



October 28, 2020

VIA Electronic Delivery

Ms. Jill M. Peterson
Assistant Secretary
Securities and Exchange Commission
100 F Street NE Washington, DC 20549

Re: *File No. SR-FINRA-2020-031; Proposed rule change to adopt new requirements for member inter-dealer quotation systems and to delete the rules related to the OTC Bulletin Board® Service (the "Proposed Rule")*

Dear Ms. Peterson,

OTC Link LLC ("OTC Link")¹ respectfully submits this letter to the Securities and Exchange Commission ("Commission" or "SEC") to comment on the above-referenced Proposed Rule filed by the Financial Industry Regulatory Authority ("FINRA"). In summary, the Proposed Rule change seeks to: (1) delete rules related to FINRA's OTC Bulletin Board Service® ("OTCBB"); and (2) adopt Proposed Rule 6439 ("Rule 6439") to expand the scope of regulatory obligations applicable to inter-dealer quotation systems ("IDQS").

As a FINRA member and operator of an IDQS that would be subject to Proposed Rule 6439, OTC Link supports the Proposed Rule and recommends certain modifications to further enhance its value to investors, regulators and market participants. We view the Rule 6439 objectives of establishing a modernized and transparent regulatory framework governing the form and content of quotations displayed on an IDQS as advancing the Commission and FINRA's goal of enhancing investor protection and improving market transparency.

Introduction

OTC Link supports FINRA's two-pronged approach of enhancing rules associated with the operation of IDQSs in conjunction with the retirement of OTCBB. As described in the rule filing, the industry's preference for electronic, regulated IDQSs that offer subscribers an interconnected network of liquidity providers has eliminated the utility of OTCBB. Given the lack of quotation activity on OTCBB, and the prevalence of commercial IDQS operators regulated by FINRA and by the SEC as Alternative Trading Systems, OTC Link agrees with FINRA's assertion that that SRO resources allocated to maintaining OTCBB operations would be better directed elsewhere.

¹ OTC Link LLC is a wholly-owned subsidiary of OTC Markets Group Inc. OTC Link LLC is a FINRA member broker-dealer and operates OTC Link ATS, an SEC registered Alternative Trading System ("ATS"). Unlike traditional ATSs, OTC Link ATS does not route nor execute orders. Rather, OTC Link ATS operates an interdealer quotation system ("IDQS") that serves to connect a diverse network of broker-dealer subscribers that provide liquidity and execution services for over 11,000 U.S. domiciled and global securities. Rather than match orders, OTC Link ATS allows subscribers to send trade messages and engage in bilateral trade negotiations within a centralized and transparent platform.

OTC Link also agrees with FINRA that rules intended to effectuate the retirement of OTCBB may correspond with new rules applicable to IDQSSs. Rule 6439, as proposed, establishes a modernized regulatory framework that promotes investor protection and market integrity objectives pursuant to the Exchange Act of 1934 and applicable FINRA Rules.²

In support of a more streamlined, efficient and transparent regulatory structure applicable to quotation activities on FINRA member IDQSSs, OTC Link proposes the following modifications to Proposed Rule 6439, and related rules governing IDQSSs under FINRA's Rule 6400 Series:

- 1. FINRA should issue additional guidance to clarify IDQS responsibilities concerning Proposed Rule 6439(c) obligations with respect to subscriber unresponsiveness.**
- 2. Proposed Rule 6439 should be revised to eliminate redundant and duplicative regulatory requirements, such that: (i) entities complying with Rule 6439(d) reporting requirements are exempt from CAT reporting obligations; and (ii) those subject to the fair access requirements of Regulation ATS are exempt from the requirements under Rule 6439(c).**
- 3. Related FINRA Rule 6437 should be amended to prohibit the locking and crossing of quotations between connected interdealer quotation systems.**

As the operator of an IDQS subject to the Proposed Rule, and the only IDQS that would be subject to the requirements set forth in paragraphs (c) and (d) of the Rule Proposal,³ we are familiar with the various regulatory requirements applicable to our marketplace. As set forth in the recommendations below, OTC Link believes the Proposed Rule offers an opportunity for FINRA to significantly reduce regulatory redundancies and create a more efficient and transparent marketplace.

FINRA should issue additional guidance regarding IDQS responsibilities concerning Rule 6439(c) obligations with respect to subscriber unresponsiveness.

Paragraph (c) of the Proposed Rule requires member IDQSSs to establish, maintain, and enforce written policies designed to address instances of unresponsiveness to messages sent to access firm quotes in accordance with existing FINRA Rule 5220.

