



June 01, 2015

Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-05-15: Exemption for Certain Exchange Members

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter in response to the proposal by the Securities and Exchange Commission (“Commission”) to amend Rule 15b9-1 under the Securities Exchange Act of 1934 (“Exchange Act”). 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. In practical effect, Section 15(b)(8) requires membership in the Financial Industry Regulatory Authority (“FINRA”) because FINRA is the only registered national securities association. Under the proposal, the Commission 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. SIFMA supports the Commission’s proposal to amend Rule 15b9-1.

At the outset, we note that the Commission’s proposal to amend Rule 15b9-1 is one of a number of initiatives on equity market structure that Chair White announced in a speech last year. For many years, SIFMA and its members have been vocal advocates and thought leaders on equity market structure issues. The U.S. equity markets are the deepest, most liquid and most efficient in the world, with investors enjoying extraordinarily low transaction costs, narrow spreads, and fast execution speeds. Nevertheless, SIFMA believes there are aspects of market structure that could be enhanced through steps designed to decrease unnecessary market complexity, increase transparency of market information, and promote fairness in access.

To sharpen the focus on these important issues, SIFMA’s Board of Directors convened a broad-based task force in 2014 of members from across the country and across the industry, including retail and institutional dealers and asset managers, to develop a series of tangible and actionable market structure reforms. Through this task force, SIFMA has developed more than a dozen specific recommendations for

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. 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>.

addressing equity market structure. We published those recommendations in July 2014.² In October 2014, SIFMA submitted a letter to the Commission providing background and analysis in connection with our market structure recommendations.³

SIFMA's recommendations on equity market structure addressed a number of critical areas of focus in connection with market complexity, dissemination of market data, and transparency and disclosure. We urge the Commission to take action on these very important issues. In this regard, we agree with Commissioner Gallagher's request that the Commission address core market structure issues, such as Regulation NMS, the status of self-regulatory organizations ("SROs"), and revisiting the amendments to the Exchange Act enacted through the Securities Acts Amendments of 1975.⁴

While SIFMA supports the proposal on Rule 15b9-1, we urge the Commission to address issues that are more clearly related to, and impactful on, equity market structure. We agree with Commissioner Piwowar's statement that, in the extensive recent discussions on equity market structure, there have been no other suggestions that requiring FINRA membership for proprietary trading firms is an essential issue.⁵

In addition, SIFMA offers comments on the proposal with respect to: (1) the impact of the proposal on FINRA's fees and revenues; and (2) the application of Rule 15b9-1 to exchange routing broker-dealers.

FINRA Fees

The Commission's proposed changes to Rule 15b9-1 would, by definition, result in additional firms joining FINRA, and in turn, those firms becoming subject to FINRA's fees. FINRA has noted that it has four primary member regulatory fees to fund its operations: the Gross Income Assessment, the Personnel Assessment, the Trading Activity Fee ("TAF") and the Branch Office Assessment.⁶ FINRA also charges various other fees to its members for products and services. In addition, many FINRA members pay membership and regulatory fees to exchanges, which the exchanges then pay over to FINRA pursuant to regulatory services agreements ("RSAs"). The Commission stated in its proposal that FINRA may need to consider reassessing the structure of its fees, including the TAF, in order to assure that those fees are fairly and equitably applied to the firms that join FINRA as a result of the amendments

² See SIFMA Equity Market Structure Recommendations (July 10, 2014), available at <http://www.sifma.org/workarea/downloadasset.aspx?id=8589949840>.

³ See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Mary Jo White, Chair, Securities and Exchange Commission dated October 24, 2014 ("**SIFMA Equity Market Structure Recommendations SEC Letter**").

⁴ See Daniel M. Gallagher, Commissioner, Securities and Exchange Commission, Statement at Open Meeting on Rule 15b9-1 (March 25, 2015), available at <http://www.sec.gov/news/statement/032515-ps-cdmg-15b9-1.html>.

⁵ See Michael S. Piwowar, Commissioner, Securities and Exchange Commission, Statement at Open Meeting on Rule 15b9-1 (March 25, 2015), available at <http://www.sec.gov/news/statement/032515-ps-cmsp.html>.

