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January 23, 2014

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

**Re: File No. SR-FINRA-2013-031 (Proposed Rule Change Relating to
Participation on the Alternative Display Facility) – Response to Comments**

Dear Ms. Murphy:

This letter is being submitted by Financial Industry Regulatory Authority, Inc. (“FINRA”) in response to comments submitted to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing (“Proposal”).¹

FINRA proposes to amend the requirements for members seeking registration as FINRA Alternative Display Facility (“ADF”) Market Participants in light of the migration of the ADF to the Multi Product Platform (“MPP”) (“ADF migration”). The Proposal, among other things, would require that a potential ADF Market Participant submit an ADF Deposit Amount of \$250,000, or \$500,000 if requesting accelerated ADF migration. The potential ADF Market Participant can earn back some or all of its ADF Deposit Amount through a credit structure based on the market data revenue associated with the member’s trade reporting activity on the ADF if the ADF Market Participant submits at least 75% of both its quote and trade volume to the ADF.²

¹ See Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 4652 (August 1, 2013) (SR-FINRA-2013-031).

² Under the terms of the Proposal, an ADF Market Participant may earn back up to 80% of its ADF Deposit Amount over a two-year period through a credit structure based on market data revenue. Specifically, for every \$1.00 of market data revenue received by FINRA that is associated with that member’s trade reporting activity on the ADF, the member shall receive \$0.50 out of escrow. The ADF Market Participant may earn back the remaining 20% of its ADF Deposit Amount upon the conclusion of that two-year term, subject to the same conditions as the initial 80%.

The Commission received one comment letter on the Proposal from the National Stock Exchange, Inc. (“NSX”),³ to which FINRA responded.⁴ After extending the time in which it was required to act on the Proposal,⁵ the Commission instituted proceedings to determine whether to approve or disapprove the Proposal.⁶ As part of those proceedings, the Commission solicited additional comments on the Proposal, and NSX submitted a second comment letter,⁷ to which FINRA also responded.⁸ Following the conclusion of that comment period, the New York Stock Exchange LLC (“NYSE”) submitted a comment letter,⁹ which is the subject of this response.

In its submission, NYSE recognizes that FINRA needs to recover the cost incurred in migrating the ADF to the MPP. However, NYSE believes that the terms under which an ADF Market Participant may earn back some or all of the ADF Deposit Amount, when considered in conjunction with current FINRA Rule 7510, which governs fees to be assessed for quotation updates on the ADF, is not consistent with Section 15A(b)(9) of the Act.¹⁰ Specifically, NYSE notes that, under the terms of the Proposal, an ADF Market Participant may earn back up its ADF Deposit Amount over a two year period if the ADF Market Participant submits at least 75% of both its quote and trade volume to the ADF. NYSE also notes that, under FINRA Rule 7510, the Quotation Update Charge to be paid by an ADF Market Participant varies commensurate with the number of trades reported through the ADF by that ADF Market Participant. NYSE argues that, taken together, Rule 7510 and the provision in the Proposal for earning back some or all of the ADF Deposit Amount impose a burden on competition, since it would be economically prohibitive for an ADF Market Participant to use the ADF for submitting quotes without also

³ See Letter to Elizabeth M. Murphy, Secretary, Commission, from David Harris, Chairman and CEO, NSX, dated September 9, 2013.

⁴ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Stephanie M. Dumont, Senior Vice President and Director of Capital Markets Policy, dated October 25, 2013.

⁵ See Securities Exchange Act Release No. 70358, 78 FR 56967 (September 16, 2013).

⁶ See Securities Exchange Act Release No. 70776 (October 30, 2013), 78 FR 66405 (November 5, 2013).

⁷ See Letter to Elizabeth M. Murphy, Secretary, Commission, from David Harris, Chairman and CEO, NSX, dated November 26, 2013.

⁸ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Stephanie M. Dumont, Senior Vice President and Director of Capital Markets Policy, dated December 11, 2013.

⁹ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, Executive Vice President and Corporate Secretary, NYSE, dated January 7, 2014 (“NYSE letter”).