OTC Link recognizes the importance of an IDQS's function of monitoring subscriber responsiveness in support of compliance with the firm quote obligations pursuant to FINRA Rule 5220. We understand that we must balance that function against the fair access requirements under the proposed rule and Regulation ATS, all while being mindful of our role as a private actor rather than an SRO. Today, OTC Link monitors subscriber unresponsiveness through OTC Link ATS's quote "saturation" feature. When the subscriber posting a quote on OTC Link ATS fails to timely respond to a message sent by a counterparty subscriber, the "saturation"

² See e.g. 15 U.S.C. 78o-3(b)(11); FINRA Rule 6400 Series (rules related to quoting and trading in OTC equity securities); FINRA Rule 5200 Series (rules related to quotation and trading obligations and practices).

³ Rule Proposal, pg. 11, fn. 22 ("Currently, FINRA is aware of only one member inter-dealer quotation system that does not match and auto-execute, and thus would be subject to proposed Rule 6439 (c) and (d).")

feature removes the quote from OTC Link ATS's best bid or offer calculation, thereby preventing extensive market delays due to subscriber unresponsiveness. OTC Link also tracks subscriber unresponsiveness as a percentage of a firm's received "Liability 1"⁴ messages that expire without a response. These features are designed to offer transparency into a firm's response rate, deter unresponsiveness and facilitate our subscribers' compliance with Rule 5220's firm quote provisions. However, the ultimate responsibility of Rule 5220's firm quote obligations lies with the quoting subscriber and the role of the IDQS should be limited to monitoring activity and facilitating our subscribers' compliance with firm quote rules described in Rule 5220. The market will benefit from a clear separation between SROs and commercial market operators.

Accordingly, OTC Link requests additional guidance with respect to the requirements in paragraphs (c)(3) (documenting the subscriber's rationale for unresponsiveness) and (c)(4) (determining specified steps when an instance or repeated order unresponsiveness may have occurred). As a market operator, OTC Link is not privy to a subscriber's "rationale" or other reasons for unresponsiveness. Specifically, we request that FINRA issue guidance confirming that OTC Link ATS's existing "saturation" feature and provision of data regarding subscriber unresponsiveness to received Liability 1 messages meet the standards set forth in paragraphs (c)(3) and (c)(4) of Proposed Rule 6439.

The Proposed Rule should be modified to reduce redundant and duplicative reporting obligations for IDQs and member firms.

OTC Link strongly supports and appreciates the efforts of the Commission and FINRA in reducing regulatory costs and complexity through the promulgation of new rules that seek to consolidate and eliminate duplicative requirements.⁵ In the spirit of promoting regulatory efficiency through streamlined requirements applicable to IDQs, OTC Link offers the following recommendations.

Paragraph (d)(1) of the Proposed Rule would require FINRA Member IDQs (including OTC Link ATS) to provide FINRA with monthly reports containing certain trade data. Paragraph (d)(2) specifies that, to the extent this information is, or becomes, reportable to the Consolidated Audit Trail ("CAT") under Rule 6830, it would not be required to report duplicate data under Rule 6439. OTC Link notes that quote and trade message data reportable to FINRA pursuant to Rule 6439(d) is similar to data elements reportable to CAT. Indeed, the Rule Proposal states that "[w]hether obtained pursuant to this proposed rule or through CAT, the information required by proposed Rule 6439(d)(1)(B) would bolster FINRA's ability to surveil for compliance with Rule 5220."

It is important to note that OTC Link ATS operates with a quote-driven market structure that allows fully disclosed counterparties to send each other bilateral trade messages and

⁴ When a Subscriber receives multiple trade messages in response to a single quote, an "L1" designation will be given to the first incoming directed trade message at or better than the displayed price, "L2" for the second, "L3" for the third, and so on. The "L" designation is short for Liability, with each inbound trade message sent through OTC Link against an existing OTC Link published quote known as a "Liability Message."

⁵ See e.g. SEC Release No. 33-10618 (modernizing and simplifying certain disclosures requirements in Regulation S-K, and relates rules and form in a manner that reduces costs and burdens on registrants while continuing to provide all material information to investors); see also SEC Release No. 33-10532 (adopting amendments to SEC disclosure requirements that have become redundant, duplicative, overlapping, outdated, or superseded in light of other SEC disclosure requirements, GAAP standards, or changes in the information environment); see also, Robert W. Cook, Remarks: New Special Study Conference (Mar. 24, 2017) (noting concerns around regulatory duplication and promoting the efficient allocation of responsibilities as between the SEC and self-regulatory organizations), available at: <https://www.finra.org/media-center/speeches-testimony/remarks-new-special-study-conference>.

