September 27, 2022

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Exemption for Certain Exchange Members (No. S7-05-15)

Dear Ms. Countryman,

The undersigned organizations appreciate the opportunity to respond to the Securities and Exchange Commission ("SEC" or "Commission") Re-Proposal ("Re-Proposal")[1] to amend an exemption from Section 15(b)(8) of the Securities Exchange Act regarding requiring any broker or dealer registered with the Commission to become a member of a national securities association ("FINRA"). The Re-Proposal would significantly limit the available exemptions from registration.[2] Of particular concern is that it would unnecessarily require many options trading firms to become FINRA members.

We support transparency and well-regulated markets and believe that efficient market oversight and regulation help further the goal of healthy and well-functioning markets. However, it is important that these policy goals are balanced with avoiding unnecessary and overly burdensome costs on market participants to prevent negative impacts on both investors and overall market quality. In this instance, as it relates to imposing FINRA membership on currently-unregistered options trading firms, the additional costs and administrative burdens are significant yet there would be no discernable improvement in regulatory oversight.

[1] Securities Exchange Act Release No. 34-95388 (July 29, 2022), 87 FR 49930 (August 12, 2022).

[2] Specifically, the Re-Proposal would amend Rule 15b9-1 by replacing the proprietary trading exemption with more narrow exemptions from Section 15(b)(8). Under the re-proposal, a Commission-registered broker or dealer would be required to become a member of FINRA if it effects securities transactions other than on an exchange of which it is a member unless all of the following exemptions are met: (1) it is a member of a national securities exchange; (2) it carries no customer accounts; and (3) such transactions (i) result solely from orders that are routed by a national securities exchange of which the broker or dealer is a member to comply with Rule 611 of Regulation NMS or the Options Order Protection and Locked/Crossed Market Plan; or (ii) are solely for the purpose of executing the stock leg of a stock-option order.

We are supportive of requiring FINRA membership for trading firms that primarily conduct their business off-exchange,[3] but we are concerned that the Re-Proposal would also require FINRA membership for options trading firms who are already members of options exchanges and whose primary business is conducted on those exchanges. Any trading by options market makers in the underlying cash equities markets is related to legitimate hedging of their options positions and is effectively done in a customer capacity. Given the important role played by options market making firms, we strongly believe that any final rule should clearly exempt broker-dealers from FINRA membership if their away exchange activity is for the purpose of hedging the risk of their home exchange options trading activity or in furtherance of such options trading activity. Importantly, the Re-Proposal, similar to the 2015 Proposal,[4] does not sufficiently articulate any regulatory benefit to direct FINRA oversight of this benign activity.

I. Cost Associated with FINRA Membership is Overly Burdensome and Will Have Negative Impacts on Options Market Quality

The Re-Proposal, similar to the 2015 Proposal, would place a significant cost burden on options market makers by narrowing the exemptions under Rule 15b9-1 and effectively requiring FINRA membership for these trading firms that have previously been exempt. FINRA membership fees range in cost based on various factors, including trading volume, and can be quite significant to many firms notwithstanding that the trading activity in question is comparable to general non-broker-dealer trading effected by customers through FINRA members. The notion that FINRA might choose to reduce membership costs related to certain activities is insufficient justification to proceed with applying the proposal to options trading firms.

FINRA oversight and FINRA rules are largely focused on customer protection. It is important to note that options market making firms do not have customers and their trading activity is actively regulated by options exchanges. It is overly burdensome from a financial perspective to require FINRA membership for firms that do not carry customer accounts or have customers in general to protect. As such, we do not believe that FINRA membership is appropriate or necessary for options market making firms that do not have customers.

Moreover, the Re-Proposal also fails to properly account for the nuances of today's listed options marketplace. Options market maker firms serve a crucial role in the options ecosystem in that they provide necessary liquidity to support the healthy functioning of the options markets and allow investors to access that liquidity when they are looking to buy or sell options contracts. In order to offset the risks associated with carrying diverse options positions, options market makers must be able to hedge their exposures with related securities including the underlying equities or comparable options products.

The Re-Proposal asks if not adopting a hedging exemption would affect liquidity on the exchanges[5] – we believe that there could be a negative impact on options market liquidity. For example, FINRA membership will impose heavy financial burdens on options market making firms of all sizes – firms that importantly do not have customers and should be focused on deploying their resources and capital to make quality options markets and providing crucial liquidity to the benefit of all investors. It is especially

[3] *See* Re-Proposal, at FN 6 (defining "off-exchange" for the purposes of the Proposal as any securities transaction in an exchange-listed security that is not effected, directly or indirectly, on a national securities exchange).
[4] Securities Exchange Act Release No. 74581 (March 25, 2015), 80 FR 18036 (April 2, 2015).
[5] Re-Proposal at 49950.

concerning that smaller options market makers may be even less equipped to absorb the costs associated with FINRA membership, which could ultimately lead to decreased competition and as a result, the potential for impaired liquidity, especially during times of market stress.

