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VIA EMAIL: pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 15-13, Trading Activity Fee (TAF), May 2015

Dear Ms. Asquith:

The FIA Principal Traders Group (“FIA PTG”)¹ appreciates the opportunity to comment on the Financial Industry Regulatory Authority, Inc. (“FINRA”) proposal to exempt from the Trading Activity Fee (“TAF”), transactions executed by proprietary trading firms on an exchange of which the firm is a member (the “Proposal”).² FIA PTG supports the Proposal, but has some suggestions, as described below, for modifying the Proposal’s scope.

FIA PTG members include firms registered as broker-dealers (“BDs”) with the Securities and Exchange Commission (the “SEC”) as well as a small number of FINRA member firms. If the pending proposal to amend Rule 15b9-1 (the “15b9-1 Proposal”)³ under the Securities Exchange Act of 1934 (the “Exchange Act”) is adopted, we expect many proprietary trading BDs (each a “Proprietary BD” and collectively, “Proprietary BDs”) engaged in off-exchange trading, including several FIA PTG member firms, to become members of FINRA (being the sole national securities association). Accordingly, adjustments to TAF could represent a significant change in the cost structure of FINRA membership for Proprietary BDs.

¹ FIA PTG is an association of more than 20 firms that trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. FIA PTG advocates for open access to markets, transparency and data-driven policy.

² See FINRA Regulatory Notice 15-13, *Trading Activity Fee (TAF)* (May 5, 2015), at http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-13.pdf.

³ Exchange Act Release No. 74581 (Mar. 25, 2015), 80 FR 18035 (Apr. 2, 2015).

Overview: FIA PTG Supports the Proposal with Some Suggested Modifications

FIA PTG agrees with both FINRA⁴ and the SEC⁵ who have acknowledged the significant monetary impact of applying the current TAF structure to Proprietary BDs that become FINRA members. We concur it “could result in a significant TAF obligation for these ... firms that may be disproportionate to FINRA’s anticipated costs associated with the financial monitoring and trading surveillance of these firms....”⁶

While we agree that the TAF exemption should be expanded to reflect the business models of Proprietary BDs that may become FINRA members, we recommend that the exemption be based on the nature of the transaction rather than the nature of the firm. We believe the exemption should include all transactions executed in a principal capacity for the account of a BD on exchanges where such BD is a member.⁷

Accordingly we suggest the following revision to the text of the proposed rule change:

(L) Transactions by a ~~Proprietary Trading Firm~~ **FINRA member firm** effected in a **principal capacity** on a national securities exchange of which the ~~Proprietary Trading Firm~~ **firm** is a member. ~~For purposes of this paragraph, a “Proprietary Trading Firm” shall mean a member that trades its own capital and that does not have “customers,” as that term is defined in FINRA Rule 0160(b)(4). The funds used by a Proprietary Trading Firm must be exclusively firm funds, and all trading must be in the firm’s accounts. Traders must be owners of, employees of, or contractors to the firm.~~

⁴ See Marcia Asquith, FINRA, Comment Letter on Securities Exchange Act Release No. 74581 - Proposed Rule Regarding Exemption for Certain Exchange Members (File No. S7-05-15), at 8 (Jun. 2, 2015), at <http://www.sec.gov/comments/s7-05-15/s70515-18.pdf> (“FINRA agrees with the Commission’s understanding of ... the financial impact of the TAF, which these Non-Member Firms would be subject to once becoming members of FINRA.”).

⁵ See 15b9-1 Proposal, *supra* note 3, at 31 n.95 (“The Commission notes that FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, to assure that it is fairly and equitably applied to many of the Non-Member Firms that, as a result of the amendment to Rule 15b9-1, may join FINRA.”); See also Daniel M. Gallagher, *SEC Statement at Open Meeting on Rule 15b9-1*, n.3 (Mar. 25, 2015), at <http://www.sec.gov/news/statement/032515-ps-cdmg-15b9-1.html> (“The release notes that as a consequence of this rulemaking - once adopted - that FINRA may need to reassess the structure of its fees, including its Trading Activity Fee to assure that it is fairly and equitably applied to the many firms that may join FINRA. I agree with this position and the SEC should do whatever is necessary to limit the additional costs imposed upon the firms.”).

