they engage in trading otherwise than on exchanges of which they are members.[17]

B. Economic Baseline

The economic baseline for FINRA's proposed rule change consists of the regulatory framework under the SEC's proposed amendments to SEA Rule 15b9-1, if adopted, as well as FINRA's current TAF. In the Proposing Release, the SEC notes that, under the amended rule, a non-FINRA member firm that trades equities, options or fixed income securities off-exchange, or on exchanges of which it is not a member, can comply in four ways. One option is to join FINRA. The other options are to cease any off-exchange trading and either trade solely upon the exchanges of which the firm is already a member, or join additional exchanges, or cease trading securities altogether.[18] The discussion below briefly considers the benefits, costs and other economic impacts of the SEC proposed amendments to SEA Rule 15b9-1, as discussed by the SEC, to facilitate the consideration of the economic impacts of FINRA's proposed rule change to the TAF.

FINRA expects that some firms that are not currently FINRA members will apply for FINRA membership due to the SEC's modifications to SEA Rule 15b9-1, if adopted. These firms would maintain the ability to effect securities transactions on the same on and off exchange venues on which they currently effect such transactions. These firms would incur the one-time and ongoing costs of FINRA membership, including the TAF and other regulatory fees. The TAF would increase these firms' variable costs to trade, and the SEC notes that this may lead certain firms to reduce their trading both on-

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17 See supra notes 8-10 and accompanying text.

18 See Proposing Release, supra note 8, 87 FR 49930, 49958.

exchange and off-exchange.[19] These firms may, however, mitigate some of the disincentive that comes from being liable for the TAF for trading on exchanges by registering as market makers.[20] Membership by these firms in FINRA would provide more stable and uniform FINRA surveillance of off-exchange and cross-exchange trading activity than currently occurs.[21]

Other non-FINRA member firms may choose to cease their off-exchange activity rather than join FINRA. Some of these firms may adjust their business models to trade solely upon the exchanges of which they are already a member or join additional exchanges upon which they wish to trade. However, since these firms may currently trade on exchanges of which they are not members, they may also cease trading on some of those exchanges.[22]

The SEC also discusses how the changes non-FINRA member firms make to their business models to comply with the proposed amendments to SEA Rule 15b9-1 may affect other activities, including competition in the equity and U.S. Treasury securities markets, particularly for off-exchange liquidity provision.[23] As discussed above, non-FINRA member firms that join FINRA may reduce trading off-exchange and those that do not join FINRA will cease trading off-exchange, with similar impacts on their provision of off-exchange liquidity. Non-FINRA member firms may also reduce trading

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19 See Proposing Release, supra note 8, 87 FR 49930, 49958-60, 49965.

20 See Proposing Release, supra note 8, 87 FR 49930, 49960, 49965.

21 See Proposing Release, supra note 8, 87 FR 49930, 49962.

22 See Proposing Release, supra note 8, 87 FR 49930, 49967.

23 See Proposing Release, supra note 8, 87 FR 49930, 49958.

and liquidity provision on exchanges, whether or not they join FINRA.[24] A loss in liquidity provision may impose costs on investors in the form of higher trading costs than they would otherwise realize.[25] However, current member firms may increase their activity and offset some of these impacts, both on and off-exchange.[26] The ultimate impact on liquidity, execution quality and trading volume for particular assets and trading venues is generally not determinate. Regarding the overall provision of liquidity to financial markets, however, the SEC argues that the effect of the proposed rule is not likely to be significant.[27]

Current FINRA members, including proprietary trading firms, would not be directly affected by the SEC proposal.[28] However, to the extent that member firms currently compete with non-member firms that must become FINRA members or change their historical trading activities to avoid FINRA membership, the current members may benefit from having more uniform regulatory requirements among similarly situated competitors.

The SEC has estimated that there are approximately 65 broker-dealers registered with the Commission and exchange members that are not FINRA members. Each of

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24 See Proposing Release, supra note 8, 87 FR 49930, 49959-60.

25 See Proposing Release, supra note 8, 87 FR 49930, 49959. The SEC also states that the removal of liquidity from the market could either improve or degrade execution quality on off-exchange markets and reduced liquidity on exchanges can result in higher spreads and increased liquidity. Id. at 49960.

26 See Proposing Release, supra note 8, 87 FR 49930, 49960.

27 See supra note 26.

28 See Proposing Release, supra note 8, 87 FR 49930, 49963.

these non-FINRA member firms will assess the costs and benefits of the options permitted by the amendments the SEC may make to SEA Rule 15b9-1. FINRA cannot determine the number of firms that may choose to become FINRA members or the likelihood or magnitude of any anticipated changes in trading behavior because of the proposed SEC rule amendments.[29]

FINRA estimates that approximately 66 member firms derive all or most of their revenue from proprietary trading, although not all of these firms would meet the proposed definition of "proprietary trading firm" based on their current business models.[30] FINRA understands that, of the 66 firms that clear their own trades, the TAF accounts for over 85% of the regulatory fees paid by these firms (GIA, PA and TAF). However, most of the 66 firms do not clear their own trades and so do not pay TAF directly to FINRA.[31] Whether these firms conduct trades subject to TAF and whether they reimburse their clearing firm for the TAF, is not known to FINRA. Overall, between 2015 and 2022, TAF as a proportion of regulatory fees received by FINRA ranged from 41% to 56%. For the member firms that are proprietary trading firms and conduct trades subject to

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29 FINRA notes that the SEC Proposal also discusses difficulties related to predicting changes in trading behavior and associated competitive impacts. See Proposing Release, supra note 8, 87 FR 49930, 49960.

30 Some of these 66 member firms may need to adjust their business models if they seek to qualify for the proposed TAF exemption. Whether these firms would eliminate disqualifying activity, move it into a separate entity or decline to take the TAF exemption depends on the value of this activity and the extent to which the loss of scale economies in conducting the activity in a separate entity would affect the cost.

31 See Trading Activity Fee Frequently Asked Questions, https://www.finra.org/rules-guidance/guidance/faqs/trading-activity-fee ("Data should be submitted as monthly aggregates at the clearing firm level" A100.6).

TAF, this may be a closer approximation to the maximum share of their regulatory fees that would be subject to the proposed TAF exemption.

C. Economic Impacts

FINRA is proposing to amend the TAF to exempt all transactions by a FINRA member proprietary trading firm executed on an exchange of which it is a member.[32] The proposed rule change would directly impact member proprietary trading firms by providing them an exemption from the TAF for such transactions. These member proprietary trading firms include current FINRA members as well as those that would join FINRA due to the SEC's proposed amendments to SEA Rule 15b9-1. The FINRA proposed rule change may also impact the number of non-member proprietary trading firms that choose to apply for FINRA membership rather than use one of the other options for compliance (as described above). All comparisons below are relative to the baseline, and therefore assume that SEA Rule 15b9-1 is amended as proposed and that, notionally, firms have adjusted their business conduct taking into account the SEC proposed rule and market conditions, as described above.

i. Anticipated Benefits

FINRA believes that the proposed TAF exemption is clear and simple for firms to implement. In addition, the proposed TAF exemption will likely dampen potential competitive effects and other market impacts as participants determine how to respond to proprietary trading firms' change in trading behaviors in response to the amendments to SEA Rule 15b9-1, while continuing to assess fees in a manner that is fair, reasonable, and

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32 As noted above, the TAF currently provides an exemption for proprietary transactions by a member firm effected on an exchange of which it is a member in its capacity as a specialist or market maker in the security on that exchange.

equitably allocated among FINRA member firms. FINRA anticipates that, by reducing the fees associated with FINRA membership, the proposed TAF exemption may result in more proprietary trading firms joining FINRA. FINRA membership would allow these firms increased flexibility in where and how they trade.

Proprietary trading firms that are current FINRA members would experience a reduction in their TAF assessments to the extent they conduct non-market making transactions executed on exchanges of which they are members. Under the proposed TAF exemption, proprietary trading firms that become FINRA members would incur a smaller TAF assessment than they otherwise would pay absent the proposal. FINRA cannot determine the number of firms for which the proposed TAF exemption will have an impact on their determination of whether to become FINRA members and the likelihood or magnitude of any anticipated changes in trading behavior. There is significant diversity in the business models of proprietary trading firms. FINRA expects that the impacts of the exemption would depend on the level of trading activities proprietary trading firms conduct other than on the exchanges of which they are members. The impacts may also vary with the proportion of TAF to their overall FINRA membership costs. When TAF is expected to be a significant component of their membership costs, the proposed exemption is more likely to affect the firm's decision to become a FINRA member under the baseline.

ii. Anticipated Costs

As discussed above, FINRA anticipates that the proposed TAF exception may increase the number of proprietary trading firms that choose to become FINRA members relative to the baseline. The costs to these firms, like the benefits to these firms discussed

above, are qualitatively the same as those incurred by proprietary trading firms that would choose to become FINRA members absent the proposed TAF exemption. These firms presumably choose to become FINRA members because the overall financial outcome is superior to that which would occur without joining FINRA and complying with the SEC proposed rule by restricting their trades to exchanges of which they are members.

D. Other Economic Effects

Effects on Trading Activities

Proprietary trading firms that are current FINRA members may alter their trading strategies to take advantage of the proposed TAF exemption, which may impact the amount and allocation of trading activity among exchange and off-exchange trading venues from the baseline. Likewise, the existence of the TAF exemption may impact non-FINRA member firms' decision whether to become FINRA members, and thus also may impact the amount and allocation of trading activity among exchange and off-exchange trading venues from the baseline.

These potential changes in trading activity of proprietary trading firms may affect liquidity, execution quality and trading volume on the various trading venues. However, the extent and direction of the effect is generally not determinate and depends on how other market participants, including non-proprietary trading firms, respond to proprietary firms' actions.[33] To the extent the TAF exemption dampens a decrease in liquidity that may otherwise result as trading firms adjust to the amendments to SEA Rule 15b9-1, such an impact could help improve outcomes for investors seeking to trade, including

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33 See Proposing Release, supra note 8, 87 FR 49930, 49959.

lowering transaction costs or providing greater immediacy in trading relative to the baseline.

Effects on Competition

FINRA members that are proprietary trading firms may compete to provide liquidity with other FINRA members. Since the proposed TAF exemption is only available for proprietary trading firms, it could provide those firms with a competitive advantage over other members that engage in similar trading activity but do not qualify as proprietary trading firms by changing the relative costs of trading. However, this advantage would not be greater than what non-FINRA member proprietary trading firms currently experience (prior to the potential amendments of SEA Rule 15b9-1).

In addition, to the extent the proposed rule change leads to more proprietary trading firms joining FINRA, the proposed rule change may increase competition by having a more level playing field in terms of the costs associated with FINRA membership and regulatory requirements. As discussed in the SEC Proposal, competition in liquidity provision may be distorted by inequalities in regulatory requirements.[34] With more uniform regulatory requirements and oversight due to the potential increase in FINRA membership, proprietary trading firms could compete more equitably to supply liquidity both on and off-exchange.

E. Alternatives Considered

FINRA considered alternatives to the exemption proposed in this proposed rule change. FINRA believes that the proposed TAF exemption is preferable to an exemption from other types of fees and is directly related to the impacts on the provision of liquidity

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[34] See Proposing Release, supra note 8, 87 FR 49930, 49960.

that the SEC discusses in its proposal.

FINRA also considered other alternative changes to the TAF, including adjusting the overall rate of the TAF or implementing a tiered TAF structure based on trading activity or providing caps. However, such alternatives could likely be more costly to implement for both the affected firms and FINRA, compared to the proposed TAF exemption. Accordingly, FINRA believes that the simple structure in this proposed rule change would be more cost effective to implement. FINRA will have more information about the total fees paid by proprietary trading firms, and their impact on FINRA's regulatory programs and fees once these firms become FINRA members.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Following the SEC's 2015 Proposal to amend SEA Rule 15b9-1, FINRA published Regulatory Notice 15-13 to solicit comment on a proposal to exclude from FINRA's TAF transactions by a proprietary trading firm on exchanges of which the firm is a member.[35] Four comment letters were received in response to the 2015 Notice.[36] Following the SEC's re-proposal of amendments to SEA Rule 15b9-1 in December 2022,

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35 See Regulatory Notice 15-13 (May 2015) ("2015 Notice").

36 Letter from Mary Ann Burns, Chief Operating Officer, FIA Principal Traders Group ("FIA PTG"), to Marcia E. Asquith, Corporate Secretary, FINRA, dated June 19, 2015 ("FIA PTG 2015 Letter"); Letter from Adam Nunes, Hudson River Trading LLC ("HRT"), to Marcia E. Asquith, Corporate Secretary, FINRA, dated June 19, 2015 ("HRT 2015 Letter"); Letter from Rory O'Kane, Chairman of the Board & James Toes, President and CEO, Security Traders Association ("STA"), to Marcia E. Asquith, Corporate Secretary, FINRA, dated June 19, 2015 ("STA Letter"); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Marcia E. Asquith, Corporate Secretary, FINRA, dated June 22, 2015 ("SIFMA Letter").

FINRA re-opened the comment period for Regulatory Notice 15-13 by publishing Regulatory Notice 22-30.[37] Four additional comment letters were received in response to the 2022 Notice.[38] A copy of both Regulatory Notices are attached as Exhibit 2a. Copies of the comment letters received in response to both Regulatory Notices are attached as Exhibit 2b.

FINRA received four generally supportive comment letters in response to Regulatory Notice 15-13.[39] All of these commenters also suggested expanding the proposed TAF exemption to cover additional proprietary trades. FINRA received three supportive[40] and one unsupportive[41] comment letter in response to Regulatory Notice 22-30.

Supportive Comments

The FIA PTG 2023 Letter, HRT 2023 Letter, and Group One Letter stated that the proposed TAF exemption would help address the significant increase in costs that

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37 See Regulatory Notice 22-30 (December 2022) ("2022 Notice").

38 Letter from Adam Nunes, Hudson River Trading LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 13, 2023 ("HRT 2023 Letter"); Letter from Joanna Mallers, Secretary, FIA PTG, to Jennifer Piorko Mitchell, Office of Corporate Secretary, FINRA, dated March 8, 2023 ("FIA PTG 2023 Letter"); Letter from John Kinahan, Chief Executive Officer, Group One Trading, LP ("Group One"), to Jennifer Piorko Mitchell, Office of Corporate Secretary, FINRA, dated March 15, 2023 ("Group One Letter"); and Letter from University of Pittsburgh, School of Law ("Pittsburgh University") to Jennifer Piorko Mitchell, Office of Corporate Secretary, FINRA, dated March 17, 2023 ("University of Pittsburgh Letter").

