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March 17, 2023

Via email

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Jennifer Piorko Mitchell

Office of the Corporate Secretary

FINRA

1735 K Street, NW

Washington, DC 20006-1506

RE: Regulatory Notice 22-30: FINRA Re-opens Comment Period for Regulatory Notice 15-13 Seeking Comment on TAF Exemption for Proprietary Trading Firms

Dear Ms. Mitchell:

The University of Pittsburgh Securities Arbitration Clinic (the “Clinic”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“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”). The Clinic, a University of Pittsburgh curricular offering, provides legal representation to investors who have limited resources, often advocating for people whose claims represent much of their life savings. The Clinic provides the following commentary on Regulatory Notice 22-30.

Introduction

The Securities and Exchange Commission (the “Commission”) recently re-proposed amendments to Rule 15b9-1 under the Securities Exchange Act of 1934. Rule 15b9-1 currently

provides proprietary trading firms with an exemption from membership in a national securities association. If the Commission's re-proposal is adopted, the amendments generally would require a proprietary trading firm relying on the current exemption to register with FINRA if the firm continues to effect transactions other than on an exchange of which it is a member, with limited exceptions. By registering with FINRA, proprietary trading firms would be required to abide by FINRA's existing fee structures, including FINRA's TAF. The TAF is one of the regulatory fees FINRA assesses to recover the costs of supervising and regulating firms. This includes costs associated with performing examinations, financial monitoring, and FINRA's policy, rulemaking, interpretive and enforcement activities. FINRA's Regulatory Notice 22-30 has re-opened the comment period for Regulatory Notice 15-13, which had previously proposed an exemption to exclude FINRA's TAF from transactions by a proprietary trading firm on exchanges of which the firm is a member. Throughout this memo we have answered questions one (1) through four (4) from FINRA Regulatory Notice 22-30 ("the Notice").

1. TAF is the only FINRA fee that is based on trading activity. Is it appropriate to provide a TAF exemption to proprietary trading firms? How would the proposed TAF exemption impact proprietary trading firms?

It is not appropriate to provide a TAF exemption to proprietary trading firms. FINRA uses a Consolidated Audit Trail ("CAT") which tracks orders throughout their life cycle and identifies the broker-dealers handling them, thus allowing regulators to efficiently track activity in Eligible Securities throughout the U.S. markets.¹ All proprietary trading activity, including market making activity is subject to CAT reporting. There are no exclusions or exemptions of any kind for type of firm or type of trading activity.² Many proprietary trading firms trade

¹ *CATNMSPLAN: Consolidated Audit Trail*, <https://www.catnmsplan.com/>. Accessed 7 March 2023.

² "Consolidated Audit Trail (CAT) | FINRA.org." *finra*, 15 November 2016, <https://www.finra.org/rules-guidance/key-topics/consolidated-audit-trail-cat>. Accessed 7 March 2023.

exclusively using high frequency trading and algorithms. This type of trading has a great effect on the market, increasing the risk of market manipulation and creating a massive pool of data, which FINRA must use in the process of regulating proprietary trading firms in order to protect investors. The cost to monitor these transactions does not justify a TAF exemption for proprietary trading firms.

- 2. The exemption proposed in *Regulatory Notice 15-13* would provide TAF relief to proprietary trading firms for all trades on an exchange of which they are members, thereby reducing TAF obligations for proprietary trading firms. By definition, the exemption would apply to new and existing proprietary trading firms, but not other firms that trade actively on exchanges, including for customers. Is this difference in treatment appropriate?**

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 (iii) the firm's trading activity.³ If proprietary trading firms are exempt from the TAF, the difference in TAF obligation between proprietary trading firms and firms that actively trade on exchanges, including for customers, will not be appropriate. Whether or not proprietary trading firms are trading on behalf of customers is not relevant to the exemption proposed in *Regulatory Notice 15-13*. Proprietary trading firms make massive amounts of trades which have severe impacts on the market. As such, there is a need for FINRA to collect data, oversee, and regulate proprietary trading firms. While the cost to regulate proprietary trading firms is less than the cost to regulate firms which trade on behalf of customers, proprietary trading firms should not be entirely exempt from the TAF when trading on an exchange on which they are members.

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

3. With these proposed changes (or any recommended alternatives), would the TAF fee continue to be equitably allocated among FINRA members that engage in proprietary and customer trading? Would the balance between TAF and other FINRA fees that fund FINRA's operations continue to be equitable?

