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Via email to: rule-comments@sec.gov

June 4, 2015

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: **Proposed Rule: *Exemption for Certain Exchange Members***
Release No. 34-74581; File No. S7-05-15

Dear Mr. Fields:

The New York Stock Exchange LLC ("NYSE"), on behalf of NYSE Amex Options and NYSE Arca Options, and The NASDAQ OMX Group, Inc., on behalf of the options markets of NASDAQ OMX PHLX LLC, NASDAQ OMX BX, Inc., and The NASDAQ Stock Market LLC (collectively, the "Exchanges"), are pleased to submit this letter in response to rules proposed by the U.S. Securities and Exchange Commission ("Commission") to amend Rule 15b9-1.[1] The Proposed Rule would establish a more limited exemption from membership in a national securities association, i.e., Financial Industry Regulatory Authority ("FINRA"), than under current Rule 15b9-1. The Proposed Rule would not exempt broker-dealers trading in off-exchange venues and on exchanges in which such broker-dealers from the requirement to become members of FINRA, unless they fall within one of the following proposed exceptions:

- Dealer Hedge Exemption. The broker-dealer is a dealer conducting business on the floor of an exchange in which it is a member and effects transactions off the exchange for the dealer's own account with or through another registered broker-dealer, that are solely for the purposes of hedging the risks of its floor-based activities; and

[1] Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015) ("Proposed Rule").

- Rule 611 Routing Exemption. The broker-dealer effects transactions off the exchange that result from orders routed by the exchange of which it is a member to prevent trade-throughs.

As the operators of five major U.S. options exchanges, we are keenly interested in the Proposed Rule.

The purpose of Rule 15b9-1 when initially adopted by the Commission was to accommodate exchange specialists and floor brokers conducting off-exchange trading ancillary to their floor-based business. Specifically, Rule 15b9-1 exempts a broker-dealer from the requirement to become a member of a national securities association if it is a member of a national securities exchange, carries no customer accounts, and has annual gross income of no more than $1,000 that is derived from securities transactions effected on an exchange other than the one of which it is a member (the "*de minimis* allowance"). Further, any income derived from trading in the broker-dealer's own account with or through another registered broker-dealer does not count towards the *de minimis* allowance. As a result, the current exemption allows a proprietary trading firm to be a member of one exchange and not a member of FINRA, and conduct an unlimited amount of trading for its own account through another registered broker-dealer on off-exchange venues and on exchanges of which the proprietary trading firm is not a member. These broker-dealers today need only maintain membership at one exchange and register with the SEC to avail them to the exemption from FINRA membership. The Commission's stated intent in proposing amendments to Rule 15b9-1, is to require these proprietary trading firms with little or no floor presence on any exchange to become FINRA members and, thus, be subject to its regulatory oversight.

The Exchanges are concerned, however, that the Proposed Rule would also unintentionally require floor brokers, which have a business focused on the floor of an exchange in which they are members, to become members of FINRA. In particular, we are concerned that the Proposed Rule could restrict floor brokers from fulfilling stock-option orders. A classic stock-option order involves the buying or selling a stated number of units of an underlying stock coupled with the purchase or sale of option contract(s) representing either (A) the same number of units of the underlying stock, or (B) the number of units of the underlying stock necessary to create a hedged position. Investors employ stock-option strategies to establish a hedged position and limit their risk.

For example, an NYSE Amex floor broker (who is a member of NYSE Amex but is not a FINRA member) seeking to execute a stock-option trade for its customer will always execute the options leg on NYSE Amex but would be required to route the stock leg to another broker-dealer for execution on another market of which the NYSE Amex floor broker is not a member. Floor brokers routinely send the stock leg of a stock-option order to other broker-dealers who then execute such transactions on exchanges of which they are a member or on

off-exchange venues. Because the stock component of a stock-option order cannot be executed on the options exchange of which a floor broker is a member, the floor broker must route the stock component to another broker for execution on an away market.