39 See FIA PTG 2015 Letter; HRT 2015 Letter; SIFMA Letter; and STA Letter.

40 See FIA PTG 2023 Letter; Group One Letter; and HRT 2023 Letter.

41 See University of Pittsburgh Letter.

affected firms would otherwise face in light of the SEC's proposed amendments. HRT and FIA PTG further stated that the proposed exemption from TAF appropriately recognizes the differences in the activities between proprietary trading businesses and customer businesses, and the accompanying costs related to regulating each type of business.[42] Group One added that implementing the proposed TAF exemption would support the ability of proprietary trading firms to continue to provide liquidity in the least disruptive manner possible.[43] HRT, FIA PTG, and Group One also asserted that implementing the TAF exemption would achieve an equitable allocation of fees and be in line with FINRA's actual cost of regulating its members.[44] SIFMA also generally supported the proposed TAF exemption and stated that FINRA should not assess TAF on any principal transactions executed on exchanges of which the firm is a member, regardless of the type of firm.[45]

Requests for Modifications

The FIA PTG 2015 Letter and SIFMA Letter requested that the proposed TAF exemption be broadened to include all principal trades done on an exchange of which a firm is a member, rather than just trades by proprietary trading firms.[46] Similarly, STA

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42 See HRT 2023 Letter, at 1-2; FIA PTG 2023 Letter.

43 See Group One Letter, at 1.

44 See HRT 2023 Letter; FIA PTG 2023 Letter; and Group One Letter.

45 See SIFMA Letter, at 2.

46 Some comments also addressed the potential restructuring of the TAF as well as issues related to other FINRA fees. For example, STA suggested that FINRA reduce the current TAF rate for equity securities and, in particular, consider reducing the rate for over-the-counter and exchange trades by proprietary trading firms. SIFMA requested that FINRA review its fees more broadly and provide

recommended that FINRA "reduce the TAF rates for equity transactions by proprietary firms on over-the-counter and exchanges of which they are not a member."[47]

HRT proposed that all principal trades executed on any exchange be exempt from the TAF, adding that "off-exchange trades, as well as Agency and Riskless Principal trades executed on an exchange, should continue to be charged the TAF."[48] HRT stated that, as proposed, the TAF exemption may discourage firms from engaging in customer-based business[49] or, alternatively, could result in such firms operating multiple broker-dealers to avoid the proprietary firm business incurring a TAF obligation on exempt exchange transactions.[50]

As discussed above, FINRA believes that it is appropriate to proceed with an exemption from TAF for proprietary trading firms with respect to their transactions on an

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more transparency into how it uses and allocates the revenues it receives from fees and other sources of income. While these comments are not germane to the instant proposal—which seeks to provide an exemption from the TAF for a proprietary trading firm for transactions on an exchange of which it is a member—FINRA notes that it reviews its revenues as part of its budgeting process and revises fees as appropriate, both their application and their rates. In this regard, on October 14, 2020, FINRA amended various regulatory fees to increase the revenues that FINRA, as a not-for-profit self-regulatory organization, relies upon to fund its regulatory mission. The proposed fee increases were designed to better align FINRA's revenues with its costs while preserving the existing equitable allocation of fees among FINRA members. See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-032).

47 See STA Letter, at 4.

48 See HRT 2015 Letter, at 2.

49 See supra note 48.

50 See supra note 48; see also FIA PTG 2015 Letter, at 3.

exchange of which they are a member because FINRA anticipates that regulatory costs largely will relate to overseeing such firms' activity over the counter or across exchanges.

The FIA PTG 2015 Letter requested that, should the TAF exemption be limited to "proprietary trading firms" as proposed, FINRA provide guidance regarding the scope of the term "proprietary trading firm" to clarify: (i) the scope of the term "customer" for purposes of the exemption, and (ii) the requirement that traders be owners of, employees of, or contractors to the firm. Specifically, the FIA PTG 2015 Letter requested that FINRA clarify that the criteria "does not have customers" only applies to customers that are engaged in transactions in securities that are subject to the TAF, and not to "non-securities transactions, fixed-income transactions, and other businesses such as stock-lending and licensing of technology."[51] FIA PTG also asked that FINRA specify what time period is relevant for purposes of determining whether a firm is engaged in a customer business.[52] Further, FIA PTG requested that FINRA clarify that traders or other associated persons could be employed by an affiliate of the firm (rather than firm itself) without losing the ability to rely on the proposed exemption.[53] FIA PTG asserted that such employment arrangements are "a common structure" for such firms.[54]

In response to these comments, FINRA is clarifying that the relevant activities for purposes of the proposed definition of "proprietary trading firm" are securities activities. The term "securities activities" would include transactions in any security (including

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51 See FIA PTG 2015 Letter, at 4.

52 See supra note 51.

53 See supra note 51, at 5.

54 See supra note 51, at 5.

fixed income) and also would include securities lending transactions. However, the term would not include non-securities activities such as licensing of technology or non-securities transactions. In addition, FINRA is modifying the definition of "proprietary trading firm" to clarify that "customer" would include "any person, other than a broker or dealer, with whom the member engages, or within the past six months has engaged, in securities activities." FINRA believes that the six-month proposed timeframe will provide additional clarity as to the application of the rule as members' businesses may evolve over time. Thus, for example, if a member restructures its business such that it ceases engaging in securities activities with customers, the member would be able to avail itself of the proposed proprietary trading firm exemption after a six-month period (assuming that the other conditions of the exemption are met). The six-month timeframe would be assessed on an ongoing basis; therefore, any securities activity with a customer would cause the firm to be ineligible for the exemption for six months from the time the firm ceases to engage in such customer activity. Finally, FINRA is proposing to include within the scope of "proprietary trading firm" a firm that (in addition to the other criteria) conducts all trading through the firm's accounts by traders that are owners of, employees of, or contractors to the firm "or employees of an affiliate of the firm."

Unsupportive Comments

Pittsburgh University stated that proprietary trading firms engage in significant trading in the marketplace, which pose a substantial risk to the market, and that there is a related cost for FINRA to supervise and oversee proprietary trading firm activity and that, therefore, FINRA should apply a TAF rate to proprietary trading firms that is

proportional to the cost of regulating such firms.[55] Pittsburgh University also stated that "[w]hile the cost to regulate proprietary trading firms is less than the cost to regulate firms which trade on behalf of customers, proprietary trading firms should not be entirely exempt from the TAF when trading on an exchange on which they are members."[56]

FINRA agrees that regulating proprietary trading firm trading activity will involve a cost. For this reason, FINRA is not proposing to exempt proprietary trading firms from the TAF altogether. As discussed above, FINRA believes it is appropriate to exempt proprietary trading firms from the TAF for transactions on an exchange of which they are a member because FINRA anticipates that regulatory costs largely will relate to overseeing such firms' activity over the counter or across exchanges.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[57] and paragraph (f)(2) of Rule 19b-4 thereunder,[58] in that the proposed rule change is establishing or changing a due, fee, or other charge imposed by

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55 See University of Pittsburgh Letter, at 6.

56 See University of Pittsburgh Letter. Pittsburgh University added that "[t]o exempt proprietary trading firms from TAFs would alter the balance between the TAF and other FINRA fees that fund FINRA's operations, due to an increased cost in regulation without a similar increase of resources."

57 15 U.S.C. 78s(b)(3)(A)(ii).

58 17 CFR 240.19b-4(f)(2).

the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register

Exhibit 2a. Regulatory Notice 15-13 (May 2015); Regulatory Notice 22-30 (December 2022)

Exhibit 2b. Copies of comment letters

Exhibit 5. Text of proposed rule change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2023-009)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA's Trading Activity Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Section 1(b) of Schedule A to the FINRA By-Laws to exempt from the Trading Activity Fee ("TAF") any transaction by a proprietary

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(ii).

4 17 CFR 240.19b-4(f)(2).

trading firm that occurs on an exchange of which the proprietary trading firm is a member.

The text of the proposed rule change is available on FINRA's website at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As a general matter, the most significant sources of FINRA's funding are three core regulatory fees: the Gross Income Assessment; the TAF; and the Personnel Assessment.[5] These regulatory fees are used to substantially fund FINRA's regulatory activities, including examinations, financial monitoring, and FINRA's policymaking, rulemaking, and enforcement activities.[6] As discussed in FINRA's prior Regulatory Notices, FINRA is proposing an exemption from one of FINRA's regulatory fees—the

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5 See FINRA By-Laws, Schedule A, Section 1.

6 See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-032).

TAF—for transactions by "proprietary trading firms," which FINRA understands would include firms currently operating in compliance with existing SEA Rule 15b9-1 and that would be required to become FINRA members in light of the SEC's proposed amendments to SEA Rule 15b9-1, as further discussed below.[7] In this regard, FINRA proposes to define "proprietary trading firm" as a member that (i) trades exclusively its own capital; (ii) does not have "customers," which shall include any person, other than a broker or dealer, with whom the member engages, or within the past six months has engaged, in securities activities; and (iii) conducts all trading through the firm's accounts by traders that are owners of, employees of, or contractors to the firm, or employees of an affiliate of the firm.

Under the Exchange Act, a registered broker-dealer must become a member of a national securities association (currently, FINRA is the sole national securities association) unless the broker-dealer effects transactions in securities solely on a national securities exchange of which it is a member.[8] SEA Rule 15b9-1 provides an exemption to the requirement that a broker-dealer become a member of a national securities association if the broker-dealer (i) is a member of a national securities exchange, (ii) carries no customer accounts, and (iii) has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a

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7 FINRA believes that proprietary trading firms currently operating in compliance with existing SEA Rule 15b9-1 that would join FINRA due to the SEC's proposed amendments to SEA Rule 15b9-1 would meet the proposed definition of "proprietary trading firm" and would qualify for the proposed exemption (assuming no changes to their business models that would alter their eligibility), as well as current FINRA members that meet the proposed definition. See also infra notes 37 and 39.

8 15 U.S.C. 78o(b)(8).

member in an amount no greater than $1,000 (the $1,000 limitation is known as the "de minimis allowance").[9] The $1,000 gross income limitation does not apply to income derived from transactions for the dealer's own account with or through another registered broker or dealer. Thus, for example, income derived from over-the-counter trades through an alternative trading system does not count toward the $1,000 threshold. On July 29, 2022, the SEC proposed amendments to SEA Rule 15b9-1 to narrow the exemption from association membership.[10]

As discussed in the Proposing Release, the securities markets have evolved dramatically since the adoption of SEA Rule 15b9-1 and, today, the de minimis allowance is relied upon by proprietary trading firms that, in some cases, engage in substantial cross-exchange and off-exchange trading activity, yet they are not subject to FINRA oversight.[11] The SEC therefore proposed to eliminate the de minimis allowance and instead provide that a broker-dealer may effect transactions otherwise than on a national securities exchange of which it is a member in only two narrow circumstances: (i) transactions that result solely from orders routed by the exchange of which the firm is a member to prevent trade-throughs consistent with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Cross Market Plan; and (ii) transactions that are

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9 17 CFR 240.15b9-1.

10 See Securities Exchange Act Release No. 95388 (July 29, 2022), 87 FR 49930 (August 12, 2022) ("Proposing Release"). The SEC previously proposed to amend SEA Rule 15b9-1 in 2015. See Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015) (File No. S7-05-15) ("2015 Proposal").

11 See Proposing Release, supra note 10, 87 FR 49930, 49931.

solely for the purpose of executing the stock leg of a stock-option order, subject to specified conditions.[12]

The SEC estimates that the proposed amendments to SEA Rule 15b9-1 would impact approximately 65 broker dealers that are not currently FINRA members.[13] Thus, if adopted, the proposed amendments to SEA Rule 15b9-1 would require additional broker-dealers to become a member of FINRA (unless they limit their activities to the contours of the amended exemption from membership in a national securities association), and such member firms would become subject to FINRA regulatory fees, among other requirements.

Proprietary trading firms that potentially could become members of FINRA have expressed concern about the TAF in particular. FINRA notes that there currently are several exemptions from the TAF, including for transactions by floor brokers and for market making transactions subject to Section 11(a) of the Act.[14] However, proprietary trading firms do not function as floor brokers and may only be registered market makers in some, but not all, of the securities that they trade. As a result, if the proposed amendments to SEA Rule 15b9-1 are adopted by the SEC, those proprietary trading firms that would become FINRA members would be subject to the TAF for much of their trading activity, including transactions on exchanges of which they are a member. The SEC noted specifically when proposing the amendments to SEA Rule 15b9-1 that FINRA may want to "evaluate its TAF to ensure that it appropriately reflects the activities of, and

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12 See Proposing Release, supra note 10.

13 See Proposing Release , supra note 10, 87 FR 49930, 49954.

14 FINRA By-Laws, Schedule A, Section 1(b)(2)(F) and (G).

regulatory responsibilities towards, broker-dealer proprietary trading firms that would be required to join FINRA if the proposed amendments to [SEA] Rule 15b9-1 are adopted."[15] In light of the SEC's proposed amendments to SEA Rule 15b9-1, FINRA has considered the application and potential impact of the TAF to proprietary trading firms and has concluded that it is appropriate to provide an exemption from the TAF for all proprietary trading firms for transactions executed on an exchange of which the proprietary trading firm is a member.[16] As FINRA regularly evaluates its fees to ensure appropriate funding for its regulatory mission, FINRA expects to evaluate the TAF—including with respect to proprietary trading firms—more broadly in the future.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice. The implementation date will be no earlier than the date of adoption of the Commission's amendments to SEA Rule 15b9-1 eliminating the de minimis allowance and no later than the effective date of any such amendments.[17]

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15 See Proposing Release, supra note 10, 87 FR 49930, 49943. In the 2015 Proposal, the SEC made a similar comment: "FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, in order to assure that it is fairly and equitably applied to many of the [non-FINRA member firms] that, as a result of the amendments to [SEA] Rule 15b9-1, may join FINRA." See 2015 Proposal, supra note 10, 80 FR 18036, 18044 n.95.

16 FINRA notes that, in addition to any other applicable FINRA fees, proprietary trading firms would incur a TAF obligation on transactions executed otherwise than on an exchange and on transactions executed on an exchange of which the firm is not a member. These transactions would be subject to the TAF under the existing fee structure and at existing rates.

17 See supra note 10.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[18] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed TAF exemption will result in an equitable allocation of fees to proprietary trading firms in accord with their activities and the regulatory resources to oversee them with respect to their trading activity on an exchange of which they are a member.

FINRA believes it is reasonable to propose this amendment in view of the fact that regulatory costs for firms that do not have customers are expected to be less than the cost to oversee the activity of firms with customers. FINRA also believes that it is appropriate to proceed with an exemption for proprietary trading firms with respect to their transactions on an exchange of which they are a member because FINRA anticipates that regulatory costs largely will relate to overseeing such firms' activity over the counter or across exchanges.

