



The Security Traders Association of New York, Inc.

Members of the Security Traders Association
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Executive Director

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Ms. Elizabeth M. Murphy
Secretary
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 Security Traders Association of New York, Inc. (“STANY”) respectfully submits this letter in response to the proposal by the Financial Industry Regulatory Authority (“FINRA”) to create a Quotation Consolidation Facility (“QCF”) that would serve as a commercial data consolidator and disseminator of quote data in the over-the-counter equity market (“OTC”).

The Security Traders Association of New York is the voice of the trader in the New York metropolitan area. STANY represents approximately 1,200 individuals, all engaged in the buying, selling and trading of securities. As such, we are uniquely qualified to discuss rules and regulations affecting the purchase and sale of securities. STANY is the largest affiliate of the Security Traders Association (STA). STA is a multinational professional trade organization that works to improve the ethics, business standards and working environments of its members. Neither STA, nor STANY, represent a single business or business model, but rather provide a forum for traders representing institutions, broker-dealers, ECNs, ATs and floor brokers to share their unique perspectives on issues facing the securities markets. Our members work together to promote their shared interest in efficient, liquid markets, as well as their concern for investor protection. We believe that strong and efficient markets require an appropriate balance between effective regulation and innovation and competition.

Members of STANY, who trade OTC equity securities, strongly object to FINRA’s QCF Proposal. We believe that creation of a QCF by FINRA is unnecessary, harmful to competition within the OTC equity market, and detrimental to investors and issuers. The QCF will increase the cost of trading in OTC securities and provide no benefit to the marketplace for the increased cost which can ultimately be passed along to customers.

FINRA is proposing to “create a QCF for OTC Equity Securities for regulatory and transparency purposes that would serve as a data consolidator for all quote data in the over-the-counter equity market.” While the goal sounds admirable, there is no regulatory or transparency need or benefit to be gained by the proposed QCF.

FINRA’s assertion that its proposed QCF is necessary for the consolidation of quotation information for OTC equity securities is false. Currently there are two display facilities for OTC equities- the OTC Bulletin Board (OTCB) run by FINRA and Pink Quote run by Pink OTC Markets. FINRA has indicated that it

will cease operating the OTCBB; consequently there will be only one inter-dealer quotation service for the OTC market- Pink Quote. Therefore there is no need for FINRA to establish the QCF to achieve the goal of consolidated quotes.

STANY both encourages and welcomes any and all vendors, consortiums or groups, including FINRA through its OTCBB, to compete with the Pink OTC Market. Inter-dealer markets that compete for listings and order flow based on pricing and available information bring value to customers, issuers and the broker-dealer community. However, future potential fragmentation is not a valid reason to establish a FINRA run QCF.

At present, there is no reason to believe that additional inter-dealer quote systems will develop in the OTC markets. On the contrary, the added costs and constraints of the QCF are likely to work as a disincentive to potential new entrants in the inter-dealer quote arena. As such, the QCF can be viewed as anti-competitive and a disincentive to innovation and improvement in the OTC equity market. Even the possibility of competition keeps service providers on their toes. One of the many problems with the QCF proposal is that it reduces the possibility that a viable competitor will emerge in this space. If FINRA chooses not to compete with Pink OTC's inter-dealer market, we do not believe that it should run a QCF that will serve to discourage innovation and competition.

Investors, market participants and regulators already have ready access to real-time data for OTC equities traded on an inter-market basis at a reasonable cost. Since 2004, Pink OTC has been purchasing FINRA market maker data for display in its systems. Currently Pink OTC publishes a consolidated NBBO in securities that are dually-quoted in the OTCBB and Pink Quote. Market data vendors that purchase market data from Pink OTC are contractually obligated to consolidate quotations from Pink Quote with quotations published on the OTCBB. In contrast, FINRA has not been active in consolidating information from its inter-dealer system OTCBB with quotations from Pink Quote. Nevertheless, with the planned elimination of the OTCBB by FINRA, there will be no present or foreseeable need for consolidation.

Numerous choices are currently available to broker-dealers wishing to view market data for OTC equity securities. Broker-dealers may obtain a license from Pink OTC to view a consolidated NBBO reflecting securities dually quoted in Pink Quote and the OTCBB and the NBBO in other OTC securities quoted in Pink Quote, or they can purchase access to a NASDAQ workstation that only displays the NBBO in OTCBB quoted securities. Likewise there are currently over thirty market data vendors that offer their customers the ability to consolidate Pink Quote and OTCBB quotes.

The QCF proposal requires that broker-dealers cease using inter-dealer quotation systems if the quotes are not being contemporaneously sent to FINRA. This is troubling since problems with connectivity, or other electronic communications problems, including problems with FINRA's systems could shut easily down the entire OTC market.

Likewise, there is no regulatory need for the proposed QCF. Pink OTC makes all of the market data generated by its inter-dealer quotation system available to FINRA as its reporting agent for all its broker dealer customers. This data has been provided to FINRA by Pink OTC free of charge through a real time market data feed. This data is provided for regulatory purposes under existing Rule 6330. All of the information that FINRA would receive under the QCF is already sent to FINRA; therefore the QCF would provide no additional regulatory or surveillance benefits.

The creation of the QCF will immediately and measurably increase costs of quoting OTC equities. Implementation of the proposal will create a four dollar quote position fee that will be applied to all OTC equity securities. The proposal will require broker dealers to provide FINRA with all of their quotations in OTC securities that are submitted to an inter-dealer quotation system. This information is currently provided to FINRA by Pink OTC. Firms will not be able to execute against "quotes" in the QCF, but any firm placing a quote in Pink Quote will be required to pay an additional \$4 to FINRA.

FINRA would then publish an NBBO in these securities through NASDAQ Level One feed. The NBBO shown on QCF will be a delayed replay of the information available in Pink Quote in real time. This delayed quote will have no value and is likely to cause confusion for investors.

The proposed QCF carries with it additional risk of confusion for the investor and encouragement of fraud by issuers. Securities sold in the OTC market include unregistered securities and ADRs as well as securities registered with the Commission. We are concerned the proposed QCF with quotes disseminated through NASDAQ Level One feed might give investors the false impression that FINRA operates a marketplace in OTC securities and regulates the issuers of those securities.

The Commission decided in 1999 that FINRA's operation of a regulated public marketplace for unregistered securities was inconsistent with the full disclosure goals of the federal securities laws and ordered FINRA to remove unregistered securities from the OTCBB. Consequently, unregistered securities have not been included in NASDAQ's Level One feed since 2000. FINRA has no regulatory authority over issuers of the securities quoted in OTC inter-dealer quotation systems. The dissemination of quote information for unregistered securities in the NASDAQ Level One feed is likely to give the false impression to investors and other market participants that an SRO is regulating the issuers of these securities. The dissemination of quotes by FINRA could lead investors and market participants to the conclusion that FINRA has regulatory authority with which it is not empowered.

We are also concerned about the quality of information that FINRA's QCF would provide to investors. FINRA assertion that the QCF will give investors additional transparency is unfounded. Quotes in the QCF will carry an identifier that will distinguish between current reporting issuers, late reporting issuers and non-reporting issuers. Significantly more information is already being provided by Pink OTC in Pink Quote. The Pink OTC currently categories OTC equity securities by the quality and quantity of disclosure and provides superior information to help investors make informed investment decisions.

Lastly, we question whether FINRA has the authority to introduce a QCF. The Securities Exchange Act of 1934 ("Exchange Act") requires FINRA to promote fair quotations, not provide them. Section 17B of the Exchange Act authorized FINRA to establish the OTCBB to provide a market for "penny stocks" at a time when there was no private electronic system that displayed real-time quotation information for penny stocks. Today, Pink Quote and the OTCBB provide such a market not only for penny stocks but for ADRs and other OTC equity securities. FINRA can continue to maintain the OTCBB and compete with Pink OTC if it so chooses. However, it is inappropriate for FINRA to terminate its inter-dealer quote system and charge broker-dealers to "consolidate" quotes already available on Pink Quote.

STANY respectfully urges the Commission to reject FINRA's QCF proposal. We would be happy to answer any questions the Commission might have with respect to our comments.

Respectfully submitted,

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Executive Director