

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90067; File No. SR-FINRA-2020-031)

October 1, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Delete the Rules Related to the OTC Bulletin Board Service

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 September 24, 2020, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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 delete the rules related to the OTC Bulletin Board[®] Service (“OTCBB”) and cease its operation, and to enhance the regulation of quotations in OTC Equity Securities by adopting new requirements for member inter-dealer quotation systems.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing new FINRA Rule 6439 (Requirements for Inter-Dealer Quotation Systems) to expand and enhance the obligations of member firms that operate certain systems that regularly disseminate the quotations of identified broker-dealers in OTC Equity Securities³ (“inter-dealer quotation systems”).⁴ The proposed rule change also deletes the rules related to the OTCBB and ceases its operation, as further discussed below.

Background

Section 15A of the Act provides that FINRA, among other things, must have rules governing the form and content of quotations for securities sold otherwise than on an exchange,

³ Rule 6420(f) defines “OTC Equity Security” as any equity security that is not an “NMS stock” as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term “OTC Equity Security” shall not include any Restricted Equity Security. (The term “Restricted Equity Security” is defined in Rule 6420(k) to mean any equity security that meets the definition of “restricted security” as contained in Securities Act Rule 144(a)(3).)

⁴ See Rule 6420(c), which defines “inter-dealer quotation system” as “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.” This definition tracks the SEC’s definition of the same term in SEA Rule 15c2-11.

which includes OTC Equity Securities. Specifically, Section 15A(b)(11) requires that such rules be designed to: (1) produce fair and informative quotations, (2) prevent fictitious or misleading quotations, and (3) promote orderly procedures for collecting, distributing, and publishing quotations.⁵ FINRA currently has in place extensive rules that govern the activity of member firms when they engage in quoting OTC Equity Securities. For example, the FINRA Rule 6400 Series (Quoting and Trading in OTC Equity Securities), among other things, provides a regulatory framework that governs the form and content of quotations; and FINRA maintains rules of general applicability that govern quoting and trading practices in the FINRA Rule 5200 Series (Quotation and Trading Obligations and Practices) (together, “Quotation Governance Rules”).

FINRA’s Quotation Governance Rules generally prescribe limitations around the conduct of members that publish quotations in OTC Equity Securities, including quotations displayed on inter-dealer quotation systems. For example, FINRA has a number of rules modeled off the principles found in SEC Regulation NMS that apply to member quotation activities on inter-dealer quotation systems in OTC Equity Securities. These rules consist of: (1) Rule 6434 (Minimum Pricing Increment for OTC Equity Securities), which sets forth the permissible pricing increments for the display of quotations and acceptance of orders; (2) Rule 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities), which requires firms to avoid locking and crossing quotations within an inter-dealer quotation system; (3) Rule 6450 (Restrictions on Access Fees), which establishes a cap on access fees imposed against a firm’s published quotation; and (4) Rule 6460 (Display of Customer Limit Orders), which requires an OTC market maker, subject to certain exceptions, to display the full size of customer

⁵ 15 U.S.C. 78q-3(b)(11).

limit orders that improve the price of the market maker's displayed quotation or that represent more than a de minimis change in the size of the market maker's quote if at the best bid or offer.⁶

In addition, Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) generally provides that every member entering quotations in an inter-dealer quotation system must enter and honor those quotations for at least the minimum sizes defined in the rule.⁷

Further, Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11) generally provides that members may not initiate or resume quotations in any "quotation medium,"⁸ which includes an "inter-dealer quotation system," unless the member files a Form 211 with FINRA and complies with SEA Rule 15c2-11 (Initiation or resumption of quotations without specified information).⁹

⁶ See Securities Exchange Act Release No. 62359 (June 22, 2010), 75 FR 37488 (June 29, 2010) (Order Approving File No. SR-FINRA-2009-054) (approving the NMS-principled rules). These rules extended to the unlisted equity market certain protections previously applicable only to exchange-listed securities under the SEC's Regulation NMS and were adopted to enhance market quality and investor protection in the over-the-counter marketplace. See also Regulatory Notice 10-42 (September 2010).

⁷ See Rule 6433.

⁸ Rule 6420 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." See Rule 6420(j).

⁹ SEA Rule 15c2-11(a) generally provides that, "[a]s a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium . . . unless such broker or dealer has in its records the documents and information required [under this rule], and, based upon a review of the [required] information . . . has a reasonable basis under the circumstances for believing that the [required] information is accurate in all material respects, and that the sources of the [required] information are reliable." 17 CFR 240.15c2-11(a).