Under the proposal, proprietary trading firms (as defined in the proposed rule) that are current FINRA members would experience a reduction in their TAF assessments to the extent they conduct non-market making transactions executed on exchanges of which they are members. Proprietary trading firms that become FINRA members would incur a smaller TAF assessment than they otherwise would pay absent the proposal.

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[18] 15 U.S.C. 78o-3(b)(5).

Finally, FINRA believes that the proposal is reasonable in that the proposed exemption is clear, simple, and cost effective for firms to implement.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

1. Regulatory Need

As discussed above, the SEC is proposing to amend SEA Rule 15b9-1 to narrow the scope of the exemption from FINRA membership. The proposed amendments to SEA Rule 15b9-1, if adopted, would generally require proprietary trading firms to become FINRA members if they engage in trading otherwise than on exchanges of which they are members.[19]

2. Economic Baseline

The economic baseline for FINRA's proposed rule change consists of the regulatory framework under the SEC's proposed amendments to SEA Rule 15b9-1, if adopted, as well as FINRA's current TAF. In the Proposing Release, the SEC notes that, under the amended rule, a non-FINRA member firm that trades equities, options or fixed income securities off-exchange, or on exchanges of which it is not a member, can comply in four ways. One option is to join FINRA. The other options are to cease any off-exchange trading and either trade solely upon the exchanges of which the firm is already

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19 See supra notes 10-12 and accompanying text.

a member, or join additional exchanges, or cease trading securities altogether.[20] The discussion below briefly considers the benefits, costs and other economic impacts of the SEC proposed amendments to SEA Rule 15b9-1, as discussed by the SEC, to facilitate the consideration of the economic impacts of FINRA's proposed rule change to the TAF.

FINRA expects that some firms that are not currently FINRA members will apply for FINRA membership due to the SEC's modifications to SEA Rule 15b9-1, if adopted. These firms would maintain the ability to effect securities transactions on the same on and off exchange venues on which they currently effect such transactions. These firms would incur the one-time and ongoing costs of FINRA membership, including the TAF and other regulatory fees. The TAF would increase these firms' variable costs to trade, and the SEC notes that this may lead certain firms to reduce their trading both on-exchange and off-exchange.[21] These firms may, however, mitigate some of the disincentive that comes from being liable for the TAF for trading on exchanges by registering as market makers.[22] Membership by these firms in FINRA would provide more stable and uniform FINRA surveillance of off-exchange and cross-exchange trading activity than currently occurs.[23]

Other non-FINRA member firms may choose to cease their off-exchange activity rather than join FINRA. Some of these firms may adjust their business models to trade solely upon the exchanges of which they are already a member or join additional

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20 See Proposing Release, supra note 10, 87 FR 49930, 49958.

21 See Proposing Release, supra note 10, 87 FR 49930, 49958-60, 49965.

22 See Proposing Release, supra note 10, 87 FR 49930, 49960, 49965.

23 See Proposing Release, supra note 10, 87 FR 49930, 49962.

exchanges upon which they wish to trade. However, since these firms may currently trade on exchanges of which they are not members, they may also cease trading on some of those exchanges.[24]

The SEC also discusses how the changes non-FINRA member firms make to their business models to comply with the proposed amendments to SEA Rule 15b9-1 may affect other activities, including competition in the equity and U.S. Treasury securities markets, particularly for off-exchange liquidity provision.[25] As discussed above, non-FINRA member firms that join FINRA may reduce trading off-exchange and those that do not join FINRA will cease trading off-exchange, with similar impacts on their provision of off-exchange liquidity. Non-FINRA member firms may also reduce trading and liquidity provision on exchanges, whether or not they join FINRA.[26] A loss in liquidity provision may impose costs on investors in the form of higher trading costs than they would otherwise realize.[27] However, current member firms may increase their activity and offset some of these impacts, both on and off-exchange.[28] The ultimate impact on liquidity, execution quality and trading volume for particular assets and trading venues is generally not determinate. Regarding the overall provision of liquidity to

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24 See Proposing Release, supra note 10, 87 FR 49930, 49967.

25 See Proposing Release, supra note 10, 87 FR 49930, 49958.

26 See Proposing Release, supra note 10, 87 FR 49930, 49959-60.

27 See Proposing Release, supra note 10, 87 FR 49930, 49959. The SEC also states that the removal of liquidity from the market could either improve or degrade execution quality on off-exchange markets and reduced liquidity on exchanges can result in higher spreads and increased liquidity. Id. at 49960.

28 See Proposing Release, supra note 10, 87 FR 49930, 49960.

financial markets, however, the SEC argues that the effect of the proposed rule is not likely to be significant.[29]

Current FINRA members, including proprietary trading firms, would not be directly affected by the SEC proposal.[30] However, to the extent that member firms currently compete with non-member firms that must become FINRA members or change their historical trading activities to avoid FINRA membership, the current members may benefit from having more uniform regulatory requirements among similarly situated competitors.

The SEC has estimated that there are approximately 65 broker-dealers registered with the Commission and exchange members that are not FINRA members. Each of these non-FINRA member firms will assess the costs and benefits of the options permitted by the amendments the SEC may make to SEA Rule 15b9-1. FINRA cannot determine the number of firms that may choose to become FINRA members or the likelihood or magnitude of any anticipated changes in trading behavior because of the proposed SEC rule amendments.[31]

FINRA estimates that approximately 66 member firms derive all or most of their revenue from proprietary trading, although not all of these firms would meet the proposed definition of "proprietary trading firm" based on their current business models.[32] FINRA

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29 See supra note 28.

30 See Proposing Release, supra note 10, 87 FR 49930, 49963.

31 FINRA notes that the SEC Proposal also discusses difficulties related to predicting changes in trading behavior and associated competitive impacts. See Proposing Release, supra note 10, 87 FR 49930, 49960.

32 Some of these 66 member firms may need to adjust their business models if they seek to qualify for the proposed TAF exemption. Whether these firms would

understands that, of the 66 firms that clear their own trades, the TAF accounts for over 85% of the regulatory fees paid by these firms (GIA, PA and TAF). However, most of the 66 firms do not clear their own trades and so do not pay TAF directly to FINRA.[33] Whether these firms conduct trades subject to TAF and whether they reimburse their clearing firm for the TAF, is not known to FINRA. Overall, between 2015 and 2022, TAF as a proportion of regulatory fees received by FINRA ranged from 41% to 56%. For the member firms that are proprietary trading firms and conduct trades subject to TAF, this may be a closer approximation to the maximum share of their regulatory fees that would be subject to the proposed TAF exemption.

3. Economic Impacts

FINRA is proposing to amend the TAF to exempt all transactions by a FINRA member proprietary trading firm executed on an exchange of which it is a member.[34] The proposed rule change would directly impact member proprietary trading firms by providing them an exemption from the TAF for such transactions. These member proprietary trading firms include current FINRA members as well as those that would join FINRA due to the SEC's proposed amendments to SEA Rule 15b9-1. The FINRA

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eliminate disqualifying activity, move it into a separate entity or decline to take the TAF exemption depends on the value of this activity and the extent to which the loss of scale economies in conducting the activity in a separate entity would affect the cost.

33 See Trading Activity Fee Frequently Asked Questions, https://www.finra.org/rules-guidance/guidance/faqs/trading-activity-fee ("Data should be submitted as monthly aggregates at the clearing firm level" A100.6).

34 As noted above, the TAF currently provides an exemption for proprietary transactions by a member firm effected on an exchange of which it is a member in its capacity as a specialist or market maker in the security on that exchange.

proposed rule change may also impact the number of non-member proprietary trading firms that choose to apply for FINRA membership rather than use one of the other options for compliance (as described above). All comparisons below are relative to the baseline, and therefore assume that SEA Rule 15b9-1 is amended as proposed and that, notionally, firms have adjusted their business conduct taking into account the SEC proposed rule and market conditions, as described above.

a. Anticipated Benefits

FINRA believes that the proposed TAF exemption is clear and simple for firms to implement. In addition, the proposed TAF exemption will likely dampen potential competitive effects and other market impacts as participants determine how to respond to proprietary trading firms' change in trading behaviors in response to the amendments to SEA Rule 15b9-1, while continuing to assess fees in a manner that is fair, reasonable, and equitably allocated among FINRA member firms. FINRA anticipates that, by reducing the fees associated with FINRA membership, the proposed TAF exemption may result in more proprietary trading firms joining FINRA. FINRA membership would allow these firms increased flexibility in where and how they trade.

Proprietary trading firms that are current FINRA members would experience a reduction in their TAF assessments to the extent they conduct non-market making transactions executed on exchanges of which they are members. Under the proposed TAF exemption, proprietary trading firms that become FINRA members would incur a smaller TAF assessment than they otherwise would pay absent the proposal. FINRA cannot determine the number of firms for which the proposed TAF exemption will have an impact on their determination of whether to become FINRA members and the

likelihood or magnitude of any anticipated changes in trading behavior. There is significant diversity in the business models of proprietary trading firms. FINRA expects that the impacts of the exemption would depend on the level of trading activities proprietary trading firms conduct other than on the exchanges of which they are members. The impacts may also vary with the proportion of TAF to their overall FINRA membership costs. When TAF is expected to be a significant component of their membership costs, the proposed exemption is more likely to affect the firm's decision to become a FINRA member under the baseline.

b. Anticipated Costs

As discussed above, FINRA anticipates that the proposed TAF exception may increase the number of proprietary trading firms that choose to become FINRA members relative to the baseline. The costs to these firms, like the benefits to these firms discussed above, are qualitatively the same as those incurred by proprietary trading firms that would choose to become FINRA members absent the proposed TAF exemption. These firms presumably choose to become FINRA members because the overall financial outcome is superior to that which would occur without joining FINRA and complying with the SEC proposed rule by restricting their trades to exchanges of which they are members.

4. Other Economic Effects

Effects on Trading Activities

Proprietary trading firms that are current FINRA members may alter their trading strategies to take advantage of the proposed TAF exemption, which may impact the amount and allocation of trading activity among exchange and off-exchange trading

venues from the baseline. Likewise, the existence of the TAF exemption may impact non-FINRA member firms' decision whether to become FINRA members, and thus also may impact the amount and allocation of trading activity among exchange and off-exchange trading venues from the baseline.

These potential changes in trading activity of proprietary trading firms may affect liquidity, execution quality and trading volume on the various trading venues. However, the extent and direction of the effect is generally not determinate and depends on how other market participants, including non-proprietary trading firms, respond to proprietary firms' actions.[35] To the extent the TAF exemption dampens a decrease in liquidity that may otherwise result as trading firms adjust to the amendments to SEA Rule 15b9-1, such an impact could help improve outcomes for investors seeking to trade, including lowering transaction costs or providing greater immediacy in trading relative to the baseline.

Effects on Competition

FINRA members that are proprietary trading firms may compete to provide liquidity with other FINRA members. Since the proposed TAF exemption is only available for proprietary trading firms, it could provide those firms with a competitive advantage over other members that engage in similar trading activity but do not qualify as proprietary trading firms by changing the relative costs of trading. However, this advantage would not be greater than what non-FINRA member proprietary trading firms currently experience (prior to the potential amendments of SEA Rule 15b9-1).

In addition, to the extent the proposed rule change leads to more proprietary

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35 See Proposing Release, supra note 10, 87 FR 49930, 49959.

trading firms joining FINRA, the proposed rule change may increase competition by having a more level playing field in terms of the costs associated with FINRA membership and regulatory requirements. As discussed in the SEC Proposal, competition in liquidity provision may be distorted by inequalities in regulatory requirements.[36] With more uniform regulatory requirements and oversight due to the potential increase in FINRA membership, proprietary trading firms could compete more equitably to supply liquidity both on and off-exchange.

5. Alternatives Considered

FINRA considered alternatives to the exemption proposed in this proposed rule change. FINRA believes that the proposed TAF exemption is preferable to an exemption from other types of fees and is directly related to the impacts on the provision of liquidity that the SEC discusses in its proposal.

FINRA also considered other alternative changes to the TAF, including adjusting the overall rate of the TAF or implementing a tiered TAF structure based on trading activity or providing caps. However, such alternatives could likely be more costly to implement for both the affected firms and FINRA, compared to the proposed TAF exemption. Accordingly, FINRA believes that the simple structure in this proposed rule change would be more cost effective to implement. FINRA will have more information about the total fees paid by proprietary trading firms, and their impact on FINRA's regulatory programs and fees once these firms become FINRA members.

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36 See Proposing Release, supra note 10, 87 FR 49930, 49960.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Following the SEC's 2015 Proposal to amend SEA Rule 15b9-1, FINRA published Regulatory Notice 15-13 to solicit comment on a proposal to exclude from FINRA's TAF transactions by a proprietary trading firm on exchanges of which the firm is a member.[37] Four comment letters were received in response to the 2015 Notice.[38] Following the SEC's re-proposal of amendments to SEA Rule 15b9-1 in December 2022, FINRA re-opened the comment period for Regulatory Notice 15-13 by publishing Regulatory Notice 22-30.[39] Four additional comment letters were received in response to the 2022 Notice.[40] A copy of both Regulatory Notices are available on FINRA's website

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37 See Regulatory Notice 15-13 (May 2015) ("2015 Notice").

38 Letter from Mary Ann Burns, Chief Operating Officer, FIA Principal Traders Group ("FIA PTG"), to Marcia E. Asquith, Corporate Secretary, FINRA, dated June 19, 2015 ("FIA PTG 2015 Letter"); Letter from Adam Nunes, Hudson River Trading LLC ("HRT"), to Marcia E. Asquith, Corporate Secretary, FINRA, dated June 19, 2015 ("HRT 2015 Letter"); Letter from Rory O'Kane, Chairman of the Board & James Toes, President and CEO, Security Traders Association ("STA"), to Marcia E. Asquith, Corporate Secretary, FINRA, dated June 19, 2015 ("STA Letter"); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Marcia E. Asquith, Corporate Secretary, FINRA, dated June 22, 2015 ("SIFMA Letter").

39 See Regulatory Notice 22-30 (December 2022) ("2022 Notice").

40 Letter from Adam Nunes, Hudson River Trading LLC, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 13, 2023 ("HRT 2023 Letter"); Letter from Joanna Mallers, Secretary, FIA PTG, to Jennifer Piorko Mitchell, Office of Corporate Secretary, FINRA, dated March 8, 2023 ("FIA PTG 2023 Letter"); Letter from John Kinahan, Chief Executive Officer, Group One Trading, LP ("Group One"), to Jennifer Piorko Mitchell, Office of Corporate Secretary, FINRA, dated March 15, 2023 ("Group One Letter"); and Letter from University of Pittsburgh, School of Law ("Pittsburgh University") to Jennifer Piorko Mitchell, Office of Corporate Secretary, FINRA, dated March 17, 2023 ("University of Pittsburgh Letter").

at http://www.finra.org. Copies of the comment letters received in response to both Regulatory Notices are also available on FINRA's website.

FINRA received four generally supportive comment letters in response to Regulatory Notice 15-13.[41] All of these commenters also suggested expanding the proposed TAF exemption to cover additional proprietary trades. FINRA received three supportive[42] and one unsupportive[43] comment letter in response to Regulatory Notice 22-30.

Supportive Comments

The FIA PTG 2023 Letter, HRT 2023 Letter, and Group One Letter stated that the proposed TAF exemption would help address the significant increase in costs that affected firms would otherwise face in light of the SEC's proposed amendments. HRT and FIA PTG further stated that the proposed exemption from TAF appropriately recognizes the differences in the activities between proprietary trading businesses and customer businesses, and the accompanying costs related to regulating each type of business.[44] Group One added that implementing the proposed TAF exemption would support the ability of proprietary trading firms to continue to provide liquidity in the least disruptive manner possible.[45] HRT, FIA PTG, and Group One also asserted that implementing the TAF exemption would achieve an equitable allocation of fees and be in

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41 See FIA PTG 2015 Letter; HRT 2015 Letter; SIFMA Letter; and STA Letter.

42 See FIA PTG 2023 Letter; Group One Letter; and HRT 2023 Letter.

43 See University of Pittsburgh Letter.

44 See HRT 2023 Letter, at 1-2; FIA PTG 2023 Letter.

45 See Group One Letter, at 1.

line with FINRA's actual cost of regulating its members.[46] SIFMA also generally supported the proposed TAF exemption and stated that FINRA should not assess TAF on any principal transactions executed on exchanges of which the firm is a member, regardless of the type of firm.[47]

Requests for Modifications

The FIA PTG 2015 Letter and SIFMA Letter requested that the proposed TAF exemption be broadened to include all principal trades done on an exchange of which a firm is a member, rather than just trades by proprietary trading firms.[48] Similarly, STA recommended that FINRA "reduce the TAF rates for equity transactions by proprietary firms on over-the-counter and exchanges of which they are not a member."[49]

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46 See HRT 2023 Letter; FIA PTG 2023 Letter; and Group One Letter.

47 See SIFMA Letter, at 2.

48 Some comments also addressed the potential restructuring of the TAF as well as issues related to other FINRA fees. For example, STA suggested that FINRA reduce the current TAF rate for equity securities and, in particular, consider reducing the rate for over-the-counter and exchange trades by proprietary trading firms. SIFMA requested that FINRA review its fees more broadly and provide more transparency into how it uses and allocates the revenues it receives from fees and other sources of income. While these comments are not germane to the instant proposal—which seeks to provide an exemption from the TAF for a proprietary trading firm for transactions on an exchange of which it is a member—FINRA notes that it reviews its revenues as part of its budgeting process and revises fees as appropriate, both their application and their rates. In this regard, on October 14, 2020, FINRA amended various regulatory fees to increase the revenues that FINRA, as a not-for-profit self-regulatory organization, relies upon to fund its regulatory mission. The proposed fee increases were designed to better align FINRA's revenues with its costs while preserving the existing equitable allocation of fees among FINRA members. See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-032).

49 See STA Letter, at 4.

HRT proposed that all principal trades executed on any exchange be exempt from the TAF, adding that "off-exchange trades, as well as Agency and Riskless Principal trades executed on an exchange, should continue to be charged the TAF."[50] HRT stated that, as proposed, the TAF exemption may discourage firms from engaging in customer-based business[51] or, alternatively, could result in such firms operating multiple broker-dealers to avoid the proprietary firm business incurring a TAF obligation on exempt exchange transactions.[52]

As discussed above, FINRA believes that it is appropriate to proceed with an exemption from TAF for proprietary trading firms with respect to their transactions on an exchange of which they are a member because FINRA anticipates that regulatory costs largely will relate to overseeing such firms' activity over the counter or across exchanges.

The FIA PTG 2015 Letter requested that, should the TAF exemption be limited to "proprietary trading firms" as proposed, FINRA provide guidance regarding the scope of the term "proprietary trading firm" to clarify: (i) the scope of the term "customer" for purposes of the exemption, and (ii) the requirement that traders be owners of, employees of, or contractors to the firm. Specifically, the FIA PTG 2015 Letter requested that FINRA clarify that the criteria "does not have customers" only applies to customers that are engaged in transactions in securities that are subject to the TAF, and not to "non-securities transactions, fixed-income transactions, and other businesses such as stock-

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50 See HRT 2015 Letter, at 2.

51 See supra note 50.

52 See supra note 50; see also FIA PTG 2015 Letter, at 3.

lending and licensing of technology."[53] FIA PTG also asked that FINRA specify what time period is relevant for purposes of determining whether a firm is engaged in a customer business.[54] Further, FIA PTG requested that FINRA clarify that traders or other associated persons could be employed by an affiliate of the firm (rather than firm itself) without losing the ability to rely on the proposed exemption.[55] FIA PTG asserted that such employment arrangements are "a common structure" for such firms.[56]

In response to these comments, FINRA is clarifying that the relevant activities for purposes of the proposed definition of "proprietary trading firm" are securities activities. The term "securities activities" would include transactions in any security (including fixed income) and also would include securities lending transactions. However, the term would not include non-securities activities such as licensing of technology or non-securities transactions. In addition, FINRA is modifying the definition of "proprietary trading firm" to clarify that "customer" would include "any person, other than a broker or dealer, with whom the member engages, or within the past six months has engaged, in securities activities." FINRA believes that the six-month proposed timeframe will provide additional clarity as to the application of the rule as members' businesses may evolve over time. Thus, for example, if a member restructures its business such that it ceases engaging in securities activities with customers, the member would be able to avail itself of the proposed proprietary trading firm exemption after a six-month period

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53 See FIA PTG 2015 Letter, at 4.

54 See supra note 53.

55 See supra note 53, at 5.

56 See supra note 53, at 5.

(assuming that the other conditions of the exemption are met). The six-month timeframe would be assessed on an ongoing basis; therefore, any securities activity with a customer would cause the firm to be ineligible for the exemption for six months from the time the firm ceases to engage in such customer activity. Finally, FINRA is proposing to include within the scope of "proprietary trading firm" a firm that (in addition to the other criteria) conducts all trading through the firm's accounts by traders that are owners of, employees of, or contractors to the firm "or employees of an affiliate of the firm."

Unsupportive Comments

Pittsburgh University stated that proprietary trading firms engage in significant trading in the marketplace, which pose a substantial risk to the market, and that there is a related cost for FINRA to supervise and oversee proprietary trading firm activity and that, therefore, FINRA should apply a TAF rate to proprietary trading firms that is proportional to the cost of regulating such firms.[57] Pittsburgh University also stated that "[w]hile the cost to regulate proprietary trading firms is less than the cost to regulate firms which trade on behalf of customers, proprietary trading firms should not be entirely exempt from the TAF when trading on an exchange on which they are members."[58]

FINRA agrees that regulating proprietary trading firm trading activity will involve a cost. For this reason, FINRA is not proposing to exempt proprietary trading firms from the TAF altogether. As discussed above, FINRA believes it is appropriate to exempt

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57 See University of Pittsburgh Letter, at 6.

58 See University of Pittsburgh Letter. Pittsburgh University added that "[t]o exempt proprietary trading firms from TAFs would alter the balance between the TAF and other FINRA fees that fund FINRA's operations, due to an increased cost in regulation without a similar increase of resources."

proprietary trading firms from the TAF for transactions on an exchange of which they are a member because FINRA anticipates that regulatory costs largely will relate to overseeing such firms' activity over the counter or across exchanges.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[59] and paragraph (f)(2) of Rule 19b-4 thereunder.[60] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

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59 15 U.S.C. 78s(b)(3)(A).

60 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2023-009 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2023-009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2023-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Jill M. Peterson
Assistant Secretary

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61 17 CFR 200.30-3(a)(12).

Exhibit 2a

Regulatory Notice 15-13

Trading Activity Fee (TAF)

FINRA Requests Comment on Proposed Exemption to the Trading Activity Fee for Proprietary Trading Firms

Comment Period Expires: June 19, 2015

Executive Summary

On March 25, 2015, the Securities and Exchange Commission (SEC) proposed amendments to Rule 15b9-1 under the Securities Exchange Act of 1934 (SEA or Exchange Act), which currently provides many proprietary trading firms with an exemption from membership in a national securities association.[1] If adopted, the amendments generally would require a proprietary trading firm relying on the current exemption to register with FINRA if the firm continues to engage in over-the-counter trading or trading on an exchange of which it is not a member. FINRA membership would, among other things, subject these firms to the existing FINRA fee structure, including the TAF. This *Notice* requests comment on a proposed exemption to exclude from the TAF transactions by a proprietary trading firm on exchanges of which the firm is a member. The proposed rule text is attached as Attachment A.

Questions concerning this *Notice* should be directed to:

- Shelly Bohlin, Vice President, Market Regulation, at (240) 386-5029;
- Carrie DiValerio, Vice President, Finance, at (240) 386-5299; or
- Brant Brown, Associate General Counsel, Office of General Counsel, at (202) 728-6927.

May 2015

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Institutional
- Legal
- Operations
- Senior Management
- Trading

Key Topics

- Proprietary Trading Firms
- Trading Activity Fee

Referenced Rules & Notices

- Schedule A to FINRA By-Laws, Section 1
- SEA Rule 15b9-1

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by June 19, 2015. Comments must be submitted through one of the following methods:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

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

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.[2] Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Exchange Act.[3]

Background & Discussion

Section 15(b)(8) of the Exchange Act requires that a registered broker-dealer be a member of a national securities association unless the broker-dealer effects transactions in securities solely on a national securities exchange of which it is a member.[4] SEA Rule 15b9-1, however, provides an exemption to Section 15(b)(8) if a broker-dealer:

1. is a member of a national securities exchange;
2. carries no customer accounts; and
3. has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $1,000, provided, however, that the gross income limitation does not apply to income derived from transactions for the dealer's own account with or through another registered broker or dealer.

On March 25, 2015, the SEC unanimously approved proposing amendments to SEA Rule 15b9-1 that would significantly narrow the exemption from association membership.[5] If adopted, the amendments generally would require a proprietary trading firm relying on the current exemption to register with FINRA if the firm continues to engage in over-the-counter trading or trading on an exchange of which it is not a member. FINRA membership would, among other things, subject these firms to the existing FINRA fee structure.

As a general matter, FINRA has four primary Member Regulatory Fees: the Gross Income Assessment (GIA), the Personnel Assessment (PA), the TAF and the Branch Office Assessment.[6] The revenue from these four fees is used to recover the costs to FINRA of the supervision and regulation of members, including examinations; surveillance; financial monitoring; and FINRA's policymaking, rulemaking and enforcement activities.

The TAF is the one member regulatory fee that is based on trading activity and generally applies to all sales of a covered security regardless of where executed.[7] This includes both sales for the member's own account and sales on behalf of a customer. Although there are exemptions to the TAF for transactions by floor brokers and for market making transactions subject to Section 11(a) of the Exchange Act, proprietary trading firms do not act as floor brokers and may only be registered market makers in some, but not all, the securities that they trade.[8] As a result, if the proposed amendments to SEA Rule 15b9-1 are adopted by the SEC, those proprietary trading firms that would become FINRA members would be subject to the TAF for much of their trading, including trades on exchanges of which they are a member.

FINRA analyzed the potential application and impact of the TAF to proprietary trading firms and believes it could result in a significant TAF obligation for these firms that may be disproportionate to FINRA's anticipated costs associated with the financial monitoring and trading surveillance of these firms, in large part because these firms do not have customers.[9] For example, FINRA reviews for best execution (Rule 5310), trading ahead of customer orders (Rule 5320) and display of customer limit orders (SEA Rule 604) are directed at firms that have customers or receive orders from customers of another broker-dealer. For this reason, the SEC noted specifically when proposing the amendments to SEA Rule 15b9-1 that "FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, in order to assure that it is fairly and equitably applied to many of the [non-FINRA member firms] that, as a result of the amendments to [SEA] Rule 15b9-1, may join FINRA."[10]

Given these factors and the current TAF exemptions, FINRA is requesting comment on a proposed exemption to the TAF to address the application of the TAF to proprietary trading firms. The proposed exemption would exempt from the TAF transactions executed by proprietary trading firms on an exchange of which the firm is a member (including non-market maker trades). FINRA is proposing to define a "proprietary trading firm" as 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 proposed exemption would also clarify that funds used by a proprietary trading firm must be exclusively firm funds, and all trading must be in the firm's accounts. In addition, traders must be owners of, employees of or contractors to the firm.[11] Even with the proposed exemption, proprietary trading firms would still incur a TAF obligation on transactions executed otherwise than on an exchange and on transactions executed on an exchange of which the firm is not a member. These transactions would be subject to the TAF under the existing fee structure and at the same rates. The proposed TAF exemption would apply to current FINRA members that fall within the proposed definition of a proprietary trading firm as well as any new FINRA members as a result of the SEC's proposed amendments.

Economic Impacts

FINRA believes the proposed exemption will result in proprietary trading firms paying an amount of TAF that bears a more equitable relationship to the costs of regulating those firms' activities, rather than the current TAF framework which may result in a disproportionately large TAF obligation for these firms. Accordingly, among other impacts, the proposed exemption may reduce a potential disincentive to proprietary trading firms to seek FINRA membership.

The proposed exemption excludes trades by proprietary trading firms on exchanges of which the firm is a member while applying the TAF on transactions executed on an exchange of which the firm is not a member and for over-the-counter trades. The proposed exemption may have potentially different direct economic impacts on proprietary trading firms that are not currently FINRA members, proprietary trading firms that are currently FINRA members and other firms that currently trade with or provide trading access to non-FINRA member proprietary trading firms. In addition, the proposed exemption may impact the trading strategies and behaviors of some market participants.

FINRA anticipates that the quality of FINRA's supervision of activities and conduct by new member proprietary trading firms would not differ from that experienced by current member firms, and thus this proposed exemption would not be associated with any negative impacts to the public. Further, this proposed exemption is not anticipated to have direct costs on member firms that do not engage in proprietary trading. The proposed exemption does not change the application of the TAF with respect to over-the-counter trades; however, if proprietary trading firms that currently are not FINRA members ultimately register with FINRA as a result of the SEC's rulemaking, this will result in the direct application of the TAF to those proprietary trading firms.