⁶ See *supra* note 4, at 8.

⁷ BDs presently mark their orders as agency, principal or riskless principal. We believe the TAF should continue to be assessed in the same manner it currently is assessed on all transactions effected in an agency or riskless principal capacity.

We believe this modification would be preferable for several reasons. First, it would be easier for FINRA to administer than the proposed firm-based exemption since all principal trades are already marked as such at the time of execution. Second, it would eliminate the need for complex definitions of what qualifies and disqualifies a firm as a “proprietary trading firm.” Third, it would eliminate an incentive for broker-dealer fragmentation in that firms would have no need to operate multiple broker-dealers to minimize their TAF obligations.

Moreover, we believe this modification would help to ensure that, in accordance with Section 15A(b)(5) of the Exchange Act, FINRA’s rules provide for the equitable allocation of reasonable dues, fees, and other charges among members.⁸

We understand the TAF is an important component of FINRA’s funding for its regulatory program; however, the TAF is only one piece of FINRA’s revenue generated for this purpose. FINRA’s regulatory revenue is also generated from other member regulatory fees set out in Section 1 of Schedule A to FINRA’s By-Laws (the “FINRA By-Laws”), which includes the Gross Income Assessment (“GIA”) and Personnel Assessment (“PA”),⁹ both of which would be applicable to Proprietary BDs becoming new members of FINRA. As such, FINRA would receive an increase in regulatory revenue through the increase in its membership base if the 15b9-1 Proposal is approved and Proprietary BDs become new members of FINRA. These fees must be fair and equitably apportioned among FINRA members, taking into account the activities and structures of each firm.

Specific Requests for Comment

Q1: Proprietary trading firms engaging in high frequency trading may have very high order-to-execution ratios and, as a result, have a very large data footprint that drives a portion of FINRA’s costs. Given this activity, is a tiered fee structure approach based on a firm’s market data footprint, such as OATS order event volume, a better approach to addressing the TAF for these firms? Would implementing a cap on a firm’s TAF obligation be more appropriate? Would these approaches be significantly more complicated or burdensome to implement? Are there other alternative approaches FINRA should consider to accomplish the goals described in the proposal? If so, what are those alternatives and why could they be better suited? What are the potential costs and benefits of those alternatives relative to the proposed approach?

A: FIA PTG supports the current trading volume-based TAF structure. FINRA has stated that the critical components driving FINRA’s regulatory costs with respect to a particular firm are: (i) the number of registered persons with the firm; (ii) the size of the firm; and

⁸ See 15 U.S.C. § 78o-3(b)(5).

⁹ See FINRA By-Laws, Schedule A, § 1, at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4694.

(iii) the firm's trading activity.¹⁰ We believe the number of transaction messages generated by a FINRA member is a small contributor to the overall costs of regulating that member. To assess fees based on message volumes would likely result in fees for some firms that would be grossly disproportionate to those regulatory costs. These fees would have a disproportionate impact on liquidity-providing BDs, and likely result in less liquid markets overall.

We also do not support the use of caps on a firm's TAF obligation because cap levels are generally arbitrary and may not accurately represent FINRA's actual regulatory costs. This could result in disproportionate fees being assessed against mostly smaller firms that do not meet such caps. In addition, FINRA is already processing data related to at least 99.6% of daily market activity, including all off-exchange trading.¹¹ There should be little, if any, incremental cost to FINRA associated with message volume from new FINRA members, particularly if FINRA does not require duplicative OATS reporting of trades placed by one FINRA member through another FINRA member.

Q2: Is the proposed definition of "proprietary trading firm" appropriate? Is it under-inclusive or over-inclusive?

A: FIA PTG recommends against using a firm's status as a "proprietary trading firm" to determine the applicability of the TAF exemption; however, should FINRA decide to limit the exemption, it should further clarify the meaning of "customers" beyond the current definition of a customer as "not a broker or dealer" under FINRA Rule 0160.¹² Specifically, FINRA should make it clear that the criteria "does not have customers" under the definition of a proprietary trading firm, only applies to "customers" engaged in transactions in "Covered Securities,"¹³ which are applicable to the TAF, and not, for example, to non-securities transactions, fixed income transactions, and other businesses such as stock-lending and licensing of technology.