The two exceptions in the Proposed Rule would not apply to these floor brokers' activities because routing the stock leg does not amount to the broker hedging the risks of its floor-based activity, nor is the broker effecting the stock transaction to prevent trade-throughs to comply with provisions of Rule 611 of Regulation NMS. Accordingly, the Proposed Rule would require options exchange floor brokers to become members of FINRA in order to continue facilitating the execution of stock-option orders even though this activity is ancillary to the broker's floor-based business and these brokers are currently exempt from FINRA membership under Rule 15b9-1. We do not believe this result is supported by the Commission's stated reason for the Proposed Rule and, therefore, believe that the exemptions in the Proposed Rule are unintentionally narrow. Without changes, the Proposed Rule would impose additional requirements on legitimate activities of exchange members who predominantly conduct business on the floor of an exchange.

The Commission does not discuss the impact of the Proposed Rule on this floor broker activity or explain why such floor brokers should now be required to be members of FINRA. The proposed exemption for dealers that conduct business on the floor of an exchange and effect transactions off the exchange for the dealer's own account with or through another registered broker-dealer, solely for the purpose of hedging the risks of its floor based activities would not apply to floor brokers. Floor brokers do not trade for their own account, but instead effect trades as agent.

In considering the costs and benefits of the Proposed Rule, the Commission states that some firms are likely to remain exempt upon adoption of the proposed amendments and notes that many firms that are not FINRA members are small in terms of net capital and may be members of a single exchange. The Commission continues by stating that "[s]uch firms are more likely to have a floor-brokerage business model, or have limited exposure to off-exchange markets" and "would either be exempt from the rule by virtue of having no off-exchange trading or no trading on exchanges of which they are not members, or be able to rely on the floor member hedging exemption to continue their limited off-exchange trading related to floor brokerage activities."[2] The floor member hedging exemption in the Proposed Rule, however, does not exempt exchange members that engage in floor brokerage activities. Accordingly, the Exchanges request that the Commission align the exemptions from FINRA membership in Rule 15b9-1 with the purposes of the Proposed Rule, as described by the Commission.

[2] Proposed Rules supra note 1, at 18058.

In particular, the Exchanges suggest that any amendment to Rule 15b9-1 maintain floor brokers' ability to route the stock leg of a stock-option order for execution on another market by a member of the away market without requiring the floor broker to become a member of FINRA. A requirement that all options exchange floor brokers become FINRA members would substantially increase these floor brokers' costs and potentially limit the ability of some floor brokers to continue engaging in legitimate floor trading activity. Any additional costs imposed on these members by an amended Rule 15b9-1, such as the costs of putting into place policies and procedures and the costs of maintaining compliance with FINRA's capital and reporting rules, as well as membership and trading-related fees,[3] may potentially lead these firms to cease trading altogether on the floor of an exchange.

Our final comment relates to the Commission's analysis regarding the impact of the Proposed Rule on small entities. The Regulatory Flexibility Act of 1980 ("RFA") requires the Commission to undertake a flexibility analysis of a proposed rule amendment in order to measure its impact on small entities unless the Commission certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[4] The Commission concludes that of the 125 broker-dealers that are not currently FINRA members, there are at most just 11 firms deemed to be small entities and that many of these firms may be able to continue to trade off-exchange under the Proposed Rule. The Commission then certifies that the proposed amendments to Rule 15b9-1 would not, if adopted, have a significant economic impact on a substantial number of small entities. We disagree. There are 12 members across the Exchanges that are not currently FINRA members because they rely on the current exemption under Rule 15b9-1.[5] We believe many of these firms are likely small entities. These members conduct off-exchange trading on behalf of their clients and thus would not be eligible for the proposed dealer hedging exemption. The economic impact to these members would be significant based on the Commission's estimate of costs involved for firms to join and maintain their membership with FINRA.

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[3] We note that in response to the Proposed Rule, FINRA has requested comment on a proposed exemption to exclude from its Trading Activity Fee transactions by a proprietary trading firm on exchanges of which the firm is a member.

[4] Per the proposing release, a small entity includes a broker or dealer that: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act, or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.

[5] Of the 12 firms, 8 are members of NYSE Amex Options, 2 are members of NYSE Arca Options and the remaining 2 are members of NASDAQ OMX PHLX.

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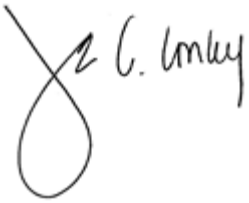
We appreciate the opportunity to comment on the Proposed Rule. In light of the important role of options floor brokers, it is important that any rules that impact their ability to participate in our markets are specifically tailored and not overly broad. The Exchanges are available to discuss any questions regarding our comments.

Respectfully,



cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
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