

VIA EMAIL AND FEDERAL EXPRESS

January 7, 2014

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

Re: Release No. 34-70048; File No. SR-FINRA-2013-031

Dear Ms. Murphy:

The New York Stock Exchange LLC (“NYSE”) submits this comment letter in response to the above-referenced proposal made by the Financial Industry Regulatory Authority, Inc., (FINRA) to amend its rules regarding the requirements for members seeking registration as FINRA Alternative Display Facility (“ADF”) Market Participants.

The NYSE recognizes that FINRA must consider the cost to migrate the ADF to its new Multi Product Platform (“MPP”). The NYSE also recognizes the challenge in accounting for the upgrade costs for the ADF when there have been no ADF participants since 2010. Nevertheless, the NYSE is concerned that the existing rate table in FINRA Rule 7510,¹ together with bundling of quote display usage and trade reporting in this proposal is not consistent with Section 15A(b)(9) of the Exchange Act.²

As proposed, an ADF Market Participant must make a deposit with FINRA in the amount of \$500,000 or \$250,000 (based on the timing of FINRA’s upgrade for the client to MPP). 80% of the deposit may be returned to the Participant over a two year period only if the market participant submits 75% of both its quote traffic and its trade reports to the ADF. The return of the deposit is limited by and commensurate with the market data revenue associated with the ADF Market Participant’s trading activity. Note that 20% of the initial deposit is kept by FINRA until the end of the two year term and is not returned if the requisite market data is not earned or if the market participant decides to quote or trade report elsewhere.

The NYSE believes that the existing rate table in FINRA Rule 7510, together with the bundling of quote display usage and trade reporting in the proposed rule is not consistent with Section 15A(b)(9) of the Exchange Act. This combination makes it economically prohibitive for the Participant to quote on the

¹ See FINRA Rule 7510.
http://finra.complanet.com/en/display/display_main.html?rbid=2403&element_id=4484.

² Section 15A(b)(9) requires that FINRA’s rules do not “impose any burden on competition not necessary or appropriate in furtherance of the purpose” of the Act.

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ADF and trade report elsewhere without forgoing its deposit and being subject to higher fees imposed under FINRA Rule 7510.

FINRA Rule 7510 charges as high as 2 cents per quote and reduces the fees on a graduated schedule down to zero for Participants that average more than 150,000 trade reports per day to the ADF. For example, if a Participant averaged 5 million daily quote updates but reported its trades to the FINRA TRF, it would be charged more than \$25 million annually to use the ADF solely to quote. The NYSE believes this existing fee structure should be revisited in light of the proposed rules. Taken together, Rule 7510 and the proposed rules are a burden to competition since it will be economically prohibitive for a Participant to use the ADF for their intended goal of submitting a quote into the National Market System via the ADF without also trade reporting via the ADF.

In order to ensure vibrant competition for quoting and trade reporting, the NYSE suggests that FINRA revisit the proposed rules and Rule 7510 with respect to bundling the quote and trade report activity in order to ensure a Market Participant can choose to pay a reasonable amount to only quote on the ADF without penalty for trade reporting on an alternate venue.

Very truly yours,

A handwritten signature in blue ink that reads "Janet McHinness". The signature is written in a cursive, flowing style.