negotiations, rather than acting as a central limit order book that automatically executes orders. As acknowledged in footnote 28 of the Rule Proposal, trade messages on OTC Link ATS “are not considered ‘orders’ for purposes of the Consolidated Audit Trail (CAT) at this time and no CAT reporting obligation exists until the terms and conditions of a trade have been agreed upon.”⁶ OTC Link currently maintains trade blotter information in a manner that allows us to report, on an efficient and consolidated basis, information specified in paragraph (d)(1). Unlike CAT, the information specified in Proposed Rule 6439(d) is designed to reflect the way in which IDQs operate and will offer a more effective and efficient means of collecting this valuable information. **Accordingly, we propose that the reporting obligations be reversed such that member IDQs with reporting obligations under Proposed Rule 6439(d) be exempt from applicable CAT reporting obligations.** FINRA and the SEC, as the primary regulators of OTC equity trading, should receive the data in the manner most beneficial to them without concern for the artificial construct of CAT reporting requirements that were not designed to cover OTC equity securities.

Additionally, paragraph (c) of the Proposed Rule contains duplicative requirements for certain IDQs already subject to the fair access provisions of Section 305(b)(5) of SEC Regulation ATS. Firms that meet the applicable trading volume threshold under Regulation ATS (including OTC Link ATS) are required to establish and maintain policies for providing access to quoting and trade messaging. The fair access rules encourage participation by market makers, agency brokers, ECNs and ATSs with varied business models, which promote more efficient and robust quoting venues in the subject securities. However, because the Regulation ATS requirements mirror those described in the Proposed Rule, **IDQs that are subject to the fair access requirements under Regulation ATS should be exempt under paragraph (c) of the Proposed Rule.**

Rule 6437 should be amended to prohibit the locking and crossing of quotations between connected interdealer quotation systems.

As FINRA evaluates and reexamines and enhances its rules applicable to IDQs, OTC Link requests that FINRA also consider revisions to Rule 6437 (Prohibition from Locking or Crossing). As currently written, the rule applies only to quotations displayed “***in the same*** inter-dealer quotation system” and does not prohibit locking and/or crossing quotations between connected IDQs.⁷

In contrast, the locking and crossing rules for NMS stocks prohibit this activity in *all* securities, whether in the same or interconnected trading systems.⁸ As described in the 2005 Reg NMS

⁶ Footnote 28 of the Proposed Rule acknowledges that “communications on a member inter-dealer quotation system that would be subject to proposed Rule 6439(d) may be in the form of messages (i.e., the back and forth communications between market makers) and are treated as ‘negotiations’ by the system as they require trader intervention before a trade can occur.” OTC Link notes that such activities do not constitute “orders” for the purposes of Rule 6439 or with respect to any CAT reporting obligations.

⁷ Regulatory Notice 10-42 (“FINRA Rule 6437 requires firms to implement policies and procedures to reasonably avoid displaying or engaging in a pattern or practice of displaying, locking, or crossing quotations in any OTC Equity Security. The rule defines a “crossing quotation” as “the display of a bid for an OTC Equity Security at a price that is higher than the displayed price of an offer for such OTC Equity Security *in the same [IDQS]*, or the display of an offer for an OTC Equity Security at a price that is lower than the displayed price of a bid for such OTC Equity Security *in the same [IDQS]*”).

⁸ See Reg NMS Rule 610(d); see also FINRA Rule 6240 (Prohibition from Locking or Crossing Quotations in NMS Stocks).

Adopting Release, locked and crossed markets increase the likelihood of investor confusion and are inconsistent with fair and orderly markets.⁹

For these reasons, OTC Link requests that FINRA expand Rule 6437's prohibition of locking and crossing quotations to apply to activity between two or more connected IDQs. Expanding Rule 6437's locking and crossing restrictions to displayed quotes on interconnected IDQs would align with FINRA and SEC Rules for NMS securities, lead to better executions¹⁰ and the Commission's goal of promoting fair and efficient markets.

Conclusion

OTC Link thanks the Commission and FINRA for the opportunity to comment on Proposed Rule 6439 to adopt new requirements for member interdealer quotation systems and to delete the rules related to the OTCBB. For the reasons described above, our comments reflect our support of the proposal and are intended to offer recommendations to enhance its stated objectives.

OTC Link would welcome the opportunity to discuss our comments in greater detail at the convenience of the Commission and FINRA. Should you have any questions, please contact me at [REDACTED] or [REDACTED]

Regards,

Christopher W Bok

Christopher Bok
Chief Compliance Officer
OTC Link, LLC

CC

Ms. Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA
Mr. David Chapman, Director, Market Regulation, FINRA

⁹ Release No. 34-51808 at 194

¹⁰ Including execution of retail orders displayed in accordance with FINRA's limit order display rules.