FINRA estimates that there are approximately 85 non-member proprietary trading firms that may opt to become FINRA members based on the proposed amendments to SEA Rule 15b9-1, but FINRA cannot determine the number of firms that may choose to become FINRA members solely on the basis of this proposed exemption.[12] Each of these firms will assess the costs and benefits of the options permitted by the SEC's proposed amendments.

Anticipated Benefits

FINRA believes the proposed exemption to the TAF is based on a simple structure that is easy for both FINRA and the affected firms to implement. In addition, this approach directly addresses exchange activities by firms currently relying on SEA Rule 15b9-1, while continuing to assess fees on trades for which FINRA is the responsible SRO.

FINRA anticipates that by reducing the potential disincentives for proprietary trading firms to seek FINRA membership, the proposed exemption may result in more proprietary trading firms joining FINRA. Accordingly, consistent with the SEC's assessment, FINRA believes that this increase in membership may lead to more comprehensive surveillance and uniform regulation of trading activity by proprietary trading firms.[13] As a result, investors and intermediaries would likely benefit from the increased regulatory oversight.

Proprietary trading firms that are current FINRA members would experience a reduction in regulatory costs to the extent they currently incur the TAF on non-market making transactions executed on exchanges of which they are members. There are currently a small number of FINRA members that would meet the definition of proprietary trading firm that trade on exchanges of which they are a member, but do not always trade in the capacity of a registered market maker on such exchanges. FINRA estimates that these firms will have a reduction in their TAF assessments as a result of the proposed exemption.

Anticipated Costs

Proprietary trading firms that are currently not members of FINRA may choose to alter their activities if the proposed amendments to SEA Rule 15b9-1 are adopted. As described in the SEC proposal, these firms may choose to exit from or limit their trading activities to exchanges of which they are members, elect to become a member of every SRO where they transact directly or indirectly or become a member of FINRA. If such a firm opts to become a FINRA member, the TAF would apply to the firm. It would incur initial implementation costs associated with the membership application process, installing systems and processes necessary to abide by FINRA's rules, as well as on-going costs, such as annual membership fees, costs of maintaining data reporting, and other costs associated with compliance and examination by FINRA staff.[14]

To avail itself of the TAF exemption proposed here, a proprietary trading firm would have to incur costs associated with exchange membership and related oversight by that exchange. FINRA anticipates that firms may evaluate the costs and benefits of exchange membership against any savings in the TAF that may accrue.

FINRA would also incur costs associated with monitoring and surveillance of the proprietary trading firms that become FINRA members as a result of the SEC's proposed amendments. FINRA anticipates that these costs would be offset by the regulatory fees collected from these new members.

Other Economic Impacts

FINRA recognizes that the proposed exemption may have an impact on where proprietary trading firms seek to execute trades. Currently, FINRA members are required to pay TAF on most of their trading regardless of where the trades are executed. This proposed exemption would result in a lower TAF for trades executed on an exchange for which the proprietary trading firm is a member than a trade executed elsewhere. It is possible that some proprietary trading firms may consider altering their order submission strategies in an effort to minimize the TAF, all other things being equal. FINRA seeks comment and data on the likelihood of such a reaction to this proposed exemption and any costs or benefits that might arise from a change in the location of liquidity provision by these firms.

Request for Comment

FINRA requests comment on all aspects of the proposed exemption. In addition, FINRA specifically requests comment on the following issues:

- Proprietary trading firms engaging in high frequency trading may have very high order-to-execution ratios and, as a result, have a very large data footprint that drives a portion of FINRA's costs. Given this activity, is a tiered fee structure approach based on a firm's market data footprint, such as OATS order event volume, a better approach to addressing the TAF for these firms? Would implementing a cap on a firm's TAF obligation be more appropriate? Would these approaches be significantly more complicated or burdensome to implement? Are there other alternative approaches FINRA should consider to accomplish the goals described in the proposal? If so, what are those alternatives and why could they be better suited? What are the potential costs and benefits of those alternatives relative to the proposed approach?
- Is the proposed definition of "proprietary trading firm" appropriate? Is it under-inclusive or over-inclusive?
- What are the relevant economic impacts associated with the proposed exemption? Please provide any data or evidence of the size and distributions of these costs, benefits and other impacts.
- Are proprietary trading firms likely to alter their trading practices or business models based on this proposed exemption? If so, how would these firms alter their activity across trading venues? What are the economic impacts associated with any change in trading strategy or practice that might occur?
- Is the proposed TAF exemption for trades on an exchange of which the proprietary trading firm is a member appropriate? Should all exchange trades by proprietary trading firms be exempt from the TAF? If all exchange trades were exempt, would that influence proprietary trading firms' trading practices (e.g., would they shift their trading activities from the over-the-counter market to exchanges to avoid incurring the TAF)?
- Do FINRA member firms currently, partially or fully pass on the TAF to non-FINRA member proprietary trading firms for the transactions executed on an ATS or through a FINRA member today?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

Endnotes

1. *See* Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015) (File. No. S7-05-10) (SEC proposal).

2. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.

3. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

4. FINRA is currently the only registered national securities association.

5. *See* SEC proposal. Specifically, the proposed amendments eliminate the $1,000 *de minimis* allowance and replace it with a provision that exempts from association membership exchange member broker-dealers that operate on the floor of an exchange to the extent they effect transactions off-exchange solely for the purpose of hedging the risks of their floor-based activities. *See* SEC proposal at 38, 80 FR at 18045-46.

6. *See* FINRA By-Laws, Schedule A, Section 1.

7. "Covered securities" for purposes of the TAF include exchange-registered securities, over-the-counter equity securities, security futures, TRACE-Eligible Securities (as defined in FINRA Rule 6710), and municipal securities subject to the reporting requirements of the Municipal Securities Rulemaking Board. *See* FINRA By-Laws, Schedule A, Section 1(b)(1).

8. FINRA By-Laws, Schedule A, Section 1(b)(2)(F) and (G).

9. Although FINRA does not, and cannot, directly align particular fee revenue to direct costs, FINRA has a statutory obligation to ensure that its rules provide for the equitable allocation of reasonable dues, fees and other charges among its members. *See* SEA § 15A(b)(5).

10. *See* SEC proposal at 31 n.95, 80 FR at 18044 n.95; *see also* SEC proposal at 99, 80 FR at 18061.

11. These requirements are based largely on existing exchange definitions of proprietary trading firms. *See, e.g.*, NYSE Rule 7410(p); CBOE Rule 3.6A, Interpretation .07.

12. While there are approximately 125 broker-dealers that are not members of FINRA, FINRA estimates that only approximately 85 of these would meet the definition of "proprietary trading firm" under this proposed exemption.

13. *See* SEC proposal at 89-91, 80 FR at 18058-59.

14. *See* SEC proposal at 91-102, 80 FR at 18059-62. These firms may experience a reduction in membership fees on the exchange that currently serves as their designated examining authority (DEA), if FINRA assumes that role.

Attachment A

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

* * * * *

Section 1—Member Regulatory Fees

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) No Change.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (I) No Change.

(J) Transactions in security futures held in futures accounts; [and]

(K) Proprietary transactions by a firm that is a member of both FINRA and a national securities exchange, effected in its capacity as an exchange specialist or market maker, that are subject to Securities Exchange Act of 1934, Section 11(a) and Rule 11a1-1(T)(a) thereunder; however, this exemption does not apply to other transactions permitted by Section 11(a) such as bona fide arbitrage or hedge transactions; and[.]

(L) Transactions by a Proprietary Trading Firm effected 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.

(3) through (4) No Change.

(c) through (e) No Change.

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Regulatory Notice 22-30

Trading Activity Fee (TAF)

FINRA Re-opens Comment Period for Regulatory Notice 15-13 Seeking Comment on TAF Exemption for Proprietary Trading Firms

Comment Period Expires: March 17, 2023

Summary

In support of the Securities and Exchange Commission's re-proposal to amend Rule 15b9-1 under the Securities Exchange Act of 1934,[1] FINRA is issuing this *Notice* to re-open the comment period for *Regulatory Notice 15-13*. Rule 15b9-1 currently provides proprietary trading firms with an exemption from membership in a national securities association. If the SEC re-proposal is adopted, the amendments generally would require a proprietary trading firm relying on the current exemption to register with FINRA if the firm continues to effect transactions other than on an exchange of which it is a member, with limited exceptions. FINRA membership would, among other things, apply FINRA's existing fee structure to these firms, including FINRA's Trading Activity Fee. FINRA is re-opening the comment period for *Regulatory Notice 15-13*, which had previously proposed an exemption to exclude from FINRA's Trading Activity Fee transactions by a proprietary trading firm on exchanges of which the firm is a member.

Questions concerning this *Notice* should be directed to:

- Carrie DiValerio, Sr. Vice President, Finance, at (240) 386-5299 or carrie.divalerio@finra.org;
- Jacqueline Gorham, Associate General Counsel, Office of General Counsel (OGC), at (212) 858-4119 or jacqueline.gorham@finra.org; or
- Faisal Sheikh, Principal Counsel, OGC, at (202) 728-8370 or faisal.sheikh@finra.org.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by March 17, 2023.

December 15, 2022

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Institutional
- Legal
- Operations
- Senior Management
- Trading

Key Topics

- Market Making
- Proprietary Trading Firms
- Trading Activity Fee

Referenced Rules & Notices

- FINRA Rule 0160
- Regulatory Notice 15-13
- Schedule A to FINRA By-Laws, Section 1
- SEA Rule 15b9-1
- Section 15(b)(8) of the Exchange Act

Comments must be submitted through one of the following methods:

- Online using FINRA's comment form for this *Notice*;
- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

  Jennifer Piorko Mitchell
  Office of the Corporate Secretary
  FINRA
  1735 K Street, NW
  Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: Comments received in response to this *Regulatory Notice* and *Regulatory Notice 15-13* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.[2]

Before becoming effective, any proposed rule change must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA or Exchange Act).[3]

Background & Discussion

Section 15(b)(8) of the Securities Exchange Act of 1934 requires that a registered broker-dealer be a member of a national securities association unless the broker-dealer effects transactions in securities solely on a national securities exchange of which it is a member.[4] Rule 15b9-1, however, provides an exemption to Section 15(b)(8) if a broker-dealer:

1. is a member of a national securities exchange;
2. carries no customer accounts; and
3. has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $1,000, provided, however, that the gross income limitation does not apply to income derived from transactions for the dealer's own account with or through another registered broker or dealer.

In March 2015, the SEC proposed amendments to SEA Rule 15b9-1[5] that would have significantly narrowed the exemption from association membership and, in connection with that proposal, the SEC stated that "FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, in order to assure that it is fairly and equitably applied to many of the [non-FINRA member firms] that, as a result of the amendments to Rule 15b9-1, may join FINRA."[6] As a result, in May 2015, FINRA issued *Regulatory Notice 15-13*, proposing an exemption from its Trading Activity Fee (TAF) for proprietary firms' transactions on exchanges of which they are a member (including non-market making trades).[7] In the 2015 *Notice*, FINRA proposed to define a "proprietary trading firm" as 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 proposal also provided that funds used by a proprietary trading firm must be exclusively firm funds, and all trading must be in the firm's accounts. In addition, traders must be owners of, employees of, or contractors to the firm.[8]

Similar to the 2015 SEC proposal, the SEC re-proposal would significantly narrow the exemption from association membership.[9] In connection with the re-proposal, the SEC stated that "[g]iven FINRA's prior consideration of amendments to its TAF, FINRA may again evaluate its TAF to ensure that it appropriately reflects the activities of, and regulatory responsibilities towards, broker-dealer proprietary trading firms that would be required to join FINRA if the proposed amendments to Rule 15b9-1 are adopted." Thus, FINRA is re-opening the comment period for *Regulatory Notice 15-13* to obtain feedback on the proposed exemption to the TAF for proprietary trading firms, as described in *Regulatory Notice 15-13*.

Request for Comment

FINRA requests comment on the questions presented in *Regulatory Notice 15-13* as well as on the below additional questions:

- As discussed in *Regulatory Notice 15-13*, TAF is the only FINRA fee that is based on trading activity. Is it appropriate to provide a TAF exemption to proprietary trading firms? How would the proposed TAF exemption impact proprietary trading firms?
- The exemption proposed in *Regulatory Notice 15-13* would provide TAF relief to proprietary trading firms for all trades on an exchange of which they are members, thereby reducing TAF obligations for proprietary trading firms. By definition, the exemption would apply to new and existing proprietary trading firms, but not other firms that trade actively on exchanges, including for customers. Is this difference in treatment appropriate?

- With these proposed changes (or any recommended alternatives), would the TAF fee continue to be equitably allocated among FINRA members that engage in proprietary and customer trading? Would the balance between TAF and other FINRA fees that fund FINRA's operations continue to be equitable?
- Should an alternative TAF rate specific to proprietary trading firms be considered?
- Are broker-dealers, including current members and proprietary trading firms that would be scoped in by the SEC re-proposal, likely to alter their trading practices or business models based on the proposed TAF exemption (or any suggested alternatives)? If so, how would these firms alter their activity across trading venues (*e.g.,* would they shift their trading activities from the over-the-counter market to exchanges to avoid incurring the TAF)? What would be the consequences for investors if firms were to alter trade routing to affect their aggregate regulatory fees? What would the impact potentially be on liquidity and the functioning of the markets? Please provide comment on the economic impacts associated with any change in trading strategy or practice that might occur.
- FINRA member proprietary trading firms compete in the provision of liquidity with other FINRA members that would not meet the definition of "proprietary trading firm" under the proposed TAF exemption. To what extent is the trading activity of these two types of firms similar? Is it likely that members would reorganize their activities to separate proprietary trading firm functions into a separate entity to benefit from the proposed exemption?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

Endnotes

1. *See* Exchange Act Release No. 95388 (July 29, 2022), 87 FR 49930 (August 12, 2022) (File. No. S7-05-15) ("SEC re-proposal") (re-proposing amendments to SEA Rule 15b9-1).
2. Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA, however, reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters. FINRA also reserves the right to redact or edit personally identifiable information from comment submissions.
3. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Some proposed rule changes take effect immediately upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
4. FINRA is currently the only registered national securities association.
5. *See* Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015) (File. No. S7-05-10) ("2015 SEC proposal").
6. *See* 2015 SEC proposal at n.95.
7. *See Regulatory Notice 15-13* (May 2015) (Trading Activity Fee (TAF)) ("2015 Notice").
8. This proposed definition is based largely on existing exchange definitions of "proprietary trading firm." *See, e.g.*, MIAX Rule 100.
9. Specifically, the SEC re-proposal would eliminate the $1,000 *de minimis* allowance and replace it with a provision that exempts from membership in a national securities association "a registered broker or dealer that is an exchange member, carries no customer accounts, and effects securities transactions solely on a national securities exchange of which it is a member except in two narrow circumstances: (1) a broker or dealer effects transactions in securities otherwise than on an exchange to which it belongs as a member that result solely from orders that are routed by an exchange of which it is a member in order to comply with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Crossed Market Plan; or (2) a broker or dealer effects transactions in securities otherwise than on an exchange to which it belongs as a member that are solely for the purpose of executing the stock leg of a stock-option order." *See* SEC re-proposal at 49940.

