

This comment is submitted by Wachtel & Co., Inc., a small self-clearing broker-dealer located in Washington, DC. We apologize for its submission after the period for comments has closed.

The focus of this comment is FINRA Rule 7470, which provides an exemption from several OATS requirements for qualifying small firms who record orders manually. It is our understanding that approximately two hundred small firms, including ours, rely on this important rule and we wish to make certain that the provision is not overlooked in the Commission's analysis.

As described below, the exemption is narrowly tailored. It was provided following extensive review and discussion that included the highest levels of the NASD as well as key SEC staff. Management of this firm submitted several letters on the need for relief and met personally with staff of both organizations (the SEC and NASD). The message carried in those efforts was that OATS is far too expensive and burdensome for the many small firms using manual orders to qualify as reasonable or cost effective regulation. To the best of our knowledge, nothing has changed in the approximately five years since the exemption was enacted that would alter that assessment. Further, as the SEC is aware, current OATS rules are themselves considerably less restrictive than the expanded framework now being proposed.

Rule 7470 only covers firms who meet its tight restrictions on annual revenue and have clean disciplinary records. It excludes firms that engage in market-making, principal transactions with customers or clearing for other firms. Like many other firms making use of Rule 7470, we have altered our business model to comply with its terms.

In the SEC's proposing release, cost is discussed extensively, however we did not see a reference to the small firms currently using manual orders. We must emphasize that we believe the Commission's analysis with respect to the effect on those firms should be squarely focused on the issue of disproportionate impact. That analysis five years ago showed a need for exemptive relief and as we have noted, nothing has changed -- except perhaps that the regulatory environment has become even more challenging.

When FINRA was formed, we were assured that the NASD's sensitivity to the needs of its many small members would be retained. In addition, the Commission has consistently in our experience shown a willingness to provide special consideration where warranted for small firms. Those firms today are coping with an avalanche of change emanating from Congress, the Commission and the Treasury (with respect to the latter, we are referring to cost basis reporting and transfer requirements, which are complex and extensive). We are keenly aware that every year the number of firms in the industry seems to decline. The contribution of regulatory burden on that trend should continue -- as it has been -- to be a serious concern for the government at all levels. Further, please note that small firms--in comparison to their larger brethren-- are considerably less able or likely to engage in the rulemaking process making their voices heard.

The exemption carried in FINRA Rule 7470 is a model of flexible responsive regulation to the disproportionate burden of regulation on certain small firms. Regardless of the path of the consolidated order trail system now being proposed, this exemptive rule should be retained, modified appropriately and made permanent.

Thank you for your consideration. Management of this firm would be pleased to provide further information or respond to inquiries regarding this letter.

