

KIMBERLY UNGER, ESQ.
Executive Director

June 11, 2012

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

Via e-mail to:

Re: SEC Release No.: 34-6692; File No. SR-FINRA-2012-023
Proposed Rule Change Relating to FINRA's Trading Activity Fee Rate for Transactions in Covered Equity Securities

Dear Ms. Murphy:

The Security Traders Association of New York, Inc. ("STANY")¹ respectfully submits this letter in response to the Financial Industry Regulatory Authority's ("FINRA's") proposed increase in the Trade Activity Fee ("TAF") Rate for transactions in covered equity securities (the "Proposal").²

We appreciate that FINRA uses TAF fees as one component of its revenue source for funding its regulatory programs³ and that the continued funding of FINRA regulation is necessary. We are therefore primarily concerned about the way fees are assessed, rather than FINRA's need to raise additional revenue.

The TAF is assessed on a per share basis on the sale of all exchange registered securities wherever executed (except non-TRACE-Eligible debt securities), over-the-counter equity securities, security futures, TRACE-eligible securities in a reportable TRACE transaction and all multiple securities subject to MSRB reporting requirements. The current TAF rate for covered equity securities, in effect since March 1, 2012, is \$0.000095 per share with a per-transaction fee cap of \$4.75. FINRA proposes to increase the rate by approximately 25% to \$0.000119 per share with a \$5.95 per transaction cap.

¹ STANY is the voice of the trader in the New York metropolitan area and represents approximately 1,000 individuals who are engaged in the trading of securities. As such, we are uniquely qualified to discuss proposed rules and regulations affecting trading. STANY is the largest affiliate of the Security Traders Association ("STA"), a multinational professional association that is committed to being a leading advocate of policies and programs that foster investor trust, professional ethics and marketplace integrity and that support education of market participants, capital formation and marketplace innovation. As an industry organization of individuals employed in the securities markets, STANY does not represent a single business or business model, but rather provides a forum for trading professionals representing institutions, broker-dealers, ATSS, and trading centers to share their unique perspectives on issues facing the securities markets.

² SEC Release No. 34-66924 (May 4, 2012)

³ In addition to the TAF, FINRA's primary regulatory pricing structure consists of the Personnel Assessment and the Gross Income Assessment.

Our primary concern is that an increase in TAF fees will have a disproportionate impact on FINRA members who make markets in OTC equity securities. This is unfair and may further discourage market making in the financial instruments that have the greatest need for market makers.

FINRA acknowledges that “although TAF is generally charged on transactions in equity securities, TRACE-reportable securities, options and futures, over 95% of TAF revenue is generated by transactions in covered equity securities.” As a consequence a disproportionate amount of the FINRA’s regulatory funding comes from firms that trade OTC equity securities. These firms are already hard-pressed. At a time when trading desks are seeing a marked decline in revenue due to the decline in volume, we are concerned that an increase in there per share fees may cause some firms to go out of business and will serve as a further disincentive to other firms to continue making markets or providing liquidity in the markets for OTC equity securities.

STANY suggests that FINRA consider a funding scheme for its regulatory programs that more fairly allocates the financial burden of regulation across asset classes and regulated members.

STANY urges the Commission to reject FINRA’s proposal to file future changes to TAF for immediate effectiveness under Section 19(b)(3)(A), as opposed to its current filing of fee changes under Section 19(b)(2) of the Securities Exchange Act of 1934.

We think the current practice of permitting fee increases without prior notice and comment deprives regulated firms of due process and leads to poor decision-making. While STANY understands that an argument can be made that prior notice and comment proceedings foresee change filings by Exchanges and SROs may interfere with price competition, this argument cannot apply to FINRA, which has no competitors. We believe that any fee change made for non-competitive reasons should be subject to notice and comment proceedings prior to implementation.

The potential impact of per share fees, especially on lower priced equity securities and the continued willingness of firms to make markets in those securities, warrants a reasonable period for notice and comment on proposed fee changes. The opportunity for public comment on these TAF cost changes may serve to keep ensure that any future increases are reasonable and applied in a fair and equitable manner. We believe that, as these fee changes are not being made for competitive reasons, but rather to fund FINRA’s regulatory regime, transparency is in the best interests of both market participants and the public.

STANY appreciates the opportunity to submit these comments on FINRA’s proposed increases in TAF fees. If you have any questions or comments concerning the thoughts expressed in our letter, please do not hesitate to contact us.

Respectfully submitted,

Kimberly Unger
Executive Director, STANY