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June 19, 2015

VIA EMAIL: 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, Trading Activity Fee (TAF), May 2015

Dear Ms. Asquith:

The FIA Principal Traders Group ("FIA PTG")[1] appreciates the opportunity to comment on the Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to exempt from the Trading Activity Fee ("TAF"), transactions executed by proprietary trading firms on an exchange of which the firm is a member (the "Proposal").[2] FIA PTG supports the Proposal, but has some suggestions, as described below, for modifying the Proposal's scope.

FIA PTG members include firms registered as broker-dealers ("BDs") with the Securities and Exchange Commission (the "SEC") as well as a small number of FINRA member firms. If the pending proposal to amend Rule 15b9-1 (the "15b9-1 Proposal")[3] under the Securities Exchange Act of 1934 (the "Exchange Act") is adopted, we expect many proprietary trading BDs (each a "Proprietary BD" and collectively, "Proprietary BDs") engaged in off-exchange trading, including several FIA PTG member firms, to become members of FINRA (being the sole national securities association). Accordingly, adjustments to TAF could represent a significant change in the cost structure of FINRA membership for Proprietary BDs.

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1 FIA PTG is an association of more than 20 firms that trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. FIA PTG advocates for open access to markets, transparency and data-driven policy.

2 *See* FINRA Regulatory Notice 15-13, *Trading Activity Fee (TAF)* (May 5, 2015), *at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-13.pdf.

3 Exchange Act Release No. 74581 (Mar. 25, 2015), 80 FR 18035 (Apr. 2, 2015).

Overview: FIA PTG Supports the Proposal with Some Suggested Modifications

FIA PTG agrees with both FINRA[4] and the SEC[5] who have acknowledged the significant monetary impact of applying the current TAF structure to Proprietary BDs that become FINRA members. We concur it "could result in a significant TAF obligation for these … firms that may be disproportionate to FINRA's anticipated costs associated with the financial monitoring and trading surveillance of these firms…."[6]

While we agree that the TAF exemption should be expanded to reflect the business models of Proprietary BDs that may become FINRA members, we recommend that the exemption be based on the nature of the transaction rather than the nature of the firm. We believe the exemption should include all transactions executed in a principal capacity for the account of a BD on exchanges where such BD is a member.[7]

Accordingly we suggest the following revision to the text of the proposed rule change:

> (L) Transactions by a ~~Proprietary Trading Firm~~ FINRA member firm effected in a principal capacity on a national securities exchange of which the ~~Proprietary Trading Firm~~ 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.~~

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4 *See* Marcia Asquith, FINRA, Comment Letter on Securities Exchange Act Release No. 74581 - Proposed Rule Regarding Exemption for Certain Exchange Members (File No. S7-05-15), at 8 (Jun. 2, 2015), *at* http://www.sec.gov/comments/s7-05-15/s70515-18.pdf ("FINRA agrees with the Commission's understanding of … the financial impact of the TAF, which these Non-Member Firms would be subject to once becoming members of FINRA.").

5 *See* 15b9-1 Proposal, *supra* note 3, at 31 n.95 ("The Commission notes that FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, to assure that it is fairly and equitably applied to many of the Non-Member Firms that, as a result of the amendment to Rule 15b9-1, may join FINRA."); *See also* Daniel M. Gallagher, *SEC Statement at Open Meeting on Rule 15b9-1*, n.3 (Mar. 25, 2015), *at* http://www.sec.gov/news/statement/032515-ps-cdmg-15b9-1.html ("The release notes that as a consequence of this rulemaking - once adopted - that FINRA may need to reassess the structure of its fees, including its Trading Activity Fee to assure that it is fairly and equitably applied to the many firms that may join FINRA. I agree with this position and the SEC should do whatever is necessary to limit the additional costs imposed upon the firms.").

6 *See supra* note 4, at 8.

7 BDs presently mark their orders as agency, principal or riskless principal. We believe the TAF should continue to be assessed in the same manner it currently is assessed on all transactions effected in an agency or riskless principal capacity.

We believe this modification would be preferable for several reasons. First, it would be easier for FINRA to administer than the proposed firm-based exemption since all principal trades are already marked as such at the time of execution. Second, it would eliminate the need for complex definitions of what qualifies and disqualifies a firm as a "proprietary trading firm." Third, it would eliminate an incentive for broker-dealer fragmentation in that firms would have no need to operate multiple broker-dealers to minimize their TAF obligations.

Moreover, we believe this modification would help to ensure that, in accordance with Section 15A(b)(5) of the Exchange Act, FINRA's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members.[8]

We understand the TAF is an important component of FINRA's funding for its regulatory program; however, the TAF is only one piece of FINRA's revenue generated for this purpose. FINRA's regulatory revenue is also generated from other member regulatory fees set out in Section 1 of Schedule A to FINRA's By-Laws (the "FINRA By-Laws"), which includes the Gross Income Assessment ("GIA") and Personnel Assessment ("PA"),[9] both of which would be applicable to Proprietary BDs becoming new members of FINRA. As such, FINRA would receive an increase in regulatory revenue through the increase in its membership base if the 15b9-1 Proposal is approved and Proprietary BDs become new members of FINRA. These fees must be fair and equitably apportioned among FINRA members, taking into account the activities and structures of each firm.

Specific Requests for Comment

Q1: Proprietary trading firms engaging in high frequency trading may have very high order-to-execution ratios and, as a result, have a very large data footprint that drives a portion of FINRA's costs. Given this activity, is a tiered fee structure approach based on a firm's market data footprint, such as OATS order event volume, a better approach to addressing the TAF for these firms? Would implementing a cap on a firm's TAF obligation be more appropriate? Would these approaches be significantly more complicated or burdensome to implement? Are there other alternative approaches FINRA should consider to accomplish the goals described in the proposal? If so, what are those alternatives and why could they be better suited? What are the potential costs and benefits of those alternatives relative to the proposed approach?

A: FIA PTG supports the current trading volume-based TAF structure. FINRA has stated that the critical components driving FINRA's regulatory costs with respect to a particular firm are: (i) the number of registered persons with the firm; (ii) the size of the firm; and

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8 *See* 15 U.S.C. § 78o-3(b)(5).

9 *See* FINRA By-Laws, Schedule A, § 1, *at* http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4694.

(iii) the firm's trading activity.[10] We believe the number of transaction messages generated by a FINRA member is a small contributor to the overall costs of regulating that member. To assess fees based on message volumes would likely result in fees for some firms that would be grossly disproportionate to those regulatory costs. These fees would have a disproportionate impact on liquidity-providing BDs, and likely result in less liquid markets overall.

We also do not support the use of caps on a firm's TAF obligation because cap levels are generally arbitrary and may not accurately represent FINRA's actual regulatory costs. This could result in disproportionate fees being assessed against mostly smaller firms that do not meet such caps. In addition, FINRA is already processing data related to at least 99.6% of daily market activity, including all off-exchange trading.[11] There should be little, if any, incremental cost to FINRA associated with message volume from new FINRA members, particularly if FINRA does not require duplicative OATS reporting of trades placed by one FINRA member through another FINRA member.

Q2: Is the proposed definition of "proprietary trading firm" appropriate? Is it under-inclusive or over-inclusive?

A: FIA PTG recommends against using a firm's status as a "proprietary trading firm" to determine the applicability of the TAF exemption; however, should FINRA decide to limit the exemption, it should further clarify the meaning of "customers" beyond the current definition of a customer as "not a broker or dealer" under FINRA Rule 0160.[12] Specifically, FINRA should make it clear that the criteria "does not have customers" under the definition of a proprietary trading firm, only applies to "customers" engaged in transactions in "Covered Securities,"[13] which are applicable to the TAF, and not, for example, to non-securities transactions, fixed income transactions, and other businesses such as stock-lending and licensing of technology.

In addition, FINRA should clarify the relevant time-period for determining whether a firm is engaged in a "customer" business. For example, would a single "customer" transaction require a BD, otherwise only engaged in proprietary trading, to pay the TAF indefinitely or for a limited period of time, such as a month or year?

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[10] *See* Brant K. Brown, FINRA, *SR-FINRA-2012-023 - Proposed Rule Change Relating to FINRA's Trading Activity Fee for Transactions in Covered Equity Securities - Response to Comments*, at 2-3 (Jun. 19, 2012), *at* http://www.finra.org/sites/default/files/RuleFiling/p127098.pdf.

[11] *See* 15b9-1 Proposal, *supra* note 3, at 72 n. 172.

[12] *See* FINRA Rule 0162(a)(4), *at* http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=5456.

[13] *See* FINRA By-Laws, *supra* note 9, at (b)(1).

Moreover, the definition should be clarified so that a broker-dealer would not be disqualified from being considered a "proprietary trading firm" if its traders or other associated persons were employed by an affiliate of the BD, which is a common structure.

As previously stated, we believe the proposed TAF exemption should apply to all transactions executed in a principal capacity for the account of a BD on exchanges where such BD is a member (including non-market maker trades). This would eliminate the need for exacting definitions of "proprietary trading firms" and "customers."

Q3: What are the relevant economic impacts associated with the proposed exemption? Please provide any data or evidence of the size and distributions of these costs, benefits and other impacts.

A: While we do not anticipate that the Proposal would significantly impact the amount of fees collected by FINRA, we don't have the information necessary to assess this fully. It is clear that without the exemption, FINRA would see a significant increase in regulatory revenue from TAF fees assessed to Proprietary BDs that become members of FINRA and it appears that the costs associated with regulating these new member firms would be significantly lower than FINRA members that do conduct customer business.

Q4: Are proprietary trading firms likely to alter their trading practices or business models based on this proposed exemption? If so, how would these firms alter their activity across trading venues? What are the economic impacts associated with any change in trading strategy or practice that might occur?

A: While it is should be expected that firms will seek to manage their costs, it is difficult to anticipate how firms might arrange their business structures or alter their behavior based on the Proposal.

Q5: Is the proposed TAF exemption for trades on an exchange of which the proprietary trading firm is a member appropriate? Should all exchange trades by proprietary trading firms be exempt from the TAF? If all exchange trades were exempt, would that influence proprietary trading firms' trading practices (e.g., would they shift their trading activities from the over-the-counter market to exchanges to avoid incurring the TAF)?

A: FIA PTG supports limiting the exemption to all transactions executed in a principal capacity for the account of a BD on exchanges where such BD is a member.

Q6: Do FINRA member firms currently, partially or fully pass on the TAF to non-FINRA member proprietary trading firms for the transactions executed on an ATS or through a FINRA member today?

A: A FINRA member must make a commercial decision as to whether or not TAF should be a pass through cost to its non-FINRA member customers. Based on feedback from FIA PTG members, it appears that in many cases, TAF is explicitly passed through to non-FINRA members. In other cases, TAF is certainly a consideration in setting pricing for such transactions.

Conclusion

FINRA must provide for the equitable allocation of reasonable dues, fees, and other charges among members and must ensure regulatory fees are assessed in line with its actual cost of regulating its members. Accordingly, we support the Proposal but suggest modifying it to apply to all transactions executed in a principal capacity for the account of a BD on exchanges where such BD is a member. This modification focuses this transaction-based regulatory fee on the nature of the transaction, not the nature of the firm.

FIA PTG would like to thank FINRA for the opportunity to comment on the Proposal and we look forward to working together going forward. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Mary Ann Burns at maburns@fia.org.

Respectfully,

FIA Principal Traders Group

Mary Ann Burns
Chief Operating Officer
FIA

cc: Bob Colby, Chief Legal Officer
Brant Brown, Associate General Counsel

HUDSON RIVER TRADING LLC

June 19, 2015

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

Re: Regulatory Notice 15-13 – Trading Activity Fee

Dear Ms. Asquith:

Hudson River Trading LLC ("Hudson River Trading") appreciates the opportunity to comment on FINRA's proposed exemption to the Trading Activity Fee ("TAF") for proprietary trading firms. Hudson River Trading is a global, multi-asset class quantitative trading firm that develops automated trading strategies that provide liquidity and facilitate price discovery on exchanges and Alternative Trading Systems ("ATSs").

Hudson River Trading's broker-dealer affiliate, HRT Financial LLC ("HRTF"), is a proprietary trading and market making firm that is registered with the Securities and Exchange Commission (the "Commission") and 16 exchanges, including all US equities exchanges. HRTF is currently exempt from FINRA registration under Rule 15b9-1 under the Securities Exchange Act of 1934.

The Commission recently proposed amendments to Rule 15b9-1 that would require FINRA membership for proprietary trading firms that engage in off-exchange trading[1]. If the amendments are adopted and there is no change to the TAF, the affected firms' regulatory costs will increase significantly. Hudson River Trading supports FINRA's proposed exemption to TAF for proprietary trading firms because it appropriately recognizes the differences in regulating proprietary trading businesses and customer businesses.

Overview

Hudson River Trading agrees with FINRA[2] and the Commission[3] that absent a change in the application of TAF, many firms affected by the proposed amendments would see a significant increase in member regulatory costs. Further, we agree with FINRA's statement in its regulatory notice that such increases, which we estimate could be several million dollars for more active firms, are disproportionate to FINRA's cost of regulating such firms: "FINRA analyzed the potential application and impact of the TAF to proprietary trading firms and believes it could result in a significant TAF obligation for these firms that may be disproportionate to FINRA's anticipated

[1] See Securities and Exchange Commission Release No. 34-74581; File No. S7-05-15 "Exemption for Certain Exchange Members" http://www.sec.gov/rules/proposed/2015/34-74581.pdf

[2] See FINRA Regulatory Notice 15-13 "Trading Activity Fee (TAF)" http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-13.pdf

[3] See Securities and Exchange Commission Release No. 34-74581; File No. S7-05-15 "Exemption for Certain Exchange Members" http://www.sec.gov/rules/proposed/2015/34-74581.pdf

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costs associated with the financial monitoring and trading surveillance of these firms, in large part because these firms do not have customers.[4]" Hudson River Trading agrees that the cost of member regulation for proprietary trading firms is significantly lower given their limited business model and the fact that they do not do business with public customers. We believe that a modification to TAF is critical to ensure that FINRA equitably allocates fees among members.

