December 14, 2009

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

RE: FINRA's Proposed Rule Change Relating to the Restructuring of Quotation Collection and Dissemination for OTC Equity Securities Release No. 34–60999; File No. SR–FINRA–2009–077

Dear Ms. Murphy:

I appreciate the opportunity to comment on the above referenced proposal relating to the restructuring of quotation collection and dissemination for OTC equity securities. I agree with FINRA that the creation of a consolidated OTC Equity Security national best bid and offer ("NBBO") will benefit market integrity and foster investor protection, but believe that FINRA should consider whether only quotes for at least the minimum size required for inter-dealer quotation systems should be incorporated in the NBBO. In addition, the position charge of $4.00/security/month may result in a burden on competition that is not necessary or appropriate.

Minimum Size Requirements and the NBBO

In the filing referenced above FINRA expresses its intent to leave Rule 6450, which establishes a tiered group of minimum sizes that must be used when quoting OTC securities on inter-dealer quotation systems, essentially unchanged. This minimum size ranges from 5,000 shares for prices of $.50 and less to one share for prices of $2,500.01 and more. However, FINRA also proposes that ATS quotes be incorporated in the NBBO, regardless of whether the ATS quotation is displayed on an inter-dealer quotation system. We understand that the difference between an ATS that is an inter-dealer quotation system and an ATS which is not an inter-dealer quotation system is that the latter does not "regularly disseminate[s] quotations of ***identified brokers or dealers***," (emphasis mine). Therefore, an ATS that never identifies brokers or dealers is not required to comply with minimum size requirements.

I understand that, today, every ATS that displays quotations in OTC equity securities regularly disseminate quotations of identified brokers or dealers. However, if an ATS were to publish quotes of less than the required size there could hypothetically be a national best offer of .10 for 100 shares, from an ATS which is not an inter-dealer quotation system, when the next best offer, from an inter-dealer quotation system, might be .15 for the required minimum amount of 5,000 shares. Publishing a NBO for $10 worth of stock may not benefit market integrity and foster investor protection. An inside quote for an insignificant amount could be misleading to investors who note price but not size, and who could mistakenly believe that the minimum size requirements for inter-dealer quotations systems would apply to an NBBO. FINRA should consider and articulate in an amended filing or written response to this comment letter why they conclude that quotes of less than the minimum size required for inter-dealer quotation systems should be included in the NBBO. If that is the case, FINRA should further articulate why Rule 6450 will be essentially unchanged, because if it is beneficial to have quotes of less than a minimum required size displayed as the NBBO, then perhaps it would be beneficial to allow market makers to quote for an amount less than the minimum required size.

Modification of the Position Charge from $6.00/Security/Month to $4.00/Security/Month

Under the proposal, FINRA would cease operating the OTCBB, consolidate quotes in OTC equity securities disseminated by any inter-dealer quotation system and any ATS into a national best bid and offer, and disseminate the NBBO in the NASDAQ Level 1 data feed.

To accomplish these aims FINRA apparently believes it is necessary to double the revenue stream it receives from the OTCBB. FINRA currently levies a position charge of $6.00/security/month on approximately 3,477 securities (about 75 issues quoted solely on the OTCBB and about 3,372 issues quoted on both the Pink Sheets and the OTCBB). The FINRA proposal would lower the position charge from $6.00 to $4.00 on approximately 9,324 securities (the 3,477 securities currently quoted on the OTCBB and about 5,877 securities quoted solely on the Pink Sheets). Since FINRA reports that there are a daily average of slightly more than 7 market makers per security on the OTCBB, the monthly revenues, realized in connection to this modification of a position charge, could increase from approximately $146,000 to more than $261,000. This admittedly rough projection does not include revenues from members that operate an ATS.

Rule 6430 currently requires all members to record and submit OTC equity quotation data in a form "prescribed by FINRA," and FINRA already consolidates and disseminates an OTCBB best bid and offer in the NASDAQ Level 1 data feed. FINRA currently describes the OTCBB position fees, that are paid by market makers, as being for participation in the OTCBB Bulletin Board Service. There are currently no fees characterized as being for the purpose of processing member quotations or disseminating an OTCBB best bid and offer in the NASDAQ Level 1 data feed. Indeed, Level 1 data is valuable and NASDAQ sells it, and shares revenues with FINRA for the OTCBB quotation data. An OTC equity NBBO will be that much more valuable; presumably NASDAQ will be able to sell it for more and share more revenue with FINRA.

If the Commission approves FINRA's proposed new fees, members will have an incentive to quote OTC equities via an ATS, rather than via a non-member inter-dealer quotation system. Moreover, these fees will act as a disincentive, so that members restrict quoting OTC equities to as few inter-dealer quotation systems as possible, because members costs will increase significantly for every inter-dealer quotation system venue in which they quote a specific security. Such fees may be good for the dominant inter-dealer quotation system and ATS currently operating, but will serve to make the barrier to new competition significantly higher than it is now.

FINRA should articulate in an amended filing or written response to this comment letter why such additional fees, above and beyond the fees generated by OTC equity trade reports, and NASDAQ revenue sharing for Level 1 data dissemination, are necessary.

Yours truly,

Jess Haberman