In addition, FINRA should clarify the relevant time-period for determining whether a firm is engaged in a "customer" business. For example, would a single "customer" transaction require a BD, otherwise only engaged in proprietary trading, to pay the TAF indefinitely or for a limited period of time, such as a month or year?

¹⁰ See Brant K. Brown, FINRA, *SR-FINRA-2012-023 - Proposed Rule Change Relating to FINRA's Trading Activity Fee for Transactions in Covered Equity Securities - Response to Comments*, at 2-3 (Jun. 19, 2012), at <http://www.finra.org/sites/default/files/RuleFiling/p127098.pdf>.

¹¹ See 15b9-1 Proposal, *supra* note 3, at 72 n. 172.

¹² See FINRA Rule 0162(a)(4), at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=5456.

¹³ See FINRA By-Laws, *supra* note 9, at (b)(1).

Moreover, the definition should be clarified so that a broker-dealer would not be disqualified from being considered a “proprietary trading firm” if its traders or other associated persons were employed by an affiliate of the BD, which is a common structure.

As previously stated, we believe the proposed TAF exemption should apply to all transactions executed in a principal capacity for the account of a BD on exchanges where such BD is a member (including non-market maker trades). This would eliminate the need for exacting definitions of “proprietary trading firms” and “customers.”

Q3: What are the relevant economic impacts associated with the proposed exemption? Please provide any data or evidence of the size and distributions of these costs, benefits and other impacts.

A: While we do not anticipate that the Proposal would significantly impact the amount of fees collected by FINRA, we don't have the information necessary to assess this fully. It is clear that without the exemption, FINRA would see a significant increase in regulatory revenue from TAF fees assessed to Proprietary BDs that become members of FINRA and it appears that the costs associated with regulating these new member firms would be significantly lower than FINRA members that do conduct customer business.

Q4: Are proprietary trading firms likely to alter their trading practices or business models based on this proposed exemption? If so, how would these firms alter their activity across trading venues? What are the economic impacts associated with any change in trading strategy or practice that might occur?

A: While it should be expected that firms will seek to manage their costs, it is difficult to anticipate how firms might arrange their business structures or alter their behavior based on the Proposal.

Q5: Is the proposed TAF exemption for trades on an exchange of which the proprietary trading firm is a member appropriate? Should all exchange trades by proprietary trading firms be exempt from the TAF? If all exchange trades were exempt, would that influence proprietary trading firms' trading practices (e.g., would they shift their trading activities from the over-the-counter market to exchanges to avoid incurring the TAF)?

A: FIA PTG supports limiting the exemption to all transactions executed in a principal capacity for the account of a BD on exchanges where such BD is a member.

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Q6: Do FINRA member firms currently, partially or fully pass on the TAF to non-FINRA member proprietary trading firms for the transactions executed on an ATS or through a FINRA member today?

A: A FINRA member must make a commercial decision as to whether or not TAF should be a pass through cost to its non-FINRA member customers. Based on feedback from FIA PTG members, it appears that in many cases, TAF is explicitly passed through to non-FINRA members. In other cases, TAF is certainly a consideration in setting pricing for such transactions.

Conclusion

FINRA must provide for the equitable allocation of reasonable dues, fees, and other charges among members and must ensure regulatory fees are assessed in line with its actual cost of regulating its members. Accordingly, we support the Proposal but suggest modifying it to apply to all transactions executed in a principal capacity for the account of a BD on exchanges where such BD is a member. This modification focuses this transaction-based regulatory fee on the nature of the transaction, not the nature of the firm.

FIA PTG would like to thank FINRA for the opportunity to comment on the Proposal and we look forward to working together going forward. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Mary Ann Burns at maburns@fia.org.

Respectfully,

FIA Principal Traders Group



Mary Ann Burns
Chief Operating Officer
FIA

cc: Bob Colby, Chief Legal Officer
Brant Brown, Associate General Counsel