It is important that FINRA 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. Under the proposed changes the TAF would not be equitably allocated among FINRA members that engage in proprietary and customer trading. The type of trading done by proprietary trading firms, often involving trading their own capital on exchanges in futures, options and equities markets by engaging in manual, automated and hybrid methods of trading, has a great effect on the market and creates a massive pool of data. As such, FINRA will face significant costs to supervise and regulate proprietary trading firms. If the exemption were to go through, FINRA members that engage in customer trading would be forced to continue paying the TAF while proprietary trading firms are exempt - despite the fact that both member groups create significant costs to FINRA in terms of regulation and supervision.

The TAF, as opposed to the Regulatory Transaction Fees or Registration fees, is specifically used by FINRA to fund its regulatory responsibilities.⁴ To exempt proprietary trading firms from TAFs would alter the balance between the TAF and other FINRA fees that fund FINRA's operations, due to an increased cost in regulation without a similar increase of resources.

⁴ *Rules and Guidance - Trading Activity Fee Frequently Asked Questions*, question 3, FINRA.org. <https://www.finra.org/rules-guidance/guidance/faqs/trading-activity-fee>

4. Should an alternative TAF rate specific to proprietary trading firms be considered?

In connection with the Commission's re-proposed amendments to Rule 15b9-1, the Commission stated that "FINRA may need to consider reassessing the structure of its fees, including its Trading Activity Fee, in order to assure that it is fairly and equitably applied to many of the [non-FINRA member firms] that, as a result of the amendments to Rule 15b9-1, may join FINRA."⁵ If FINRA were to explore an alternate TAF rate specific to proprietary trading firms, it would be in the best interests of investors and other market participants to collect a fee which is proportional to the costs of regulating proprietary trading firms. Schedule A to the FINRA By-Laws of the Corporation, Section 1 (Member Regulatory Fees) provides the following:

(a) Recovery of cost of services. FINRA shall, in accordance with this section, collect member regulatory fees that are designed to recover the costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. FINRA shall periodically review these revenues in conjunction with these costs to determine the applicable rate. FINRA shall publish notices of the fees and adjustments to the assessment rates applicable under this section.⁶

In light of the above, FINRA could review the revenue of TAFs collected from proprietary trading firms in conjunction with the costs of supervision and regulation of those firms in order to determine an applicable rate.

⁵ *Regulatory Notice 22-30, footnote 6. See 2015 SEC proposal at n.95. <https://www.finra.org/rules-guidance/notices/22-30>*

⁶ *Schedule A to the By-Laws of the Corporation, Section 1 - Member Regulatory Fees. FINRA.org. <https://www.finra.org/rules-guidance/rulebooks/corporate-organization/section-1-member-regulatory-fees>*

Conclusion

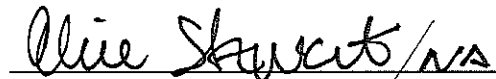
The Notice proposes exempting proprietary trading firms from the TAF on transactions executed on an exchange of which the firm is a member. We disagree with this decision, as it fails to promote market integrity and increases the risk of market manipulation. FINRA has stated that their “mission is clear - to protect investors and promote market integrity.”⁷ Having the most accurate data is better for the individual investor, whether they are large or small investors. The type of trading done by proprietary trading firms has a great effect on the market, increasing the risk of market manipulation and creating a massive pool of data, which FINRA must use in the process of regulating proprietary trading firms in order to protect investors. The cost to monitor these transactions is why TAFs are collected, therefore there should not be a TAF exemption for proprietary trading firms. However, we recognize that the costs of regulating proprietary trading firms may be lower than those with customer accounts, and therefore recommend that FINRA apply a rate that is proportional to the cost of regulating proprietary trading firms. Doing so will help both large and small investors, and will promote market integrity.

Thank you for this opportunity to comment on the proposed amendment to exempt proprietary trading firms from TAFs on transactions executed on an exchange of which the firm is a member. It is important to our clinic at the University of Pittsburgh School of Law, as our clinic provides legal representation to investors with limited resources, often advocating for

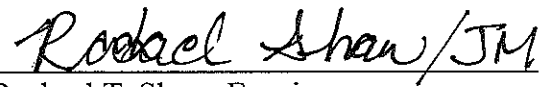
⁷ *On the Front Lines of Investor Protection*, FINRA.org. <https://www.finra.org/rules-guidance/enforcement/customer-cooperation#:~:text=At%20FINRA%2C%20our%20mission%20is,regulations%20and%20U.S.%20securities%20laws>.

people whose claims represent much of their life savings. For the aforementioned reasons, we submit our comments on the proposed amendments and the above suggestions.

Respectfully Submitted,



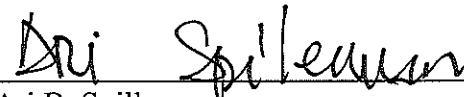
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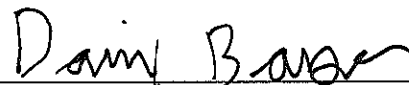
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