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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: **Release No. 34-60515; File No. SR-FINRA-2009-054**

Dear Ms. Murphy:

The Security Traders Association of New York, Inc. ("STANY")¹ appreciates the opportunity to comment on Release No 34-60515 filed with the Securities and Exchange Commission ("SEC" or "the Commission") by the Financial Industry Regulatory Authority, Inc. ("FINRA"). The filing reflects the FINRA's proposal to adopt new FINRA 6434 (Minimum Pricing Increment for OTC Equity Securities), 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities), 6450 (Restrictions on Access Fees) and 6460 (Display of Customer Limit Orders) (collectively, the "Proposal").

STANY appreciates that FINRA is attempting to update the rules pertaining to the OTC market. We are however concerned that application of certain provisions adopted in the listed markets through Reg. NMS may have significant negative consequences in a trading environment that operates very differently than the National Market System. We caution against accepting a position that if something works in the Reg. NMS world it would also work in the OTC market place.

Given that the nature of the OTC market is significantly different than the market for listed securities, we believe the OTC market regulation should be analyzed in terms of its economic impact and only those rules that would truly benefit investors and issuers in the OTC market should be adopted. We also wish to stress that, while trading under Reg. NMS has gone smoothly in the majority of active stocks Reg. NMS has not significantly improved trading in the more thinly traded issues. This gives us pause; as securities traded in the OTC markets are more similar to listed stocks with the least liquidity than they are to actively traded listed stocks.

In adopting Reg. NMS, the Commission gave great consideration to the potential impact on the quality of the markets that a wide range of rule changes could affect. Those rule changes were considered in light of the then present state of the listed markets. We suggest that the OTC market, and the investors and issuers in that market, deserve the same considerate analysis of rule changes. As FINRA has long recognized, the OTC and listed markets are different in many respects. A one size fits all approach to regulating these markets is inappropriate.

¹ The Security Traders Association of New York, Inc. (STANY), established in 1937, represents the shared interests of over 1,200 trading professionals from over 250 firms in New York, New Jersey and Southern Connecticut. STANY is the largest Affiliate of The Security Traders Association (STA). STANY's membership includes individuals employed by order execution facilities, national securities exchanges, national securities associations, ECNs, buy and sell-side trading firms, and national and international banks.

As we stated in earlier comment letters, STANY has generally supported the elimination of sub-penny quoting. We believe that small quote increments degrade market quality and can produce “flickering” quotes. Gathering and storing this type of quote traffic may lead to an arms race among system providers that raises the expenses of those offering brokerage services without allowing them to provide any discernable benefit to investors.

We have also mentioned in letters to the Commission that investors do not benefit by restricting the increment of the trade that a market maker or ECN can accept. Market regulation should only be concerned with the display of orders for execution in a public market. Such unnecessary regulation will only serve to stifle innovation, with no concomitant benefit.

STANY generally supports prohibitions on locked and crossed markets because of the harm locked and crossed quotations inflict on markets and investor confidence. However, the Proposal is weakened by limiting the prohibition to locked and crossed quotations within the same inter-dealer quotation system.

We believe that locked and crossed markets most often occur when a market participant seeks to avoid paying an access fee or seeks to obtain a rebate. As a result, a crossed market is likely to occur by comparing quotations in different inter-dealer quotation systems. Locked and crossed markets are harmful to markets and raise difficult compliance issues. For these reasons, we think the prohibition should cover all inter-dealer quotation systems that operate in the OTC market.

While we generally support the concept of voluntary limit order display, a decade of experience with regulatory efforts to encourage investors to submit priced orders indicates that a limit order display rule, without more, can harm investors. One possible way to protect investors while achieving some of the benefits of limit order display would be to permit a broker-dealer to post part of a limit order because small orders are more likely to be executed than large orders.

STANY believes the beneficial elements of the Proposal are subverted by proposing to permit access fees in the market for OTC equity securities without those fees being reflected in the displayed quote.

As stated in our prior letters, STANY has opposed non-subscriber access fees and has consistently argued for the elimination of these fees. Regulation NMS is tolerable only because all market participants are permitted to charge access fees and because the amount of those fees is limited. While the Proposal would similarly limit the amount of access fees that a firm would be permitted to charge we continue to believe that access fees generally are harmful to markets. This is especially the case in the market for OTC equity securities, which is characterized by relatively infrequent trading, as compared to the market for most NMS securities.

While the Proposal purports to “limit” access fees, the effect of this supposed “limitation” would be to open a Pandora’s Box in the OTC environment. Currently, ARCA is the only participant in the OTC market who charges access fees. These fees are part of the displayed quote. The proposed limitation is in effect a license for all market participants to charge access fees and keep those fees hidden from the public quote. Once one participant charges access fees, it will not be long before all do. Liquidity rebates and gaming will likely follow as will an increased incidence of locked and crossed markets. We can conceive of no benefit whatsoever to the investing public from the proposed limitation on access fees or from allowing hidden access fees in the OTC markets.

As noted by the Commission in its initial proposal to adopt Regulation NMS, undisplayed or hidden access fees have the effect of not reliably indicating true prices actually available to investors. Investors are therefore inhibited in their ability to compare prices offered by different broker-dealers across different marketplaces. Limiting the amount of access fees helps to partially alleviate this harm, but there is no good reason to permit this injury to the OTC market.

Moreover, we recall that the Commission has frequently taken steps to eliminate payment for order flow citing that this practice indicates the presence of an inefficient market. Access fees are used to pay liquidity rebates, which are just another form of payment for order flow. These fees and rebates provide an incentive to lock or cross markets. Compliance is therefore burdened with a difficult task, and the result is higher costs to investors.

We strongly disagree that anyone's business model requires access fees. Our members have operated successfully without charging access fees using all sorts of business models. A business that depends for its viability on collecting fees from persons who are not its customers is not a good business and should not receive anyone's support.

The Proposal will require all of our members to develop a system to charge access fees to remain competitive. Ultimately, an access fee charged on one trade will be recovered in another trade, perhaps in a different accounting period. No one will benefit. However, the costs of billing and collecting access fees and accounting for them will inevitably be passed along to investors in the form of higher transactions costs. Access fees therefore increase costs without providing any benefit to the investing public.

If the Commission determines to approve the charging of access fees in the OTC market, some adjustments need to be made either to the quote increments or the access fee caps. In the lowest priced OTC equity securities, access fees can be a significant percentage of the cost of the security. The proposed access fee of \$0.003 would be larger than the proposed minimum quote increment for securities priced at less than \$1.00. An access fee should never exceed 30% of the relevant quote increment.

We appreciate the opportunity to provide our opinion and comments. Should the Commission have any questions about STANY's position, we hope that you do not hesitate to call upon us.

Respectfully submitted,

Kimberly Unger
Executive Director