



141 W. Jackson Blvd., Suite 500
Chicago, IL 60604
312 362 2401
WWW.PEAK6.COM

June 1, 2015

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

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

RE: File Number S7-05-15; Exemption for Certain Exchange Members

Dear Mr. Fields:

PEAK6 Capital Management LLC (“PEAK6”) appreciates the opportunity to provide the Securities and Exchange Commission (“the Commission”) with comments on the above referenced proposed rule change (the “Rule”). PEAK6 is a registered proprietary trading firm regulated by several self-regulatory organizations (“SROs”), discussed herein. PEAK6 does not support the Commission’s proposal that proprietary firms should become a member of the Financial Industry Regulatory Authority (FINRA), and more specifically, it does not support membership unless the FINRA application and Trading Activity Fees (“TAF”) processes are first modified.

1. PEAK6 is a proprietary trading firm.

PEAK6 trades proprietarily and operates as a market maker in equity options, providing liquidity to participants in the equity and equity derivatives markets. PEAK6, acting as principal, buys and sells equity securities and equity derivative financial instruments. In addition, PEAK6 trades across several other asset classes, including options, fixed income securities and futures. PEAK6 is a registered broker-dealer with the Commission and its Designating Examining Authority (“DEA”) is the Chicago Board Options Exchange (“CBOE”). It is also a member of NYSE Amex, NYSE Arca, BATS Exchange, BOX Options Exchange, International Securities Exchange, ISE Gemini and NASDAQ OMX PHLX LLC (collectively, the “Member Exchanges”). It has no customers.

2. PEAK6 is regulated.

PEAK6 is regulated in its capacity as a registered broker-dealer and a member of CBOE and the Member Exchanges. As such, PEAK6 is subject to full regulatory oversight and does not require additional oversight by FINRA.

As a registered broker-dealer, PEAK6 is a member of multiple exchanges and therefore is subject to multiple regulators. While each exchange has different rules, CBOE alone provides full regulatory oversight of PEAK6 through its specialization in the operations of proprietary trading firms. PEAK6 is subject to routine and targeted examinations by CBOE. Further, via the Regulatory Services Agreement between CBOE and FINRA ("RSA"), FINRA has access to and can audit any PEAK6 information related to its securities business and trading activities, including off-exchange trading activity. It is unnecessary, then, to join FINRA since PEAK6 is effectively regulated by the Exchanges and FINRA should already have access to the information essential to supervise PEAK6's regulation.

Secondly, FINRA's examination and regulatory programs specialize in investor protection and over-the-counter ("OTC") trading. PEAK6 would not benefit from FINRA's customer-focused oversight, because it has no customers and OTC trading represents a very limited portion of PEAK6's business. Furthermore, FINRA's regulatory staff are typically securities industry generalists that do not have the deep trading expertise of the staff of the securities exchanges. Exchange focus on trading activity of proprietary trading firms has developed the securities exchanges' sophisticated understanding of the same, and, as pertaining to PEAK6, options exchanges are more specialized in regulating options trading, which results in more effective regulation. The markets are better served by PEAK6 maintaining only its memberships with CBOE and the Member Exchanges which focus on the trading activity that comprise the components of PEAK6's business.

In addition, the FINRA registration process is overly costly and burdensome, particularly for a regulatory program that does not align well to PEAK6's limited trading business. Common practice suggests that it could take up to six (6) months or longer to complete the FINRA New Membership Application (NMA) process. This would force PEAK6 to either dedicate in-house compliance and legal personnel for lengthy time periods or, alternatively, to pay large sums to engage outside counsel to aid in completing the NMA process. Moreover, because PEAK6 is already registered with the Commission and with several Self-Regulatory Organizations ("SROs"), including its DEA, CBOE, it has already spent time and materials on similar registration processes that requested much of the same information as FINRA is likely seeking. Although there may be some variation in FINRA's application process, the Commission should insist that FINRA adapt its process to allow for an application waiver for proprietary trading firms who are 1) registered with the Commission and an SRO, 2) whose information has not materially changed from its registration with such entities and 3) who remain in good standing with the Commission and its other regulators.

3. The Commission should demand collaboration among the exchanges and FINRA for more integrated and effective regulation.

Regulation of proprietary trading firms engaging in on-exchange cross-market trading activity should be accomplished by exchanges collaborating to create a more integrated regulatory program that promotes market transparency. Since exchanges are registered with, and regulated by, the Commission, each exchange has the responsibility of regulating all activity that takes place on it. To the extent that transactions are on-exchange cross-market trades, the exchanges involved in those transactions should share data as necessary to regulate the market effectively. Because such data sharing would generate market transparency, the Commission should first demand exchange collaboration instead of FINRA membership for proprietary trading firms that engage in on-exchange cross-market trading. Off-exchange trading by non-FINRA member firms should be reviewed by such firms' respective DEAs. If DEAs do not have sufficient or timely access to uniform transaction data for the firms which are its members, the Commission should be addressing a need for more transparent and uniform audit trails, such as Consolidated Audit Trail ("CAT"). Designating a new regulator for proprietary trading firms does not solve this issue.