FINRA currently exempts many proprietary, on-exchange transactions, including (1) proprietary transactions effected in a firm's capacity as an exchange market maker or specialist and (2) transactions by a firm that is a floor based broker and that is a member of both FINRA and a national securities exchange, provided that the floor based broker qualifies for exemption from FINRA membership under Rule 15b9-1. These exemptions demonstrate FINRA's recognition that proprietary, on-exchange transactions have a significantly different cost to regulate than customer transactions.

While we support FINRA's proposed exemption to the TAF for proprietary trading firms, we believe that FINRA should consider applying the TAF based on the nature of the transaction rather than the business model of the firm. Specifically, we believe that Principal trades executed on an exchange should be exempt from the TAF, while off-exchange trades, as well as Agency and Riskless Principal trades executed on an exchange, should continue to be charged the TAF. Under FINRA's current proposed exemption, a firm with a large proprietary trading business is disincentivized from engaging in any customer-focused business, as any such business would result in a significant TAF liability. As such, firms entering customer business generally start an additional broker-dealer to avoid triggering the TAF. We believe that charging the TAF based on the nature of a transaction would largely eliminate the incentive of firms to operate multiple broker-dealers.

Conclusion

Hudson River Trading supports the proposed exemption to the TAF for proprietary trading firms. We believe that the exemption appropriately recognizes the differences in regulating proprietary trading businesses and customer businesses. We recommend that FINRA consider applying the TAF based on the nature of the transaction rather than the business model of the firm.

Hudson River Trading appreciates the opportunity to submit these comments and is available to meet and discuss them with FINRA in order to respond to any questions.

Sincerely,

/s/ Adam Nunes

Adam Nunes

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[4] See FINRA Regulatory Notice 15-13 "Trading Activity Fee (TAF)"
http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-13.pdf

June 19, 2015

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

Re: FINRA Regulatory Notice 15-13 ("Notice"); Proposed Exemptions to the Trading Activity Fee ("TAF") for Proprietary Trading Firms.

Dear Ms. Asquith,

The Security Traders Association ("STA") is pleased to offer comment on FINRA Regulatory Notice 15-13 which proposes exemptions to the TAF for proprietary trading firms. The STA is comprised of 24 affiliate organizations[1] in North America, whose membership is comprised of individuals employed in the financial services industry. The STA relies on its Trading Issue Advisory Committees for input on its comment letters. For this particular comment letter the STA relied predominately on its Listed Options Committee which is comprised of liquidity providers, characterized as option market makers and proprietary trading firms,[2] and representatives from exchanges and retail brokerage firms.

STA believes that in the aftermath of the 2007 financial crisis certain regulatory actions have increased costs for all trading centers. In addition, there have been unique regulatory events with corresponding costs specific to liquidity providers in the listed options market with acute impacts to varying subsets.[3] These regulatory costs, while not the only factor,

[1] STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 24 Affiliate organizations with 4,200 individual professionals, most of who are engaged in the buying, selling and trading of securities. The STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association's founding principle, Dictum Meum Pactum – "My Word is My Bond"

[2] These requirements are based largely on existing exchange definitions of proprietary trading firms. See, e.g., NYSE Rule 7410(p); CBOE Rule 3.6A, Interpretation .07

[3] *Basel III Capital Rules and risk-weighted assets ("RWA")* A sub-set of former and current listed option market makers are subsidiaries of U.S. banking organizations that are required to maintain capital based, in part, on their RWA adopted under Basel III Capital Rules. Changes in calculating RWA have increased the capital costs of maintaining portfolios of hedged transactions in facilitating investor trades.
Options Clearing Corporation, ("OCC"); Systemically Important Financial Market Utility, ("SIFMU") in response to being designated a SIFMU in March 2014; the OCC was required, among other things, to increase its minimum regulatory capital. In February 2015, the OCC filed its capital raising plan which is a combination of capital contribution from the options exchanges who are shareholders in OCC with commitments from them for additional capital. In return, OCC will pay out dividends to these shareholders which will be financed through higher clearing rates. Firms, many of whom are market makers, who are not able to be shareholders in OCC, are not able to offset their costs.

have contributed greatly to the decrease in the overall number of liquidity providers and their make-up as measured by percentage changes in market makers and proprietary trading firms.

Furthermore, there exists foreseeable regulatory events and associated costs that if implemented could exacerbate the trend toward fewer liquidity providers from both of these groups. The Notice identifies one such event: the Securities and Exchange Commission ("SEC") proposed amendments to Rule 15b9-1 under the Securities Exchange Act of 1934 filed on March 25, 2015 ("SEC Amendment").

As explained in the Notice, the SEC Amendment:

"If adopted, the amendments generally would require a proprietary trading firm relying on the current exemption to register with FINRA if the firm continues to engage in over-the-counter trading or trading on an exchange of which it is not a member. FINRA membership would, among other things, subject these firms to the existing FINRA fee structure, including the TAF".

In addition, the Notice states that it has been the assessment of the SEC that having proprietary firms as FINRA members will:

"…lead to more comprehensive surveillance and uniform regulation of trading activity by proprietary trading firms. As a result, investors and intermediaries would likely benefit from the increased regulatory oversight."

Regarding anticipated reactions from those proprietary firms affected should the SEC Amendment and FINRA Notice be adopted, FINRA states such firms may:

- Alter their activities;
- Choose to exit from or limit their trading activities to exchanges of which they are members;
- Elect to become a member of every SRO where they transact directly or indirectly;
- Become a member of FINRA.

Today there are over 800,000 option series on approximately 4,700 underlying equities, ETFs, and indices. Each option series requires a two-sided quote that is often attributed to a liquidity provider. These conditions create a regime of very low amounts of investor

to investor trading, which in turn requires liquidity providers to buy from or sell to the investor or customer who is seeking liquidity. In 2013, approximately 85% of all customer trades were facilitated with a listed options market maker on the other side.[4] Given the unique role that market makers and proprietary traders perform as liquidity providers in the listed options market, the STA is concerned this market and the investors it serves will be harmed if the SEC's Amendment is approved in its current draft and the regulatory costs of FINRA membership remain unchanged. Therefore, the STA supports FINRA's Notice to exclude from the TAF transactions by a proprietary trading firm on exchanges of which the firm is a member, although we feel more cost reductions in the form lower TAF rates are needed. We believe a lower TAF will better improve the likelihood that the SEC's desired goal of a more comprehensive surveillance and uniform regulation of trading activity by proprietary trading firms is achieved. In addition, they would ensure that FINRA fulfills its statutory obligation that its rules provide for the equitable allocation of reasonable dues, fees and other charges among its members.[5] Finally, revenue generated by the TAF from proprietary firms should result in lower unit costs in areas where the fixed costs associated with providing oversight is shared by all FINRA members.

STA is concerned that should there be an over-collection from FINRA of membership fees, attempts to rectify membership fee levels for this group will be too late to offset the permanent harm to the approximately eighty-five (85) non-FINRA member broker dealers who meet the definition of proprietary trading firms as identified in the Notice. We believe that the cost of entry to liquidity providers is so high that any exit of an existing participant will be permanent regardless of any regulatory response associated with the TAF.

To be clear, the STA believes that regulatory authorities require efficient means, processes and rules in order to discharge their responsibilities properly and that adequate funding is needed in order to achieve these goals. However, in this situation we believe that should FINRA identify additional cuts in the TAF for proprietary firms, it can achieve the SEC's goal that registered broker dealers be members of a national securities association and avoid doing permanent harm to liquidity providers without causing itself long-term monetary loss. FINRA is currently the only registered national securities

[4] Letter from Craig S. Donahue, Executive Chairman, OCC to Ms Constance M. Horsley Assistant Director, Board of Governors of the Federal Reserve System January 6, 2015

[5] Securities Exchange Act of 1934, Section 15A(b)(5)

association and it has the ability to raise the TAF at a future date to a level which may more accurately reflect its costs. Since July 2011, the SEC has approved three (3) TAF

rate increases for sales of covered equity securities filed by FINRA.[6] As such, we recommend that FINRA err on the side of implementing a TAF structure which best achieves the SEC's goals and does no permanent harm to proprietary firms. Specifically, we recommend that FINRA reduce the TAF rates for equity transactions by proprietary firms on over-the-counter and exchanges of which they are not a member.

Conclusion:

The STA compliments FINRA for analyzing the potential impact of the TAF to proprietary firms and for acknowledging that such a regime could result in a:

"significant TAF obligation for these firms that may be disproportionate to FINRA's anticipated costs associated with the financial monitoring and trading surveillance of these firms, in large part because these firms do not have customers".

STA encourages FINRA to continue its analysis and recommends a reduction in the TAF be considered in conjunction with exempting certain transactions.

We look forward to working with FINRA and the Commission on this matter and any other market structure issues that may be considered.

Sincerely,

Rory O'Kane, Chairman of the Board James Toes, President & CEO

CC:
Mary Jo White, Chair, Securities and Exchange Commission
Luis A. Aguilar, Commissioner, Securities and Exchange Commission
Daniel M. Gallagher, Commissioner, Securities and Exchange Commission
Kara M. Stein, Commissioner, Securities and Exchange Commission
Michael S. Piwowar, Commissioner, Securities and Exchange Commission
Stephen Luparello, Director, Division of Trading & Markets, Securities and Exchange Commission

[6] FINRA Regulatory Notices; 11-27 effective July 1, 2011; 12-06 effective March 1, 2012; 12-31 effective July 1, 2012


STA
Security Traders Association
Dictum Meum Pactum
Since 1934

sifma
Invested in America

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.

* * *

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

HUDSON RIVER TRADING LLC

February 13, 2023

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006

Re: FINRA Regulatory Notice 15-13 – Trading Activity Fee (TAF), May 2015

Dear Ms. Mitchell:

Hudson River Trading LLC[1] ("Hudson River Trading") appreciates the opportunity to comment on the Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to exempt from the Trading Activity Fee ("TAF") proprietary trading firm transactions on an exchange of which it is a member (the "Proposal")[2].

The Securities and Exchange Commission ("Commission") recently re-proposed amendments to Rule 15b9-1 ("Rule 15b9-1") under the Securities Exchange Act of 1934 ("Exchange Act") that would require FINRA membership for proprietary trading firms that engage in off-member-exchange trading.[3] If the proposed amendments are adopted without a corresponding change to the assessment of the TAF, the affected firms' costs will increase significantly. Hudson River Trading supports FINRA's proposed exemption to TAF for proprietary trading firms in view of the fact that it appropriately recognizes the differences in the activities and supervisory costs relating to regulation of proprietary trading businesses and customer businesses.

Hudson River Trading agrees with FINRA[4] and the Commission[5] that, absent a change in the application of TAF, many firms affected by the proposed amendments to Rule 15b9-1 would see a significant increase in regulatory costs[6] that may be disproportionate to FINRA's costs of regulating such firms.[7]

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[1] Hudson River Trading is a multi-asset class quantitative trading firm that provides liquidity on global markets and directly to our clients. Its two broker-dealer subsidiaries (HRT Financial LP and HRT Execution Services LLC) are registered with the Commission pursuant to Section 15 of the Exchange Act and are both members of FINRA and various exchanges.

[2] *See* FINRA Regulatory Notice 15-13, *Trading Activity Fee (TAF)* (May 2015) ("Regulatory Notice", *available at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-13.pdf.

[3] *See* Securities Exchange Act Release No. 95388 (July 29, 2022), 87 FR 49930 (August 12, 2022) ("Re-Proposing Release"), *available at* https://www.sec.gov/rules/proposed/2022/34-95388.pdf

[4] *See supra* note 2.

[5] *See supra* note 3.

[6] Hudson River Trading estimates that, for those active propriety trading firms relying on the current exemption to registration with FINRA that would be required to become FINRA members if the proposed amendments are adopted, the additional regulatory costs could amount to several million dollars per year.

[7] *See supra* note 2 at 3 ("FINRA analyzed the potential application and impact of the TAF to proprietary trading firms and believes it could result in a significant TAF obligation for these firms that may be disproportionate to FINRA's anticipated costs associated with the financial monitoring and trading surveillance of these firms, in large part because these firms do not have customers.").

3 WORLD TRADE CENTER, 76TH FLOOR, NEW YORK, NY 10007
PHONE: 212-293-1444 FAX: 212-293-1939

FINRA currently exempts many on-exchange transactions, including (1) proprietary transactions effected in a firm's capacity as an exchange market maker or specialist and (2) transactions by a firm that is a floor-based broker and that is a member of both FINRA and a national securities exchange, provided that the floor-based broker qualifies for exemption from FINRA membership under Rule 15b9-1. These exemptions demonstrate FINRA's recognition that the cost of regulating proprietary, on-exchange transactions is significantly different than that associated with regulating customer transactions.

Hudson River Trading supports the proposed exemption to the TAF for proprietary trading firms. In light of the significantly lower cost of FINRA regulation of proprietary trading member firms that have limited business model and do not engage in customer business, Hudson River Trading believes that a modification to TAF is critical to ensuring that FINRA equitably allocates fees among members firms. We believe that the exemption appropriately recognizes the cost differences in regulating proprietary trading businesses and customer businesses and results in a more equitable allocation of fees among FINRA members.

Hudson River Trading appreciates the opportunity to submit these comments and would be pleased to meet with FINRA to further discuss them or to respond to any questions you may have.