¹⁰ Section 15A(b)(9) requires that FINRA’s rules do not “impose any burden on competition not necessary or appropriate in furtherance of the purposes” of the Act. See 15 U.S.C. 78o-3(b)(9).

trade reporting through the ADF.¹¹ For this reason, NYSE also argues that the fee structure set forth in Rule 7510 should be revised in light of the Proposal.

FINRA disagrees with the primary assertion of the NYSE that aspects of the proposal and existing Rule 7510, taken together, impose an inappropriate burden on competition. FINRA notes that the applicable statutory standard does not limit a proposed rule simply because it may impose a burden on competition; rather, the statute requires that FINRA's rules not "impose any burden on competition not necessary or appropriate in furtherance of the purposes" of the Act.¹² This standard recognizes that fee and credit structures will likely have an impact on competition, but any impact must be considered and evaluated in light of the overall purposes of the Act.

With respect to the proposed ADF Deposit Amount, NYSE raises similar objections that NSX raised in its previous comment letters. FINRA reiterates the substance of its previous responses as to why it believes that all aspects of the Proposal are consistent with the requirements of the Act. As FINRA has previously stated, the proposed ADF Deposit Amount is designed to reasonably and equitably allow FINRA to recoup costs related to the ADF migration and the addition of a new ADF Market Participant.¹³ The provision by which an ADF Market Participant may earn back some or all of its ADF Deposit Amount is designed to provide an incentive for an ADF Market Participant to remain active on the ADF and to utilize the ADF capacity that FINRA has incurred costs to provide. This, in turn, will reduce the likelihood that FINRA will incur unnecessary expenditures in connection with the ADF migration, and will increase the probability of FINRA recouping a reasonable amount of the costs involved with launching a new ADF Market Participant from that ADF Market Participant rather than recover those costs from fees paid by all FINRA members. FINRA thus believes that the Proposal meets the standards of both Section 11A and Section 15A(b)(9) of the Act,¹⁴ in that it does not impose a burden on competition that is not necessary or appropriate, and that it continues to assure fair competition among market participants.

FINRA believes the only new issue raised by NYSE in its submission relates to FINRA's existing quotation fee structure in Rule 7510(b) rather than the Proposal itself. As an initial matter, FINRA believes that such comments are not appropriately directed to this filing, as Rule

¹¹ On this point, NYSE notes that an ADF Market Participant that averages 5 million daily quote updates but solely reports its trades to the FINRA TRF would be charged more than \$25 million annually to use the ADF solely to quote.

¹² See 15 U.S.C. 78o-3(b)(9).

¹³ As previously stated, FINRA conservatively estimates that the cost of an accelerated ADF migration will be in excess of \$3 million.

¹⁴ Although not specifically cited by NYSE in its letter, Section 11A(a)(C)(1)(ii) states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets "to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets." See 15 U.S.C. 78k-1(a)(1)(C)(ii).

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7510 has been previously filed and made effective under the Act. However, notwithstanding our view that these comments are not germane to this filing, FINRA maintains that both the proposed and existing fee structure fairly impose costs on those members whose quotation and trading activity creates system capacity demands. Similarly, both the proposed and existing fee structure provide incentives to quote and trade report to the ADF, which also generates revenue for FINRA to support the costs of operating the ADF. FINRA believes that an ADF Market Participant currently would consider both its quoting and trading activity when determining its desired level of activity on the ADF, and the Proposal, pursuant to which an ADF Market Participant would ascertain its ability to earn back some or all of its ADF Deposit Amount, is consistent with this analysis. For the reasons set forth above and in its previous submissions, FINRA believes that the Proposal does not impose an unnecessary or inappropriate burden on competition, and therefore is consistent with the Act.

* * * * *

FINRA believes that the foregoing fully responds to the issues raised by the commenter to the rule filing. Please contact me at (202) 728-8176 or Brant Brown at (202) 728-6927 if you have any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Stephanie Dumont" followed by a stylized monogram "BKBS".

Stephanie Dumont
Senior Vice President and Director of
Capital Markets Policy