



Philip M. Pinc
Vice President, Counsel

May 29, 2008

Ms. Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F St. N.E.
Washington, DC 20549-1090

VIA EMAIL TO: rule-comments@sec.gov

Re: File No. SR-FINRA-2008-011

Dear Secretary Morris:

National Stock Exchange, Inc. ("NSX") appreciates the opportunity to comment to the Securities and Exchange Commission ("SEC" or "Commission") on the proposed rule filing referenced above (the "Proposal") that was filed recently by the Financial Industry Regulatory Authority, Inc. ("FINRA"). In the Proposal, FINRA proposes to replace the current market maker-based trade reporting framework for over-the-counter equity transactions with an "executing party" framework, and further proposes that any FINRA member with the trade reporting obligation under FINRA rules that is acting in a riskless principal or agency capacity on behalf of one or more other members be required to submit non-media report(s) to FINRA, as necessary, to identify such other member(s) as a party to the trade.

NSX wishes to make clear at the outset that this letter does not question FINRA's discharge of its regulatory responsibilities as a self-regulatory organization. Rather, our concerns about the Proposal relate solely to the structure of FINRA's nontransparent and currently unregulated charges for regulatory services, and the financial consequences of this pricing that are ultimately borne by all market participants.

Based on its experience with the FINRA/NSX Trade Reporting Facility LLC ("FINRA/NSX TRF"), NSX believes that the Proposal's requirement of submission of non-media reports would significantly increase the number of non-media trades submitted to the FINRA/NSX TRF and other over-the-counter facilities, resulting in significantly increased regulatory charges by FINRA to the FINRA/NSX TRF and FINRA's other over-the-counter facilities. The Proposal, however, contains no information about these regulatory charges, perpetuating the lack of transparency of FINRA's fees charged to its over-the-counter facilities.

NSX believes that the principles of Sections 15A and 19(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") require that FINRA's fees and charges be

equitable and reasonable and subject to advance notice. At a minimum, these principles require that FINRA amend the Proposal to provide an explanation of FINRA's regulatory work conducted on non-media reports and the associated fees to be charged for this regulation. Without this, all market participants are hampered by the lack of transparency and predictability, and NSX is particularly competitively disadvantaged, as it is unable to pass on FINRA's regulatory charges to FINRA/NSX TRF customers.

These concerns are heightened by FINRA's *de facto* monopoly position in the market for over-the-counter regulatory services. There is currently no regulatory scrutiny over FINRA's fees and there are no competitive pressures that would control costs being assessed by FINRA on the industry.

Background

Under the current trade reporting structure, an executing facility reports each trade to its Securities Information Processor ("SIP") for dissemination of trade information to the public (a "media report"). The media report may also be used to report the trade to the National Securities Clearing Corporation ("NSCC") for settlement and clearance. In the alternative, a broker dealer party to the transaction may cause a separate "clearing only" report to be submitted to the NSCC, which is not disseminated to the public (a "non-media report"). The Proposal would require that the non-media ("buy-side") leg of an internalized agency trade executed by an alternative trading system be submitted to FINRA as a non-media report.

A significant amount of business on the FINRA/NSX TRF is conducted by alternative trading systems that execute internalized agency trades. As a result, by requiring the submission of non-media reports, the Proposal would significantly increase the number of reports submitted to the FINRA/NSX TRF. The FINRA/NSX TRF is a joint venture between NSX, which as the business member bears the economic benefits and burdens of the FINRA/NSX TRF's activities, and FINRA, which as the regulatory member has regulatory responsibility for the FINRA/NSX TRF. FINRA generally charges the FINRA/NSX TRF for its regulatory oversight on a cost-plus basis, with these costs being allocated on a trade report volume basis.

FINRA's Current Regulatory Charges for Non-Media Reports

Section 15A of the Securities Exchange Act of 1934, as amended (the "Exchange Act") requires that, for registered securities associations such as FINRA:

The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and

issuers and other persons using any facility or system which the association operates or controls.¹

Although the submission of non-media reports is not currently required by FINRA rules, FINRA has charged and continues to charge the FINRA/NSX TRF regulatory fees for the non-media reports submitted by FINRA/NSX TRF members. NSX is concerned that the amount of these fees may be not be reasonably related to FINRA's actual costs of regulation.

FINRA currently charges the FINRA/NSX TRF the same market regulation fee for both media reports and non-media reports. It is not clear to NSX, however, whether FINRA conducts the same level of regulation on non-media reports as it does on media reports, or if FINRA relies upon non-media reports at all for market surveillance or regulatory oversight purposes. If not, there is no basis for FINRA to impose the same charge it requires for the market regulation of media reports, which require more regulatory scrutiny.² If FINRA's actual costs for regulating media reports are higher than its actual costs for regulating non-media reports, then charging the same fee for both types of reports unfairly shifts regulatory costs to non-media reporting customers, and unfairly subsidizes customers that do not submit non-media reports.

Effect of the Proposal

If made effective, the Proposal would have the effect of requiring that a significant number of additional non-media reports be submitted. As a direct consequence of this, FINRA would be assessing substantial additional regulatory fees to the FINRA/NSX TRF and other market participants. Yet the Proposal is entirely silent as to the regulatory fees that will be assessed with respect to these non-media reports. This perpetuates and expands the scope of a non-transparent fee structure that is not subject to regulatory review or approval.

NSX believes that the securities laws, as highlighted in Section 15A and Section 19(b)³ of the Exchange Act, require transparency of fees charged by FINRA to the FINRA/NSX TRF and other TRFs. Although these fees are paid by the FINRA/NSX TRF, the ultimate cost of these fees, and the lack of predictability surrounding them, must be borne by FINRA/NSX TRF members and other market participants. In addition, this lack of transparency places NSX at a competitive disadvantage, as it is deprived of advance notice of FINRA's charges and has

¹ Section 15A(b)(5).

² NSX has no objection to the capacity allocation charges that apply to these non-media reports (since trade reports require use of CPU capacity), or any reasonable, incidental charges incurred by FINRA to separate these non-media reports from others that FINRA must monitor.

³ Section 19(b)(1) of the Exchange Act requires that proposed rules of a self-regulatory organization such as FINRA be subject to public notice and comment.

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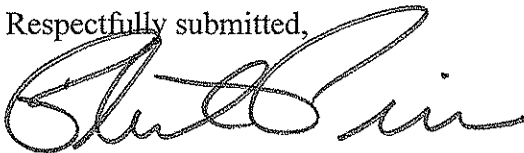
difficulty passing on FINRA's regulatory costs to its customers. Public comment and regulatory scrutiny over pricing are even more important in this context where there are no competitive pressures to control costs being assessed on the industry by FINRA.

NSX believes that FINRA should publish a complete fee schedule for notice and comment relating to its regulatory fees for TRF regulation. In addition, FINRA should perform an analysis of its actual costs associated with regulating media and non-media trades and set charges for these regulatory services that are equitable and consistently applied to all market participants. This analysis should be required before FINRA assesses fees, not after the fact, and should be included in the Proposal. This transparency is fundamental to the securities industry.

NSX requests the Commission examine this issue and take such action as the Commission deems appropriate.

Thank you for the opportunity to comment on this proposed rule filing. Please feel free to contact me at (312) 913-5918 if you have any questions or would like to discuss our comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip M. Pinc", written over a horizontal line.

Philip M. Pinc
Vice President, Counsel
National Stock Exchange, Inc.