This same concern that the Re-Proposal "could force some firms out of the markets" was voiced by Commissioners Peirce and Uyeda and it's worth noting that the universe of non-FINRA member firms has already declined significantly since 2015 – this number went from 125 firms in 2015 to only 66 at the end of 2021.[6] The Re-Proposal fails to articulate any benefits that would accrue to investors as a result of options trading firms being required to join FINRA. Investors are not better protected if options market makers are FINRA members – rather, it imposes substantial, unnecessary costs on market participants who are critical for options market quality. With respect to requiring options trading firms that do not carry customer accounts to become FINRA members, the Re-Proposal is harmful to market quality with no upside for investors.

II. Options Market Makers Already Have Appropriate Regulatory Oversight

Options market making firms that are currently non-FINRA members already have robust and appropriate regulatory oversight by their primary exchange, which serves the important role of the designated examining authority ("DEA").[7] The DEA structure is practical as it allows options exchanges, that have expertise and first-hand knowledge of the options markets, to have the primary regulatory oversight over firms that are primarily focused on options trading. There is no discernible gap in regulatory oversight for options trading firms that would be filled by requiring FINRA membership. In addition to the comprehensive oversight provided by the DEA, options market makers are subject to SEC examinations at any time, regardless of FINRA membership status. Moreover, the Consolidated Audit Trail ("CAT") allows FINRA and the SEC a view into all of the trading activity of options trading firms – those that are FINRA members and those that are not. Options trading firms that are not FINRA members are still required to report all of their trade information into the CAT.

FINRA membership for trading firms that do not carry customer accounts and that are already overseen by an exchange acting as the DEA as well as the SEC is duplicative, overly burdensome and without benefit - requiring FINRA membership for certain market participants, namely options market makers, will not further any transparency or oversight objectives or provide increased investor protection.

III. A Hedging Exemption and an Expansion of the Routing Exemption are Warranted

The Re-Proposal seeks input on whether the Commission should adopt a hedging exemption outside of the stock-option order exemption.[8] We believe a separate hedging exemption must be created to properly accommodate options market makers. Thus, we strongly believe that any final rule should clearly exempt broker-dealers from FINRA membership if their away exchange activity in equities or listed options is for the purpose of hedging the risk of their home exchange activity or in furtherance of their home exchange options activity. Especially if the routing of those orders is through a broker or dealer

[6] SEC.gov | Statement of Commissioners Hester M. Peirce and Mark T. Uyeda on Proposed Amendments to Exchange Act Rule 15b9-1

[7] Cboe Options is the DEA for the options trading firms that are signatories to this letter.

[8] Re-Proposal at 49950.

that is itself a FINRA member, whereby the non-FINRA member is simply acting in a customer capacity. Options market making firms serve a crucial role in the options ecosystem and hedging their options transactions with the underlying equities and transacting in options on away exchanges are necessary parts of their business model. These firms are already sufficiently regulated, and this type of hedging activity should be expressly exempt from requiring membership with FINRA.

The Re-Proposal also seeks input on if the scope of the routing exemption should be broadened to include broker-dealer routing to access protected quotations without using the member exchange's routing mechanisms.[9] Yes, we believe that the routing exemption does need to be broadened to include this type of activity. In order to best fulfil their duties, options trading firms should be able to access other markets through means outside of a member exchange's routing mechanisms. As such, we believe that the routing exemption as proposed is inadequate for options traders. The routing exemption should be expanded to apply to all options trading firms' away exchange activity that is related to or in furtherance of their home exchange options activity, especially when done through a FINRA member.

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We appreciate the opportunity to comment on the Re-Proposal. Please do not hesitate to contact us if you have questions regarding any of the comments provided in this letter.

Sincerely,

Akuna Securities LLC
Belvedere Trading
Chicago Trading Company
Volant Trading

cc: The Honorable Gary Gensler, Chair
Commissioner Hester M. Peirce
Commissioner Caroline A. Crenshaw
Commissioner Mark T. Uyeda
Commissioner Jaime Lizárraga
Haoxiang Zhu, Director, Division of Trading and Markets
David S. Shillman, Division of Trading and Markets

[9] Re-Proposal at 49946.