Sincerely,

/s/ Adam Nunes

Adam Nunes

FIA Principal Traders Group Comment On Regulatory Notice 22-30

Joanna Mallers
FIA Principal Traders Group

FIA PTG Principal Traders Group 2001 K Street NW, Suite 725, Washington, DC 20006 | Tel +1 202.466.5460 March 8, 2023 Jennifer Piorko Mitchell Office of the Corporate Secretary FINRA 1735 K Street, NW Washington, DC 20006-1506 Re: Regulatory Notice 15-13: Trading Activity Fee (TAF), May 5, 2015 Dear Ms. Mitchell: The FIA Principal Traders Group ("FIA PTG") 1 appreciates the opportunity to comment in response to the renewed Request for Comments on the Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to exempt from the Trading Activity Fee ("TAF"), transactions executed by proprietary trading firms ("PTFs") on an exchange of which the firm is a member (the "Proposal").2 FIA PTG supports the Proposal. On July 29, 2022, the Securities and Exchange Commission (the "Commission") re-proposed amendments to Rule 15b9-1 (the "Amendments")3 that would effectively require PTFs registered as broker dealers, like many FIA PTG members, that engage in any trading activity other than on national securities exchanges on which they are members to become members of FINRA (as the sole National Securities Association). Adopting the Amendments without a conforming change to the FINRA TAF structure will have significant financial ramifications for most FIA PTG members. FIA PTG agrees with both FINRA4 and the Commission5 who have acknowledged the potentially significant monetary impact of applying the current TAF structure to PTF broker dealers that become FINRA members. We concur it "could result in a significant TAF obligation for these … firms that may be disproportionate to FINRA's anticipated costs associated with the financial monitoring and trading surveillance of these firms…." 6 FIA PTG appreciates FINRA's acknowledgement of the significantly lower cost of performing oversight of proprietary trading member firms that do not engage in customer business. It is important that FINRA provide for the equitable allocation of reasonable dues, fees, and other charges among members and must ensure regulatory fees are assessed in line with its actual cost of regulating its members. Accordingly, FIA PTG supports the Proposal and related modification to TAF for proprietary trading firms. Finally, should the Amendments be adopted by the Commission, FIA PTG requests that FINRA move quickly thereafter to implement the Proposal to encourage firms to apply for membership more quickly rather than waiting until the end of the implementation period. If you have any questions or need more information, please contact Joanna Mallers (jmallers@fia.org). Respectfully, FIA Principal Traders Group Joanna Mallers Secretary 1 FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy. 2 See FINRA Regulatory Notice 15-13, Trading Activity Fee, May 5, 2015. 3 See Exemption for Certain Exchange Members, July 29, 2022 – Release No.34-95388; File. No. S7-05-15. 4 See supra note 2, at 3. 5 See supra note 3, at 137. 6 See supra note 2, at 3. FIA.org/PTG Jennifer Piorko Mitchell, FINRA March 8, 2023 Page 2 Respectfully, FIA Principal Traders Group Joanna Mallers Secretary 6 See supra note 2, at 3.

GROUP ONE
TRADING

March 15, 2023

VIA EMAIL: pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

Re: FINRA Regulatory Notice 22-30, Trading Activity Fee (TAF), December 2022

Dear Ms. Piorko Mitchell,

Group One Trading, L.P. ("Group One") appreciates the opportunity to comment on FINRA's proposed exemption to the Trading Activity Fee ("TAF") for proprietary trading firms. Group One is a proprietary option market making firm that is currently a member of all sixteen registered U.S. option exchanges and relies on the "proprietary trading exclusion" under Rule 15b9-1 to remain exempt from national securities association membership; however, under the Securities and Exchange Commission's (the "Commission") recently re-proposed amendments to Rule 15b9-1, Group One would be required to become FINRA members.

As noted in the comment letter submitted by Group One in response to the re-proposed amendments to Rule 15b9-1[1], Group One believes that there is no material benefit to mandatory securities association membership, as option market making firms are already well regulated. FINRA already has a direct, full view into all option market maker trading activity through the CAT, including transactions that occur on exchanges where the firm is not itself a member. However, to the extent that the Commission disagrees and the re-proposed amendments are adopted, Group One supports FINRA's proposed exemption to the TAF for proprietary trading firms because this will aid in allowing the firms that currently rely on the "proprietary trading exclusion" to continue to deploy liquidity in the least disruptive manner possible. The Commission acknowledges in the re-proposed amendments that the estimated median ongoing cost for current non-FINRA member firms to join FINRA would be

[1] https://www.sec.gov/comments/s7-05-15/s70515-20144105-309178.pdf

$2,742,664. This is a significant cost for any market participant. Group One believes that the capital markets are best served by allowing liquidity providers to continue to allow market forces to determine where liquidity is best deployed, and the proposed exemption to the TAF for proprietary trading firms means that additional regulatory fees will not be a factor in the depth and competitiveness of liquidity available on trading venues.

While Group One does not support the re-proposed amendments to 15b9-1, Group One does believe that an equitable allocation of fees among members is achieved by exempting proprietary trading firms from the TAF. Should the re-proposed amendments be adopted, Group One supports the TAF exemption as proposed. Group One would be pleased to discuss the impact of the proposed exemption further should FINRA have questions or require additional detail.

Sincerely,

John Kinahan

John Kinahan
Chief Executive Officer
Group One Trading, LP

University of Pittsburgh

School of Law

Hickton Center for Community Legal Services and Clinical Legal Education

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Mailing Address
P.O. Box 7226
Pittsburgh, PA 15213

March 17, 2023

Via email
pubcom@finra.org
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Regulatory Notice 22-30: FINRA Re-opens Comment Period for Regulatory Notice 15-13 Seeking Comment on TAF Exemption for Proprietary Trading Firms

Dear Ms. Mitchell:

The University of Pittsburgh Securities Arbitration Clinic (the "Clinic") appreciates the opportunity to comment on the Financial Industry Regulatory Authority's ("FINRA") proposal to exempt from the Trading Activity Fee ("TAF"), transactions executed by proprietary trading firms on an exchange of which the firm is a member (the "Proposal"). The Clinic, a University of Pittsburgh curricular offering, provides legal representation to investors who have limited resources, often advocating for people whose claims represent much of their life savings. The Clinic provides the following commentary on Regulatory Notice 22-30.

Introduction

The Securities and Exchange Commission (the "Commission") recently re-proposed amendments to Rule 15b9-1 under the Securities Exchange Act of 1934. Rule 15b9-1 currently

provides proprietary trading firms with an exemption from membership in a national securities association. If the Commission's re-proposal is adopted, the amendments generally would require a proprietary trading firm relying on the current exemption to register with FINRA if the firm continues to effect transactions other than on an exchange of which it is a member, with limited exceptions. By registering with FINRA, proprietary trading firms would be required to abide by FINRA's existing fee structures, including FINRA's TAF. The TAF is one of the regulatory fees FINRA assesses to recover the costs of supervising and regulating firms. This includes costs associated with performing examinations, financial monitoring, and FINRA's policy, rulemaking, interpretive and enforcement activities. FINRA's Regulatory Notice 22-30 has re-opened the comment period for Regulatory Notice 15-13, which had previously proposed an exemption to exclude FINRA's TAF from transactions by a proprietary trading firm on exchanges of which the firm is a member. Throughout this memo we have answered questions one (1) through four (4) from FINRA Regulatory Notice 22-30 ("the Notice").

1. **TAF is the only FINRA fee that is based on trading activity. Is it appropriate to provide a TAF exemption to proprietary trading firms? How would the proposed TAF exemption impact proprietary trading firms?**

It is not appropriate to provide a TAF exemption to proprietary trading firms. FINRA uses a Consolidated Audit Trail ("CAT") which tracks orders throughout their life cycle and identifies the broker-dealers handling them, thus allowing regulators to efficiently track activity in Eligible Securities throughout the U.S. markets.[1] All proprietary trading activity, including market making activity is subject to CAT reporting. There are no exclusions or exemptions of any kind for type of firm or type of trading activity.[2] Many proprietary trading firms trade

[1] *CATNMSPLAN: Consolidated Audit Trail*, https://www.catnmsplan.com/. Accessed 7 March 2023.
[2] "Consolidated Audit Trail (CAT) | FINRA.org." *finra*, 15 November 2016, https://www.finra.org/rules-guidance/key-topics/consolidated-audit-trail-cat. Accessed 7 March 2023.

exclusively using high frequency trading and algorithms. This type of trading has a great effect on the market, increasing the risk of market manipulation and creating a massive pool of data, which FINRA must use in the process of regulating proprietary trading firms in order to protect investors. The cost to monitor these transactions does not justify a TAF exemption for proprietary trading firms.

2. **The exemption proposed in *Regulatory Notice 15-13* would provide TAF relief to proprietary trading firms for all trades on an exchange of which they are members, thereby reducing TAF obligations for proprietary trading firms. By definition, the exemption would apply to new and existing proprietary trading firms, but not other firms that trade actively on exchanges, including for customers. Is this difference in treatment appropriate?**

FINRA has stated that the critical components driving FINRA's regulatory costs with respect to a particular firm are: (i) the number of registered persons with the firm; (ii) the size of the firm; and (iii) the firm's trading activity.[3] If proprietary trading firms are exempt from the TAF, the difference in TAF obligation between proprietary trading firms and firms that actively trade on exchanges, including for customers, will not be appropriate. Whether or not proprietary trading firms are trading on behalf of customers is not relevant to the exemption proposed in *Regulatory Notice 15-13*. Proprietary trading firms make massive amounts of trades which have severe impacts on the market. As such, there is a need for FINRA to collect data, oversee, and regulate proprietary trading firms. While the cost to regulate proprietary trading firms is less than the cost to regulate firms which trade on behalf of customers, proprietary trading firms should not be entirely exempt from the TAF when trading on an exchange on which they are members.

[3] *Trading Activity Fee for Transactions in Covered Equity Securities - Response to Comments*, at 2-3 *See* Brant K. Brown, FINRA, *SR-FINRA-2012-023 - Proposed Rule Change Relating to FINRA's* (Jun. 19, 2012), *at* http://www.finra.org/sites/default/files/RuleFiling/p127098.pdf.

3. **With these proposed changes (or any recommended alternatives), would the TAF fee continue to be equitably allocated among FINRA members that engage in proprietary and customer trading? Would the balance between TAF and other FINRA fees that fund FINRA's operations continue to be equitable?**

It is important that FINRA provide for the equitable allocation of reasonable dues, fees, and other charges among members and must ensure regulatory fees are assessed in line with its actual cost of regulating its members. Under the proposed changes the TAF would not be equitably allocated among FINRA members that engage in proprietary and customer trading. The type of trading done by proprietary trading firms, often involving trading their own capital on exchanges in futures, options and equities markets by engaging in manual, automated and hybrid methods of trading, has a great effect on the market and creates a massive pool of data. As such, FINRA will face significant costs to supervise and regulate proprietary trading firms. If the exemption were to go through, FINRA members that engage in customer trading would be forced to continue paying the TAF while proprietary trading firms are exempt - despite the fact that both member groups create significant costs to FINRA in terms of regulation and supervision.

The TAF, as opposed to the Regulatory Transaction Fees or Registration fees, is specifically used by FINRA to fund its regulatory responsibilities.[4] To exempt proprietary trading firms from TAFs would alter the balance between the TAF and other FINRA fees that fund FINRA's operations, due to an increased cost in regulation without a similar increase of resources.

[4] *Rules and Guidance* - Trading Activity Fee Frequently Asked Questions, question 3, FINRA.org. https://www.finra.org/rules-guidance/guidance/faqs/trading-activity-fee

4. Should an alternative TAF rate specific to proprietary trading firms be considered?

In connection with the Commission's re-proposed amendments to Rule 15b9-1, the Commission stated that "FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, in order to assure that it is fairly and equitably applied to many of the [non-FINRA member firms] that, as a result of the amendments to Rule 15b9-1, may join FINRA."[5] If FINRA were to explore an alternate TAF rate specific to proprietary trading firms, it would be in the best interests of investors and other market participants to collect a fee which is proportional to the costs of regulating proprietary trading firms. Schedule A to the FINRA By-Laws of the Corporation, Section 1 (Member Regulatory Fees) provides the following:

> (a) Recovery of cost of services. FINRA shall, in accordance with this section, collect member regulatory fees that are designed to recover the costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. FINRA shall periodically review these revenues in conjunction with these costs to determine the applicable rate. FINRA shall publish notices of the fees and adjustments to the assessment rates applicable under this section.[6]

In light of the above, FINRA could review the revenue of TAFs collected from proprietary trading firms in conjunction with the costs of supervision and regulation of those firms in order to determine an applicable rate.

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[5] *Regulatory Notice 22-30, footnote 6. See* 2015 SEC proposal at n.95. https://www.finra.org/rules-guidance/notices/22-30

[6] *Schedule A to the By-Laws of the Corporation,* Section 1 - Member Regulatory Fees. FINRA.org. https://www.finra.org/rules-guidance/rulebooks/corporate-organization/section-1-member-regulatory-fees

Conclusion

The Notice proposes exempting proprietary trading firms from the TAF on transactions executed on an exchange of which the firm is a member. We disagree with this decision, as it fails to promote market integrity and increases the risk of market manipulation. FINRA has stated that their "mission is clear - to protect investors and promote market integrity."[7] Having the most accurate data is better for the individual investor, whether they are large or small investors. The type of trading done by proprietary trading firms has a great effect on the market, increasing the risk of market manipulation and creating a massive pool of data, which FINRA must use in the process of regulating proprietary trading firms in order to protect investors. The cost to monitor these transactions is why TAFs are collected, therefore there should not be a TAF exemption for proprietary trading firms. However, we recognize that the costs of regulating proprietary trading firms may be lower than those with customer accounts, and therefore recommend that FINRA apply a rate that is proportional to the cost of regulating proprietary trading firms. Doing so will help both large and small investors, and will promote market integrity.

Thank you for this opportunity to comment on the proposed amendment to exempt proprietary trading firms from TAFs on transactions executed on an exchange of which the firm is a member. It is important to our clinic at the University of Pittsburgh School of Law, as our clinic provides legal representation to investors with limited resources, often advocating for

[7] *On the Front Lines of Investor Protection*, FINRA.org. https://www.finra.org/rules-guidance/enforcement/customer-cooperation#:~:text=At%20FINRA%2C%20our%20mission%20is,regulations%20and%20U.S.%20securities%20laws.

people whose claims represent much of their life savings. For the aforementioned reasons, we submit our comments on the proposed amendments and the above suggestions.

Respectfully Submitted,

Alice Stewart/AS

Alice L. Stewart, Esquire
Director, Securities Arbitration Clinic and
Professor of Law

Rachael Shaw/JM

Rachael T. Shaw, Esquire
Adjunct Professor of Law

Alex Peperak

Alex M. Peperak,
Certified Legal Intern
Securities Arbitration Clinic

Ari Spillerman

Ari B. Spillerman,
Certified Legal Intern
Securities Arbitration Clinic

David Boyer

David B. Boyer,
Certified Legal Intern
Securities Arbitration Clinic

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

* * * * *

Section 1 — Member Regulatory Fees

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) No Change.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (J) No Change.

(K) Proprietary transactions in TRACE-Eligible Securities by a firm that is a member of both FINRA and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker; [and]

(L) Transactions in U.S. Treasury Securities, as that term is defined in Rule 6710; and[.]

(M) Transactions by a proprietary trading firm effected on a national securities exchange of which the proprietary trading firm is a member. For purposes of this subparagraph (M), a "proprietary trading

firm" is a member that (i) trades exclusively its own capital; (ii) does not have "customers," which shall include any person, other than a broker or dealer, with whom the member engages, or within the past six months has engaged, in securities activities; and (iii) conducts all trading through the firm's accounts by traders that are owners of, employees of, or contractors to the firm, or employees of an affiliate of the firm.

FINRA may exempt other securities and transactions as it deems appropriate.

(3) through (4) No Change.

(c) through (e) No Change.

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