



November 2, 2016

**Via Electronic Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

Mr. Brent J. Fields  
Secretary  
U.S. Securities & Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File No. SR-FINRA-2016-037: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Fees and Transaction Credits for the FINRA/NYSE Trade Reporting Facility

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to the Securities and Exchange Commission (“Commission”) to comment on the above-referenced proposed rule change filed by the Financial Industry Regulatory Authority (“FINRA”) to modify the fees and transaction credits for the FINRA/NYSE Trade Reporting Facility (“NYSE TRF”). SIFMA supports the continued enhancement and proper funding of the TRFs. However, we request greater clarity about the justification for the increased fees that will be assessed to FINRA members that use the NYSE TRF.

### Overview

NYSE Market (DE) (“NYSE Market”), pursuant to an LLC agreement with FINRA, operates one of the trade reporting facilities that broker-dealers can use to report over-the-counter trades (“OTC”) in NMS stocks.<sup>2</sup> NYSE Market is primarily responsible for the management of the NYSE TRF’s business affairs, including any applicable costs, and NYSE Market is entitled to the profits and losses generated by the NYSE TRF.<sup>3</sup> FINRA states in the

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> Broker-dealers may also report OTC trades in NMS stock to either the FINRA Alternative Display Facility (“ADF”) or the NASDAQ TRF. See Securities Exchange Act Release No. 79050 (October 5, 2016), 81 FR 70462, 70463 n.5 (October 12, 2016).

<sup>3</sup> *Id.* at 70463.

proposal that, per NYSE Market, the cost of operating the TRF has increased since it commenced operations in April 2007, in part because "...regulatory costs have increased with [NYSE TRF's] higher market share, as well additional functionality and development costs." Accordingly, NYSE Market has determined to adjust the NYSE TRF fees and transaction credits to provide revenue to help offset these increased operating costs.<sup>4</sup>

FINRA Rule 7620B (Trade Reporting Facility Reporting Fees) requires FINRA members that are TRF subscribers to be assessed a monthly fee for the use of the facility.<sup>5</sup> The proposal replaces the current fee structure with a tiered monthly fee structure that is based on a member's overall OTC trading activity.<sup>6</sup> FINRA further states that members have the option of reporting to one of three TRFs, and that NYSE Market has determined that its TRF will be more competitive if users are charged a flat fee for access. Additionally, the proposal states that rather than charging the same fee to all market participants irrespective of trading activity, the fees are designed such that more active firms in the overall market pay more for access to the TRF, while less active firms in the overall market pay less.

### Analysis

The key factors in this consideration are that FINRA has informed member firms that OTC trading is not permitted if there is a TRF outage<sup>7</sup> and, as a result, member firms will rely on the NYSE TRF as a backup to the Nasdaq TRF. SIFMA recognizes that a TRF must have sufficient revenue to offset the costs associated with its operations and provide the means to upgrade the underlying hardware and software systems. However, the current proposal lacks the specificity necessary to enable market participants to determine if the proposed fee structure is reasonable. This is particularly important because firms trading OTC are now effectively required to subscribe to both the NYSE TRF and the Nasdaq TRF to continue their business operations if one of the TRFs is unavailable.

In particular, the proposal presents an assertion from NYSE Market that "regulatory costs have increased,"<sup>8</sup> as a basis for the need to increase fees. SIFMA understands that the NYSE TRF may require hardware and software upgrades and other enhancements to establish itself as a

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 70464.

<sup>6</sup> For purposes of the proposal, OTC trading activity would be based on a member's "ATS & Non-ATS OTC Market Share," which would be defined as the percentage calculated by dividing the total number of ATS and non-ATS shares reported by the member to FINRA during a given calendar quarter, divided by the total number of *all* shares reported to the CTA and UTP SIP, as applicable, during that period. *Id.* at 70463, n.10.

<sup>7</sup> See FINRA Trade Reporting Notice (OTC Equity Trading and Reporting in the Event of Systems Issues), dated January 20, 2016, available at [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Trade-Reporting-Notice-012016.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Trade-Reporting-Notice-012016.pdf).

<sup>8</sup> See *e.g.* 81 FR 70463.

competitive alternative/viable backup. However, a blanket statement simply stating that costs have increased is insufficient to justify the significant fee increases that have been put in place. FINRA members are responsible for paying the fees to fund the operation of the TRFs. Accordingly, it is a reasonable for market participants to be provided with a more detailed explanation as to the nature of the cost increases that the fees are designed to recoup, particularly now that FINRA is requiring its members to connect to a second facility if they wish to continue OTC trading in NMS securities if the member's primary facility is offline. As we have noted in other contexts, we suggest that the Commission direct the exchanges to engage an independent third-party to conduct an audit and review of their current regulatory revenues and how that money is allocated, and we believe the Commission should publish the results of that audit. That audit could include an assessment of the increased regulatory costs associated with the NYSE TRF.

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SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions, please contact either me (at [REDACTED] or [REDACTED]) or Timothy Cummings (at [REDACTED] or [REDACTED]).

Sincerely,



Theodore R. Lazo  
Managing Director and  
Associate General Counsel

cc: The Honorable Mary Jo White, Chair  
The Honorable Michael S. Piwowar, Commissioner  
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets  
Gary Goldsholle, Deputy Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets