

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71720; File No. SR-FINRA-2014-011)

March 13, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6432

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 6, 2014, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6432 to require members to certify that they have and will not accept any payment or other consideration for market making from issuers and related persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

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6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

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6430. OTC Equity Quotation Requirements

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6432. Compliance with the Information Requirements of SEA Rule 15c2-11

(a) No Change.

(b) The information to be filed shall contain:

(1) O[o]ne copy of all information required to be maintained under SEA Rule 15c2-11(a)(1), (2), (3), (4), or (5), including any information that may be required by future amendments thereto. Members are not required to file with FINRA copies of any information that is available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system; provided, however, that the filing with FINRA shall contain identifying information for each issuer report or statement available through EDGAR that was relied upon in satisfying the member's obligations under this Rule and SEA Rule 15c2-11(a), including the type of report, report date and any other information as may be requested by FINRA.

(2) [In addition, this filing shall identify]Identification of the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the

type of non-exchange-listed security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of SEA Rule 15c2-11 with which the member is demonstrating compliance.

(3) [Additionally, i]If a member is initiating or resuming quotation of a non-exchange-listed security with a priced entry, [the member's filing must specify] the basis upon which that priced entry was determined and the factors considered in making that determination.

(4) A certification that neither the member nor persons associated with the member have accepted or will accept any payment or other consideration prohibited by FINRA Rule 5250.

(c) through (e) No Change.

••• Supplementary Material: -----

01. No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 5250 (Payments for Market Making) prohibits members from receiving any payment or other consideration by issuers or issuers' affiliates and promoters, directly or indirectly, for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. The Rule is intended, among other things, to prohibit members from receiving consideration from an issuer for quoting or making a market in the issuer's securities and to assure that members act in an independent capacity when publishing a quotation or making a market in an issuer's securities.⁵ The prohibition against receiving payments for market making activities includes within its scope payments for submitting an application in connection with market making, including the filing of a Form 211.

FINRA Rule 6432 sets forth the standards applicable to member firms for demonstrating compliance with Rule 15c2-11 under the Act.⁶ Pursuant to the Rule 6432,

⁵ As stated in prior filings and notices, FINRA believes a market maker should have considerable latitude and freedom to make or terminate market making activities in an issuer's securities. The decision by a member to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the member's expectations toward the market, its current inventory position, and exposure to risk and competition. The decision, however, should not be influenced by payments to the member by the issuer. FINRA's policy concerning payments for market making was first set forth in Notice to Members 75-16 and then codified as NASD Rule 2460 (now FINRA Rule 5250) in 1997. See Notice to Members 75-16 (February 1975) and Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) ("Order Approving File No. SR-NASD-97-46").

⁶ Rule 15c2-11 under the Act prescribes information review and maintenance requirements for broker-dealers that publish quotations in a quotation medium for certain over-the-counter equity securities. Specifically, Rule 15c2-11 prohibits a broker-dealer from publishing, or submitting for publication, a quotation for a

members must submit to FINRA a Form 211 which, among other things, requires the member to provide information regarding the issuer sought to be quoted. FINRA is proposing to amend Rule 6432 to require members to, as part of the Form 211 process, certify to FINRA that neither the member nor its associated persons have or will accept any payment or other consideration for posting a quotation or market making as prohibited under Rule 5250, including in connection with the filing of the Form 211.

FINRA intends to include the new certification as part of the current Form 211, which is required to be completed by members prior to initiating or resuming quotations in a non-exchange-listed security⁷ in any quotation medium.⁸ Thus, only members submitting a Form 211 going forward will be required to certify that no payments for market making prohibited by Rule 5250 have or will be accepted. FINRA believes that this approach seamlessly implements this new requirement without imposing any additional burden on members, since both the submission of the Form 211 as well as the substantive prohibition on receipt of Rule 5250 payments already apply to members.

covered OTC equity security unless it has obtained and reviewed current information about the issuer whose security is the subject of the quotation that the broker-dealer believes is accurate and obtained from a reliable source. See 17 CFR 240.15c2-11.

⁷ Rule 6432(e) defined “non-exchange-listed security” as any equity security, other than a restricted equity security, that is not traded on any national securities exchange. Rule 6420(k) defines “restricted equity security” as any equity security that meets the definition of “restricted security” as contained in Rule 144(a)(3) under the Securities Act.

⁸ Rule 6420(j) defines “quotation medium” as any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any OTC Equity Security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be announced in a Regulatory Notice.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act,¹⁰ which requires, among other things, that FINRA's rules be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

FINRA believes that the proposed rule change meets these requirements in that it maintains the protections that Rule 5250 was designed to provide by helping to ensure that a member makes an independent decision (rather than one influenced by payments to a member from an issuer) in determining to make a market in the issuer's security in advance of FINRA permitting a member to initiate or resume quotations. By including a requirement that members certify to their compliance of this rule on the Form 211, FINRA is reinforcing the importance of member compliance with Rule 5250. The proposed rule change also facilitates FINRA's ability to identify potential red flags in

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78o-3(b)(11).

connection with members' planned quotation activities by explicitly including the Rule 5250 certification as part of the review process required of members seeking to initiate quotations in securities that require Form 211 clearance.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would require that members submitting a Form 211 certify to FINRA that neither the member nor persons associated with the member have or will accept any payment or other consideration prohibited by FINRA Rule 5250, which generally prohibits a member from receiving payments, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith. Thus, the proposed rule change helps ensure that members act in an independent capacity when publishing a quotation or making a market in an issuer's securities. Because the certification relates to compliance with a rule the member is already subject to and will be included as part of the existing Form 211, FINRA does not believe there is any substantial additional burden on competition imposed by the proposal. FINRA recognizes that the certifying firm may choose to require sub-certifications within the firm, but FINRA does not view this as required by the rule or involving significant costs relative to the compliance benefits of the certification. Further, any member submitting a new Form 211 will be required to comply with the new certification, which does not impose any disparate treatment among such members that might result in a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f)(1) of Rule 19b-4 thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(1).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2014-011 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2014-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FINRA-2014-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).