4. PEAK6 supports filing notice of an exemption to the Rule.

Should the Commission determine that certain proprietary trading firms remain exempt from the Rule, PEAK6 supports the requirement that notice of claiming such exemption be filed. Filing this exemption promotes greater transparency in firms' regulatory status. Form BD should be revised to include a section to designate whether a firm is claiming this exemption. Form BD is already required for broker-dealers and automatically makes such information available in CRD and FINRA's BrokerCheck. Therefore, exemption filing would not be burdensome for the exempt firm. Exemption notice should include exchange memberships, DEA identification, estimated percentage of annual revenue generated on each exchange, and a schedule of all off-exchange activities.

5. Regardless of whether the Commission ultimately requires FINRA registration, FINRA should change its TAF structure before any proprietary trading firm is required to become a member.

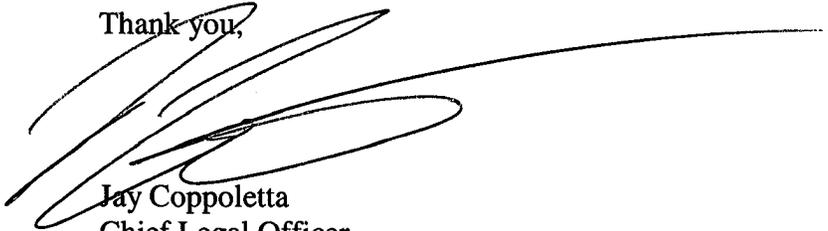
FINRA charges its members regulatory fees that are calculated based on both revenue and the number of certain transactions members make in defined products, whereas CBOE's regulatory fees are computed solely based on revenue. FINRA's fee calculation is structured under the customer-focused theory that more transactions amounts to proportionately more financial monitoring and trade surveillance in order to protect investors. However, as applied to proprietary trading firms, this theory does not hold. The level of effort expended by FINRA to regulate trading activity is not proportional to the amount of fees it charges for the actual activity. As such, the current FINRA fee structure is imbalanced and risks stifling liquidity in the markets that is provided by proprietary trading firms regardless of whether such firms are actually serving as market makers.

Because of this fee structure, FINRA regulation would be much more expensive than the cost of existing exchange regulation, but, as mentioned, is also disproportionate to FINRA's actual cost to monitor such trading firms. For example, PEAK6 performed an internal exercise which demonstrates the imbalance. PEAK6 computed pro forma regulatory fees that would be payable to FINRA based on reasonable revenue and transaction estimates for 2015 as if PEAK6 was a FINRA member. Notably, the cost of FINRA membership for PEAK6 is 250% more overall than the cost of its CBOE membership, and the fees revenue-based fees alone are 20% more with FINRA. As such, PEAK6 proposes that FINRA revise its fee structure to more accurately and fairly represent the cost of regulation over currently exempt proprietary trading firms.

FINRA recently proposed a change to its TAF schedule in Regulatory Notice 15-13 whereby transactions on exchanges of which a firm is a member would be exempt from TAF. PEAK6 provides a significant source of liquidity to the listed equity options market including by sending orders to some exchanges that it is not a member of and through hedging its listed options trading with stock transactions that may be executed off-exchange. According to FINRA TAF proposal, PEAK6 would still be subject to transaction fees both for options executed on non-member exchanges as well as for off-exchange stock transactions for hedging market maker activity and other proprietary trading that creates market liquidity and contributes to price discovery. It becomes less appealing for PEAK6 to provide the same liquidity under FINRA's proposed fee structure as we currently do under CBOE's regulatory fee structure. PEAK6 believes that the proposed revision to the TAF structure would still be disproportionately costly to currently exempt broker-dealers, and it may discourage such firms from routing trades to certain markets, thereby disrupting market efficiency. Proprietary trading firms typically route orders to the markets that can offer the best price, which may result in off-exchange or OTC trading. This process creates fair, efficient and orderly markets by providing significant liquidity, contributing to accurate price discovery and narrowing bid-ask spreads. To avoid diminished efficiency on the securities markets due to market participants changing their order routing practices and size parameters to circumvent FINRA-imposed fees, the Commission should not approve a TAF structure proposal that does not represent true regulatory costs including tiered transaction fee thresholds with deep discounts at higher volume tiers, since the resources necessary to regulate incremental trading activity decline per economies of scale.

PEAK6 appreciates the opportunity to provide comments on this proposed rule change. If we can clarify or answer any questions, please contact Andrew Tourney at (██████████) or ██████████.

Thank you,



Jay Coppoletta
Chief Legal Officer