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NASAA

March 4, 2010

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

Re: Comments to Securities Exchange Act Release No. 60999
File No. SR-FINRA-2009-077

Dear Ms. Murphy:

The Corporation Finance Section Committee of the North American Securities Administrators Association (the "Committee") appreciates the opportunity to comment on the proposal by the Financial Industry Regulatory Authority, Inc. ["FINRA," a self-regulatory organization (SRO) for purposes of the Securities Exchange Act of 1934 and subject to oversight by the SEC], to create a Quotation Consolidation Facility ("QCF") that would serve as a commercial data consolidator and disseminator for quote data in the over-the-counter (OTC) equity market (the "QCF Proposal" or "Proposal").

The Committee's interest in the QCF Proposal is from the investor protection perspective. Thus, we will not comment on issues that have been raised by others regarding the QCF Proposal, such as illegal and unconstitutional seizure of private intellectual property and the lack of SEC authority to approve the QCF Proposal.

In presenting its Proposal to the Commission, it is FINRA's burden and obligation to justify why and how the Proposal is in the best interest of both public investors and the OTC trading marketplace where investors participate. For the following reasons, we believe that the requisite justification has not been provided by FINRA:

(1) Under the QCF, the dissemination of quote information for unregistered OTC securities in the NASDAQ Level 1 feed would be likely to give the false impression to public investors and other market participants that FINRA, as an SRO, is regulating or has regulatory power over the issuers of those securities. This is not an illusory regulatory concern. At the state level, we have seen countless instances where fraudulent issuers on the OTC Bulletin Board have exploited that false impression by asserting that FINRA's operation of the OTC Bulletin Board demonstrates the legitimacy of the securities traded there.

FINRA's categorization scheme for issuers on the QCF -- which would be limited to "current SEC reporters," "late SEC reporters," and "non-SEC reporters" -- would be a step backward from the categorization system developed by the private sector's Pink OTC which classifies issuers based on the timeliness and quality of issuer disclosure. For issuers of registered securities that are not current in their reporting requirements, the Pink OTC classification system includes "limited information" or "no information." Additionally, Pink OTC has developed a "Caveat Emptor" classification to warn investors about the enhanced potential for fraud by shell companies controlled by known criminals or that may be conducting a SPAM promotional campaign for a "pump and dump" stock manipulation. In addition, Pink OTC has developed innovative graphics such as "stop" and "yield" signs, and a skull & crossbones symbol to serve as warnings to investors about specific issuers.

(2) The Committee questions the assertion by FINRA that the QCF is necessary for the consolidation of quotation information for OTC equity securities. As noted in other comment letters, currently there are only two display facilities for OTC equities -- the OTC Bulletin Board operated by FINRA and Pink Quote operated by Pink OTC. Pink Quote already consolidates the marketplace and includes securities quoted on the OTC Bulletin Board. According to TradersMagazine.com, Pink Quote currently has 80% of the total OTC quote positions, while FINRA has lost half of its quote positions in the last 2 years to Pink Quote. Inasmuch as FINRA indicated in its Proposal that it will cease operating the OTC Bulletin Board, it would leave only one inter-dealer quotation service for the OTC market – namely, Pink Quote. Therefore it would be unnecessary for FINRA to establish the QCF to achieve the goal of consolidated quotations.

(3) The Committee also has concerns that the creation of QCF would adversely impact both the liquidity of the OTC market and transaction costs to investors. As you know, other comment letters have raised the same issues regarding the Proposal.

Because the QCF Proposal would impose additional charges on all broker-dealers involved in OTC securities, the proposed $4/quote position fee presumably would force broker-dealers to limit, for cost reasons, the number of securities in which they post a two-sided quotation. This in turn would serve to reduce the liquidity provided in each security and increase the spread of the quotes that remain. Adding those quotation fees could also eliminate additional market makers from participating in the market, resulting in less liquidity, price discovery and competition.

The QCF Proposal would also require market makers to provide all OTC quotations to FINRA, as well as pay FINRA a higher monthly fee for those quotes. The increased operating costs for market makers in OTC stocks would ultimately be passed on to investors in the form of higher commissions and execution costs.

We appreciate your consideration of these comments. Please contact Rex Staples, NASAA General Counsel at 202-737-0900 with any questions about the comments herein.

Sincerely,

Jack Herstein, Chairperson
NASAA Corporation Finance Section Committee and
Nebraska Securities Administrator