⁶ See FINRA Regulatory Notice 15-13.

to Rule 15b9-1.⁷ FINRA has issued a Regulatory Notice to propose amendments to the TAF in anticipation of the amendments to Rule 15b9-1.⁸ However, FINRA's TAF proposal would provide relief for trading activity only to a specific category of firms, and the TAF would continue to apply to the same type of trading activity at other firms. Instead of this piecemeal approach, FINRA should review its fees more broadly to compare the amount of fees it charges with its actual cost of regulation.

The overarching point here is that 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 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." The Commission should take steps to ensure that FINRA's fees are reasonable and equitably allocated, and that they are not duplicative of revenue that FINRA receives from exchanges through RSAs. In this case, there should be a decrease in FINRA's overall fees with its membership base increased through this regulatory initiative. The Commission's assistance is critical because 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. This need for transparency and evaluation will become even more important if the Commission adopts the amendments to Rule 15b9-1.

Regulation NMS Routing Exemption; Application to Exchange Routing Brokers

The Commission's proposed amendments to Rule 15b9-1 include an exemption for off-exchange transactions resulting from orders that are routed by an exchange to prevent trade-throughs on that exchange. In our reading of the proposal, the exemption in Rule 15b9-1(c)(2) would apply only with respect to exchange floor members that qualify for the exception in Rule 15b9-1(c)(1) and whose orders are routed by the exchange to an off-exchange venue. We request that the Commission clarify the application of the Regulation NMS routing exemption and whether it applies to non-floor exchange members whose orders are routed by the exchange to an off-exchange venue.

In any event, the proposed exemption leads to the question of the application of Rule 15b9-1 to routing broker-dealers that are affiliated with national securities exchanges. As the Commission knows, several national securities exchanges use affiliated broker-dealers to conduct routing to other trading centers. The Commission has required these affiliated routing broker-dealers to operate as "facilities" of their respective exchanges, and the exchanges' rules set forth specific requirements that apply to their routing brokers.⁹ In particular, the exchange rules provide that the exchange must arrange for the routing

⁷ The Commission provides that many of the broker-dealers that may be required to join FINRA if the proposed amendments are adopted effect transactions in large volumes throughout the national market system, and often in a capacity other than as a registered market-maker. Accordingly, the Commission notes that FINRA may need to consider reevaluating the structure of the TAF to assure that it appropriately takes into account this business model. *See* Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 at 18044 n.95.

⁸ *See* FINRA Regulatory Notice 15-13.

⁹ *See, e.g.*, New York Stock Exchange ("NYSE") Rule 17(c); *see also* NASDAQ Rule 4758(b); *see also* BATS Exchange, Inc. ("BATS") Rule 2.11(a).

Mr. Brent J. Fields
Securities and Exchange Commission
SIFMA Comment Letter on File No. S7-05-15
June 01, 2015
Page 4

broker to be overseen by a non-affiliated SRO. In practice, the exchanges make those arrangements with FINRA.

SIFMA requests that the Commission make clear in its rulemaking that the exemption from FINRA registration under Rule 15b9-1 would not apply in any case to a [broker](#)-dealer affiliated with a national securities exchange that routes orders on behalf of the [exchange](#) for the purpose of accessing quotations in other trading centers. We understand that exchange-affiliated routing broker-dealers generally route orders to non-exchange trading centers such that they would not qualify for the exemption. However, an exchange-affiliated routing broker-dealer could restrict its activities to accessing protected quotations on other exchanges and could therefore avoid FINRA membership, even after Rule 15b9-1 is amended. For such a critical market function, we believe that consistent regulation through FINRA membership is appropriate for exchange-affiliated routing broker-dealers, regardless of where they route orders. Accordingly, the Commission should codify that requirement as part of its amendments to Rule 15b9-1.

* * *

We appreciate the Commission's consideration of our comments in response to the proposed amendments to Rule 15b9-1. If you have any questions, please contact either me (at [REDACTED] or [REDACTED]) or Timothy Cummings (at [REDACTED] or [REDACTED]g).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets