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Submitted Via Electronic Filing

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

RE: File Number SR-FINRA-2011-008; Release Number 34-63960

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 amend Rule 6450 by adding a "rate-setting rule" - Supplementary Material .01 which would require FINRA members to disclose on their websites the amount of access fees they charge at least three business days in advance of imposing those fees.

STANY is the voice of the trading community in the Great New York City 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 and OTC equities. STANY does not represent a single business or business model, but rather provides a forum for trading professionals from institutions, broker-dealers, ECNs, ATSS and systems providers 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.

STANY has consistently maintained that access fees if charged should be disclosed. Access Fees impact execution costs and the prices paid or received for securities. In order for traders to satisfy their best execution obligations they must possess information regarding the true price of securities that they are buying or selling on behalf of customers.

While we favor disclosure of fees, we do not believe that FINRA's proposal is either the most efficient or fairest way in which to accomplish fee transparency.

First, disclosure of access fee schedules on individual websites is inefficient and impractical. There are over 100 firms that currently publish quotations for OTC equity securities. Since websites themselves are inconsistent in their design, content and upkeep, locating access fee schedules on these various sites would be challenging, as well as time consuming. Likewise, the ability of firms to make rapid and cost effective changes to their websites to reflect changes in fees varies. Some have complex websites and teams of IT and design personnel on hand to make rapid and frequent changes, while smaller firms with fewer resources may have external companies make changes to their sites on a less frequent and less cost effective basis. This rule would disadvantage the smaller firms or firms with less flexible websites.

Likewise, we are concerned about the practicality and efficiency of searching through and monitoring as many as 100 individual website to ascertain and compare access fee schedules. Keeping on top of potentially changing schedules on such a vast number of sites is onerous and unnecessary given the alternatives currently available.

STANY believes that firms should display access fee information within the interdealer quotation system in which their quotations are displayed. OTC Link, the interdealer quotation system operated by OTC Markets Group, currently has functionality in the quote montage to display access fees for quoted stocks on a quotation by quotation basis. Less robust interdealer quotation systems surely can display fee schedules in one location that can be accessed by each firm using their systems.

Using OTC Link, FINRA member firms will be able to establish fees on a stock by stock basis as well as change their access fees throughout the day. This fluid, cost effective and convenient method of displaying access fees is far superior to the use of 100 individual websites with three day lead times for changes.

STANY is also concerned with that aspect of the proposed amendment which states, "Where a member makes multiple fee schedules available, the applicability of each schedule must be clear (e.g., volume discount tiers and rates.)" STANY opposes FINRA's proposed requirement that its members publicly disclose the exact amounts and reasons for offering discounts on its access fees.

FINRA Rules 5210 and 5220 require quotes published by FINRA members to be bona fide and ensure that quotations are honored by members under the terms and conditions made at the time of the quotation. There is nothing, however, in either rule to restrict a FINRA member from trading at a price that is better than its published quote.

Price improvement is a competitive tool used by market participants. The rule as proposed tends to impose rigidity on pricing, which is especially detrimental to small broker-dealers who rely upon pricing flexibility as important way in which to compete with larger firms. In the over the counter markets, prices are often negotiated. So, while a broker-dealer may publish a quote for 100 shares, another broker-dealer may attempt to negotiate a larger sale at a different price, or may seek price improvement. Broker-dealers should have the opportunity to offer discounts to published access fees, and change their access fees, from time to time, provided that the other side knows the price it will pay.

STANY believes that the required disclosure of the exact terms and conditions of potential discounts in a public forum, such as a firm's website, which can be viewed by clients as well as competitors, will unduly restrict pricing flexibility and is therefore anti-competitive. Understandably, broker-dealers may not wish to disclose to all market participants the price it offered in one transaction for fear that similar discounts will be demanded by others. The potential chilling effect on negotiations and pricing flexibility would be disadvantageous to buyers and sellers in the OTC market.

## **Conclusion**

STANY has long maintained, and continues to maintain that access fees should be disclosed. We support FINRA's efforts to improve transparency of access fees; however, we do not believe that the instant amendments represent an efficient or practical way to display those fees. Access fees should be displayed in

the same venue in which quotations are displayed so that comparisons of transaction costs can be made immediately at the time a transaction is contemplated.

We also believe that the displayed fee should represent the maximum access fee that a firm may charge and that firms should be able to provide discounts to customers and/or other market participants from time to time as they see fit without requiring disclosure of those discounts to the public or to their competitors.

Respectfully submitted,

Kimberly Unger  
Executive Director