The Rule 5200 Series also includes rules that govern quotation activity, including activity in OTC Equity Securities. For example, Rule 5210 (Publication of Transactions and Quotations) provides, among other things, that members are prohibited from publishing or circulating (or causing to be published or circulated) any notice or communication of any kind which purports to quote the bid price or ask price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security (i.e., the “fictitious quotation” prohibition). Rule 5210 applies to members that publish or circulate quotations, including on an ATS, and FINRA has published guidance to remind ATSS of their obligation to supervise activity that occurs on their platforms consistent with Rule 5210 and other FINRA rules.¹⁰ In addition, Rule 5220 (Offers at Stated Prices) generally prohibits members from making an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell (i.e., the “firm quote” requirement).

In addition to adopting and administering the Quotation Governance Rules, historically (since 1990), FINRA also expended substantial resources on operating the OTCBB, which is FINRA’s inter-dealer quotation system available for use by broker-dealers to publish quotations in eligible OTC Equity Securities. The over-the-counter marketplace was very different when FINRA, then National Association of Securities Dealers, Inc. (NASD), first established the OTCBB. At that time, members largely relied on printed, rather than electronic, media for obtaining quotation information, and FINRA believed that the OTCBB would “enhance the

¹⁰ See Regulatory Notice 18-25 (August 2018) (reminding firms, among other things, that “[a]s a general matter, consistent with existing supervision obligations, FINRA expects that an ATS’s supervisory system be reasonably designed to identify ‘red flags,’ including potentially manipulative or non-bona fide trading that occurs on or through its systems”).

efficiency of pricing and foster competition within the inter-dealer market for a particular security.”¹¹ However, given technological advancements since 1990 and the subsequent increase in alternative electronic venues with more extensive functionality than the OTCBB, the level of quotation activity occurring on the OTCBB has continued to decline over the past several years and is now nonexistent. In fact, as of the date of this filing, the OTCBB does not display or widely disseminate quotation information on any OTC Equity Securities.

Thus, while FINRA believes that the Quotation Governance Rules continue to provide important safeguards for investors and play an important role in furthering market integrity in the over-the-counter marketplace, FINRA does not believe that continued operation of the OTCBB serves any benefit to investors or the marketplace, and that the resources being expended on maintaining the OTCBB system would be better directed elsewhere. Therefore, FINRA is proposing to delete the rules governing the OTCBB and cease its operation, and at the same time enhance the regulatory obligations related to quotations in OTC Equity Securities by proposing new Rule 6439, which would govern the activities of member inter-dealer quotation systems, as further discussed below.¹²

¹¹ See Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096 (August 2, 1988) (Notice of Filing of File No. SR-NASD-88-19).

¹² As discussed further in Item II.C. below, FINRA previously proposed enhancing regulation of member inter-dealer quotation systems and deleting the rules governing the OTCBB and ceasing its operation, but ultimately withdrew that filing. See Securities Exchange Release No. 72575 (July 9, 2014), 79 FR 41339 (July 15, 2014) (Notice of Filing of File No. SR-FINRA-2014-030) (“2014 Filing”).

A. Proposed Enhanced Requirements for Member Inter-Dealer Quotation Systems

As described above, FINRA’s existing Quotation Governance Rules explicitly regulate the activities of OTC market makers¹³ and other members that display quotations on inter-dealer quotation systems, but generally do not directly provide quotation governance standards for a member inter-dealer quotation system on or through which such quotations are displayed. Given that all quotation activity in OTC Equity Securities occurs on member-operated inter-dealer quotation systems (rather than the, now essentially defunct, OTCBB), FINRA believes it is appropriate to adopt new rules directly tailored to such systems to ensure they have in place minimum standards. FINRA believes these proposed requirements complement the existing framework governing the form and content of quotations and are consistent with the goals and objectives of Section 17B of the Act¹⁴ regarding the facilitation of widespread dissemination of reliable and accurate quotation information in penny stocks.¹⁵

¹³ FINRA Rule 6420(g) defines “OTC Market Maker” as a member of FINRA that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular OTC equity security in any inter-dealer quotation system, including any system that the SEC has qualified pursuant to Section 17B of the Act. A member is an OTC market maker only in those OTC equity securities in which it displays market making interest via an inter-dealer quotation system.

¹⁴ See 15 U.S.C. 78q-2. Section 17B was enacted by Congress as part of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (“Penny Stock Act”). Pub. L. No. 101-429, 104 Stat. 931 (1990). See also Securities Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 (April 28, 1992) (“Penny Stock Release”) (adopting seven rules (the “penny stock rules”) under the Exchange Act requiring broker-dealers engaging in certain transactions in low-priced OTC securities to provide customers with specified information).

¹⁵ FINRA also separately intends to request that the Commission designate the FINRA OTC Reporting Facility (“ORF”), together with one or more member inter-dealer quotation system, as a Qualifying Electronic Quotation System (“QEQS”) for purposes of Exchange Act Rule 3a51-1(d)(1)(iii) and the penny stock rules adopted under Section 15(g) of the Exchange Act.

Proposed new Rule 6439 would apply to members that operate an “inter-dealer quotation system,” as defined in Rule 6420 (Definitions), where such system permits quotation updates on a real-time basis. Specifically, the proposal would require that member inter-dealer quotation systems: (1) establish and prominently disclose to subscribers (and disclose to prospective subscribers upon request) its written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities; (2) establish and prominently disclose to subscribers its non-discriminatory written standards for granting access to quoting and trading on its system (and disclose to prospective subscribers upon request); (3) establish written policies and procedures addressing subscriber unresponsiveness with respect to the display of firm quotations in OTC Equity Securities and the submission of reports to FINRA on a monthly basis that include specified order and response information; (4) make available to customers a written description of each OTC Equity Security order- or quotation-related data product offered by such member inter-dealer quotation system and related pricing information, including fees, rebates, discounts and cross-product pricing incentives; and (5) provide FINRA with specified information concerning the integrity of their systems.

i. Quotation Collection and Dissemination

Under paragraph (a) of proposed Rule 6439, a member inter-dealer quotation system would need to establish, maintain and enforce written policies and procedures relating to the collection and dissemination of quotation information in OTC Equity Securities on or through its system. The written policies and procedures would need to be reasonably designed to ensure that quotations received and disseminated are informative, reliable, accurate, firm, and treated in a not unfairly discriminatory manner, including by establishing non-discretionary standards under which quotations are prioritized and displayed. For example, a member inter-dealer quotation

system would be required to address in its procedures its methodology for ranking quotations, including at a minimum, addressing factors such as price (including any applicable quote access fee), size, time, capacity and type of quotation (such as unpriced quotes and bid/offer wanted quotations). The member inter-dealer quotation system also would be required to include any other factors relevant to the ranking and display of quotations (e.g., reserve sizes, quotation updates, treatment of closed quotations, and quotation information imported from other systems). The proposed rule would require member inter-dealer quotation systems to prominently disclose these written policies and procedures, along with any material updates, modifications and revisions, to subscribers within five business days following the date of establishment of the policy or procedure or implementation of the material change and to provide them to prospective subscribers upon request.¹⁶ FINRA believes that requiring these policies and procedures would help ensure that member inter-dealer quotation systems have in place appropriate standards regarding the treatment of quotations received and would promote fair and orderly quotation activity in the unlisted equity market.¹⁷ In addition, requiring that member inter-dealer quotation systems prominently disclose these procedures will provide subscribers and, upon request, prospective subscribers, with important information relating to the member inter-dealer quotation system's quotation collection and dissemination procedures.

¹⁶ A member that is an inter-dealer quotation system at the time of the effective date of this proposed rule change would prominently disclose the required information to its subscribers upon the effective date of the Rule and, thereafter, within five business days of the implementation of any material update, modification or revision thereto.

¹⁷ FINRA would examine for compliance with proposed Rule 6439, including by reviewing the adequacy of member inter-dealer quotation systems' written policies and procedures and written fair access standards required under this proposal. Specifically, depending upon the timing of implementation, FINRA would conduct a targeted exam of impacted member inter-dealer quotation systems after the initial effectiveness of the rule and incorporate a Rule 6439 review as part of the regular exam program for impacted member firms.

ii. Fair Access

Paragraph (b) of proposed Rule 6439 would require member inter-dealer quotation systems to establish non-discriminatory written standards for granting access to quoting and trading in OTC Equity Securities on its system that do not unreasonably prohibit or limit any person in respect to access to services offered by such member inter-dealer quotation system.¹⁸ This proposed requirement is consistent with the “fair access” requirements of SEC Regulation ATS but would apply to quoting and trading in all OTC Equity Securities on the member inter-dealer quotation system, regardless of the percentage of average daily volume that such member inter-dealer quotation system had in the security.¹⁹ The proposed rule would further require that member inter-dealer quotation systems prominently disclose these written standards, and any material updates, modifications and revisions thereto, to its subscribers within five business days following the date of establishment of the written standards or implementation of the material change and to provide them to prospective subscribers upon request.²⁰ FINRA believes that this proposed rule is appropriate given the significant role of member inter-dealer quotation systems

¹⁸ FINRA proposes that a member inter-dealer quotation system also must make and keep records of all grants of access including (for all subscribers) the reasons for granting such access and all denials or limitations of access and reasons (for each applicant) for denying or limiting access. A policy prohibiting or limiting access to services offered by the member inter-dealer quotation system due to non-payment by a subscriber would not be prohibited under the proposed rule.

¹⁹ The fair access requirements in proposed Rule 6439 would apply to any member inter-dealer quotation system, regardless of its trading volume. Accordingly, while certain member inter-dealer quotation systems may already be subject to the volume-based fair access requirements in SEC Regulation ATS, Rule 6439 would ensure the application of such fair access requirements to all member inter-dealer quotation systems.

²⁰ A member that is an inter-dealer quotation system at the time of the effective date of this proposed rule change would prominently disclose the required information to its subscribers upon the effective date of the Rule and, thereafter, within five business days of the implementation of any material update, modification or revision thereto.

in the over-the-counter market and will provide subscribers and prospective subscribers with additional information relating to the member inter-dealer quotation system's fair access standards.²¹

iii. Enhanced Firm Quote Compliance and Reporting

Paragraphs (c) and (d) of proposed Rule 6439 include provisions that seek to enhance the regulatory regime around firm quote rule compliance for those member inter-dealer quotation systems that do not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation. Specifically, paragraph (c) would require a member inter-dealer quotation system to establish, maintain and enforce written policies and procedures that are reasonably designed to address instances of unresponsiveness when orders are presented to trade with firm quotations displayed in OTC Equity Securities on its system. This provision, as is the case with proposed paragraph (d), discussed below, would apply only to a member inter-dealer quotation system that does not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation because there is no opportunity for unresponsiveness where orders are appropriately matched and auto-executed by the system.²²

Currently, Rule 5220 and its associated Supplementary Material sets forth members' firm quote obligations by prohibiting members from making an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may

²¹ See supra note 17.

²² Where a system permits manual responses to orders received against a displayed quotation, unresponsiveness can occur. 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).

be, at such price and under such conditions as are stated at the time of such offer to buy or sell.²³ A member's failure to respond to an order for which it has a firm quote obligation can disrupt the normal operation of the over-the-counter market.²⁴

Thus, FINRA is proposing to provide that a member inter-dealer quotation system that does not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation would be required to implement policies and procedures addressing unresponsiveness by its subscribers.²⁵ At a minimum, these policies and procedures must specify an efficient process for (i) monitoring subscriber unresponsiveness; (ii) subscribers to submit complaints to the member inter-dealer quotation system regarding potential instances of unresponsiveness to an order; (iii) documenting the subscriber's rationale for unresponsiveness; and (iv) determining specified steps when an instance of or repeated order unresponsiveness may have occurred. Given that order unresponsiveness can disrupt the normal operation of the over-the-counter market, FINRA believes that requiring policies and procedures to address this activity would increase market efficiency and integrity and thus benefit investors.

To support FINRA's oversight of the over-the-counter market, FINRA also proposes to require reporting of aggregate and order-level information by member inter-dealer quotation systems that do not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation. Specifically, proposed

²³ See Rule 5220.

²⁴ As stated in Rule 5220.01, "if at the time an order for the purchase or sale of the quoted security is presented, the member is in the process of effecting a transaction in such quoted security and immediately after the completion of such transaction communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size."

²⁵ See supra note 17.

Rule 6439(d) would provide FINRA with additional information regarding the quotation activities occurring on member inter-dealer quotation system and would assist FINRA in surveilling for member compliance with firm quote obligations and unresponsiveness, which is an area in which FINRA regularly receives complaints.²⁶ Proposed Rule 6439(d) would require that, on a monthly basis (in the form and manner prescribed by FINRA),²⁷ each member inter-dealer quotation system subject to proposed paragraph (d) must provide to FINRA order and related response information for orders in OTC Equity Securities presented for execution against a displayed quotation for which a FINRA member subscriber has a Rule 5220 obligation.²⁸ Specifically, a member inter-dealer quotation system that does not automatically execute all orders presented for execution against displayed quotations for which a member subscriber has a Rule 5220 obligation would be required to provide the following aggregated information to FINRA, categorized by FINRA member subscriber market participant identifier (MPID) across all symbols quoted by the MPID during the previous calendar month: (i) total number of

²⁶ For example, in 2018, FINRA received 119 complaints from members regarding instances of unresponsiveness to requests to execute against a displayed quotation. See infra note 42 and accompanying text.

²⁷ If the Commission approves the proposed rule change, FINRA would announce in a Regulatory Notice details about the required manner and timing of the submission of this information to FINRA.

²⁸ FINRA understands 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. While such negotiation activities are considered “orders” for purposes of firm quote rule obligations and this proposed Rule, pursuant to current guidance, they 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. See CAT FAQ J2.

marketable orders presented for execution against the MPID's quotation;²⁹ (ii) average execution (full or partial) time for marketable orders presented against the MPID's quotation based on the time an order is presented; (iii) total number of full or partial executions based on the time a marketable order is presented that are within specified execution timeframes;³⁰ (iv) total number of marketable orders presented against the MPID's quotation that did not receive a full or partial execution; and (v) average response time of the highest 10% and highest 50% of the MPID's response times for marketable orders (for full or partial executions).³¹

A member inter-dealer quotation system that is subject to proposed paragraph (d) also would be required to provide the following order-level information for each order presented against an MPID's quotation during the previous calendar month: buy/sell; security symbol; price; size; All or None indicator (yes or no); order entry firm MPID; system-generated order number (if any); order receipt time; time in force; position in queue for quote (e.g., IL1, IL2); response time; order response (e.g., execute, reject cancel, etc.); and executed quantity.

Notwithstanding these requirements, proposed Rule 6439(d)(2) generally would provide that, to the extent that the above order-level information is or becomes CAT reportable under Rule 6830 (Industry Member Data Reporting), a member inter-dealer quotation system would not have a reporting obligation under proposed Rule 6439(d)(1)(B). Whether obtained pursuant to this

²⁹ In this context, a "marketable order" refers to a message presented against a market maker's quote that is priced to be immediately executable.

³⁰ The proposed Rule would require that a member inter-dealer quotation system subject to proposed paragraph (d) report the total number of full or partial executions within the following execution timeframes: < 5 seconds; ≥ 5 seconds and < 10 seconds; ≥10 and < 20 seconds; and ≥ 20 seconds.

³¹ FINRA believes that some of this information already is generated by the member inter-dealer quotation system expected to be subject to this proposed provision. See supra note 22.

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. Thus, FINRA believes that this proposed rule change would further the integrity of the over-the counter market.

iv. Order and Quotation Data Product Transparency

Proposed Rule 6439(e) would require a member inter-dealer quotation system to provide on its website (or its affiliate distributor's website) a written description of each OTC Equity Security order- or quotation-related data product offered by such member inter-dealer quotation system and related pricing information, including fees, rebates, discounts and cross-product pricing incentives. Members would be required to keep the relevant website page(s) accurate and up-to-date with respect to the required information, and to make such information available at least two business days in advance of offering the data product. The provision would make clear that this requirement would not preclude members from negotiating lower fees with customers, provided that the member discloses on the relevant website page(s) the circumstances under which it may do so. FINRA believes that this aspect of the proposal would help keep customers, other investors and market participants informed about the availability of member-offered order- or quotation-related data products for OTC Equity Securities on an ongoing basis.

v. System Integrity

Finally, proposed Rule 6439(f) would require a member inter-dealer quotation system to provide FINRA with prompt notification when it reasonably becomes aware of any non-de minimis systems disruption that degrades, limits, or otherwise impacts the member inter-dealer quotation system's functionality with respect to trading or the dissemination of market data. Such notification would include, on a reasonable best efforts basis, a brief description of the event, its impact, and resolution efforts. Prompt receipt of this information would strengthen

FINRA's oversight of the over-the-counter market by alerting FINRA to issues that could adversely affect the reliability, availability, or integrity of member inter-dealer quotation systems that support quoting and trading of OTC Equity Securities.

To comply with this requirement, a member inter-dealer quotation system that is an SCI alternative trading system, as defined in Rule 1000 of SEC Regulation SCI,³² could provide FINRA with the same information (or a duplicate copy of any notification) submitted to the SEC concerning the occurrence of, and updates on, a non-de minimis systems disruption SCI event pursuant to Rule 1002(b) of SEC Regulation SCI,³³ promptly after filing the notification with the SEC. If a member inter-dealer quotation system is not an SCI alternative trading system, it could comply with this requirement by providing FINRA prompt notification when it reasonably becomes aware of any such systems disruption, and by providing periodic updates on the event and its resolution. As noted above, such notifications would include, on a reasonable best efforts basis, a brief description of the event, its impact, and resolution efforts. While this requirement is informed by the event reporting requirements established in Regulation SCI, it not intended to impose the formal reporting framework provided by SEC Regulation SCI, or otherwise extend or apply Regulation SCI, to a member inter-dealer quotation system not subject to it. FINRA would announce in a Regulatory Notice the methods and process by which members may provide systems disruption notifications to FINRA.

B. Proposed Deletion of OTCBB-related Rules

As discussed above, FINRA also is proposing to delete the FINRA Rule 6500 Series, which governs the operation of the OTCBB and cease its operation. Use of the OTCBB has

³² See 17 CFR 242.1000.

³³ See 17 CFR 242.1002(b).

declined precipitously over the years, such that the system now is essentially defunct. In fact, the OTCBB does not widely disseminate quotation information on any OTC Equity Securities. As a result, discontinuance of the OTCBB as an inter-dealer quotation system will not impact the current level of quotation information available for OTC Equity Securities, and FINRA strongly believes that there is no benefit to investors or the marketplace by continuing operation of the OTCBB. Further, FINRA notes that, where investors look to feeds that solely disseminate OTCBB data for quotation information on a particular OTC Equity Security, investors mistakenly may conclude that there are no current quotations in the security (when, in fact, there may be numerous quotations available elsewhere — i.e., on member-operated inter-dealer quotation systems). Therefore, FINRA believes that ceasing operation of the OTCBB would eliminate potential investor confusion regarding the availability of quotation information for OTC Equity Securities. For the same reasons, FINRA does not believe that the OTCBB, in its current state, furthers the goals and objectives of Section 17B of the Act³⁴ and, therefore, does not meet the characteristics of a system described in Section 17B of the Act regarding the widespread dissemination of reliable and accurate quotation information with respect to “penny stocks.”³⁵ However, since the inception of the OTCBB, non-self-regulatory organization (“SRO”) entities that are member inter-dealer quotation systems have increased their participation in the collection and dissemination of quotation information in OTC equity

³⁴ Section 17B of the Act provides, among other things, that the Commission shall facilitate the widespread dissemination of reliable and accurate last sale and quotation information with respect to penny stocks.

³⁵ Under SEA Rule 3a51-1, “penny stock” is defined to, among other things, exclude securities that have a price of five dollars or more as determined either on a per transaction basis or, in the absence of a transaction, on the basis of the inside bid quotation for the security displayed on an automated quotation system that has the characteristics set forth in Section 17B(b)(2) of the Act or any other system that is designated by the Commission. See 17 CFR 240.3a51-1.

securities, including for those OTC equity securities meeting the definition of “penny stock,” and have made such quotation information available to investors and market participants. Thus, FINRA believes that discontinuance of the OTCBB as an inter-dealer quotation system will not have an appreciable impact on the current level of quotation transparency for OTC equity securities. Importantly, FINRA will continue to centralize last sale transaction reporting through the ORF and, therefore, will continue to operate a system that collects and disseminates transaction information on, and provides widespread dissemination of reliable and accurate last sale information with respect to, OTC equity securities, including penny stocks.³⁶ Thus, the objectives of Section 17B of the Act relating to the provision of price and volume information to investors and market participants will continue to be satisfied through FINRA’s operation of the ORF.

In advance of the discontinuance of the OTCBB, FINRA will take steps to ensure a smooth transition for issuers and members. Specifically, although there are no members currently using the OTCBB, FINRA will publicize announcements through the FINRA.org website.³⁷ Thereafter, FINRA will continue to assess the widespread availability of quotation transparency to investors and market participants through non-SRO sources on a regular basis. If the availability of quotation information to investors significantly declines, FINRA will revisit and, if necessary, file a proposed rule change to establish an SRO-operated inter-dealer quotation system (or other measure) to facilitate the type of widespread quotation transparency described in Section 17B of the Act.

³⁶ FINRA members generally are required to report trades in OTC equity securities to ORF within 10 seconds of execution and FINRA widely disseminates this transaction information in real-time.

³⁷ FINRA notes that there currently are no OTCBB symbols.

FINRA also is proposing to delete the text of Rule 7720 (OTC Bulletin Board Service), which currently sets forth the fees applicable to a broker-dealer that displays quotations or trading interest in the OTCBB. This rule no longer would be relevant if FINRA ceased the operation of the OTCBB in connection with this proposal. In addition, FINRA is proposing to amend Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) to remove reference to Rule 6550 (Transaction Reporting), which FINRA is proposing to delete as part of this proposal.

If the Commission approves the proposed rule change, FINRA will announce the effective date(s) of the proposed rule change in a Regulatory Notice. The effective date(s) may be phased, but will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁸ 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,³⁹ which requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied, and that such rules be designed to produce fair and

³⁸ 15 U.S.C. 78o-3(b)(6).

³⁹ See 15 U.S.C. 78o-3(b)(11).

informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

Specifically, proposed Rule 6439 would implement new requirements for member inter-dealer quotation systems by, among other things, requiring such members to establish procedures that govern the treatment of, and fair access to, quotations in OTC Equity Securities. Proposed Rule 6439 also would require members to address instances of unresponsiveness to orders when subscribers are posting firm quotations in OTC Equity Securities. These provisions are designed to promote just and equitable principles of trade, protect investors and the public interest, and enhance regulatory oversight of the form and content of quotations for OTC Equity Securities, consistent with Sections 15A(b)(6) and (11). Given the significant role that member-operated inter-dealer quotation systems serve today in the marketplace for OTC Equity Securities, FINRA believes the proposed requirements would improve the reliability, integrity, fairness of, and access to quotations for OTC Equity Securities. FINRA also believes these proposed requirements are consistent with the Act because they would improve FINRA's oversight of member inter-dealer quotation systems.

Further, FINRA believes that the proposed rule change is consistent with Section 17B of the Act.⁴⁰ Section 17B was enacted by Congress as part of the Penny Stock Act, which was designed to remedy inefficiencies and address regulatory concerns caused by the lack of reliable market information on penny stocks traded over the counter and, in connection with this initiative, the Commission designated the OTCBB as a QEQS for purposes of the penny stock rules.⁴¹

⁴⁰ See 15 U.S.C. 78q-2.

⁴¹ See Penny Stock Release, supra note 14.

Due to the decline of OTCBB, as discussed above, FINRA is concerned that OTCBB is no longer a reliable source of complete quotation information for OTC equity securities and, therefore, operation of the system no longer furthers the purposes of Section 17B of the Act. FINRA believes that the proposed rule change would protect investors and the public interest by deleting the OTCBB rules and discontinuing its operation, because the OTCBB does not widely disseminate best bid or offer information for any securities. FINRA believes that ceasing operation of the OTCBB would remove potential investor confusion regarding the availability of quotation information for OTC Equity Securities and would allow FINRA to better allocate regulatory resources. FINRA believes that ceasing operation of the OTCBB, coupled with the proposed changes to improve the governance of member inter-dealer quotation systems on or through which quotations in OTC equity securities are displayed, best serves and promotes the goals of Section 17B of the Act with respect to the widespread availability of quotation information in penny stocks.

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.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Need

As discussed above, FINRA is proposing to delete the OTCBB rules and discontinue its operation and adopting new requirements for member inter-dealer quotation systems to enhance the regulation of quotation activity in OTC Equity Securities. The proposed amendments are intended to achieve a more robust regulatory framework around member inter-dealer quotation systems.

Economic Baseline

As mentioned above, the level of quotation activity occurring on the OTCBB has significantly declined over the past several years and is now nonexistent. Of the 352,698 average trades per day reported in all OTC Equity Securities in August 2020 (with a total of 7,406,664 trades reported in all OTC Equity Securities for the month), none were related to quotation activity on the OTCBB. No member firms have quoted on the OTCBB since October 29, 2019. Because all quotation activity in OTC Equity Securities now occurs on member inter-dealer quotation systems, FINRA's increased oversight of these systems would be beneficial from market integrity and investor protection perspectives.

As of August 2020, FINRA is aware of two member inter-dealer quotation systems: Global OTC and OTC Link. An average of 4,227,157 and 13,370,896 quotations were posted on Global OTC and OTC Link, respectively, per day in August 2020, leading to an average of 24,408 and 9,567 trades on Global OTC and OTC Link, respectively, per day. In that same month, an average of 5,968 and 11,586 symbols were quoted on Global OTC and OTC Link, respectively, per day.

FINRA previously proposed amendments substantially similar to proposed Rule 6439(a) and (b), which would require that member inter-dealer quotation systems adopt and prominently

disclose written policies and procedures around the collection and dissemination of quotation information in OTC Equity Securities and establish and prominently disclose non-discriminatory written standards for granting access to quoting and trading on member inter-dealer quotation systems, respectively. As discussed in Item 5 below, when previously proposed, these aspects of the proposal did not appear to be controversial because they were not opposed by commenters. FINRA understands that member inter-dealer quotation systems already have established and adopted policies and procedures regarding quote collection and dissemination. FINRA also notes that member inter-dealer systems that are alternative trading systems already may be subject to similar fair access standards pursuant to Regulation ATS (when they reach certain volume thresholds), which potentially could simplify compliance with regard to the fair access requirements under the instant proposal.

With respect to proposed Rule 6439(c) and (d) regarding firm quote compliance and reporting, FINRA would use the collected information in connection with its program regarding compliance with Rule 5220. Currently, aggrieved members may contact FINRA to report instances of unresponsiveness.⁴² In addition, FINRA understands that, while some of the order and response information required by the proposal may not be maintained in the required form by the impacted member inter-dealer quotation system at present, other aspects of the proposed required information already is collected and provided to subscribers. With respect to proposed Rule 6439(e) regarding data product and pricing transparency, FINRA understands that member inter-dealer quotation systems or affiliate distributors currently provide information regarding their data products and the associated fees on their web sites. In addition, with respect to

⁴² In 2018 and 2019, FINRA received 119 and 53 complaints, respectively, regarding unresponsiveness to attempts to execute against displayed a quote, and in 2020, FINRA has received 37 such complaints as of September 15, 2020.

proposed Rule 6439(f) regarding system integrity, if a member inter-dealer quotation system already is subject to SEC Regulation SCI, it already is required to report to the SEC the same type of information that would be required to be reported to FINRA under the proposal. For a member inter-dealer quotation system not already required to report this information to the SEC, the proposed rule would apply a new notification requirement.

Economic Impact

Costs

Due to the non-existent quoting activity on the OTCBB, FINRA does not believe that discontinued operation of the system would impose a material cost on members, as member firms were never required to maintain connectivity to the OTCBB. In addition, due to the more extensive functionalities on member inter-dealer quotation systems, FINRA believes that member inter-dealer quotation systems can serve as substitutes for the OTCBB. Furthermore, FINRA will continue to centralize last sale transaction reporting through the ORF, and, consequently, will continue to collect and disseminate transaction information on last sale information of OTC Equity Securities, including penny stocks. FINRA does not expect that members would change their behavior in terms of where they seek liquidity as a result of the proposed amendments and notes that dealers already use these other platforms for virtually all quoting in OTC Equity Securities.

Member inter-dealer quotation systems could potentially incur costs associated with establishing, adopting, and prominently disclosing procedures and standards pursuant to the requirements in proposed Rules 6439 (a) and (b), to the extent that existing procedures and standards are not sufficient to comply with the requirements of the proposed rule or are not prominently disclosed. Member inter-dealer quotation systems also could potentially incur costs

associated with the proposals related to firm quote compliance and reporting and system integrity. The potential impact of these provisions could be different for each member inter-dealer quotation system. For example, the proposals relating to firm quote compliance and reporting only apply to member inter-dealer quotation systems that do not automatically execute all orders presented against a displayed quotation on their system (because there is no opportunity for unresponsiveness where orders appropriately are matched and automatically executed by the system). However, where a member inter-dealer quotation system permits manual responses to orders received against a displayed quotation, unresponsiveness can occur, and the system would incur the costs associated with complying with the proposed enhancements. In the current regime, FINRA is aware of only one member inter-dealer quotation system that does not automatically execute all orders on its system, and thus would have to comply with proposed Rules 6439(c) and (d).

With respect to proposed Rule 6439(e) regarding data product and pricing transparency, FINRA understands that member inter-dealer quotation systems or affiliate distributors currently provide information regarding their data products and the associated fees on their websites. Member inter-dealer quotation systems could potentially incur costs associated with complying with the requirements in proposed Rules 6439(e) to the extent that existing disclosures are not sufficient to comply with the requirements of the proposed rule.

In addition, the potential impact of the proposed system disruption reporting requirement in proposed Rule 6439(f) would vary based on whether a member inter-dealer quotation system is subject to SEC Regulation SCI. For a member inter-dealer quotation system that is subject to SEC Regulation SCI, FINRA expects that the proposed requirements would impose no material additional costs. For a member inter-dealer quotation system that is not subject to SEC

Regulation SCI, the proposed requirements could impose limited additional costs, as the member inter-dealer quotation system would be required to develop a new process for promptly reporting systems disruptions to FINRA. However, FINRA intends this to be a streamlined reporting requirement that applies once the member inter-dealer quotation system reasonably becomes aware of an event; this proposal is not intended to impose the formal reporting framework provided by SEC Regulation SCI, or otherwise extend or apply Regulation SCI, to a member inter-dealer quotation system not subject to it. To the extent that such costs are passed on to the member inter-dealer quotation system's subscribers, firms potentially could observe an increase in costs associated with quoting and trading on these platforms. Such increase in costs may be reflected in fees imposed on the subscribers.

Benefits

Although no member firms have posted quotes on the OTCBB since October 29, 2019, some firms may still be connected to the OTCBB. To the extent that member firms incur costs associated with OTCBB connectivity, firms may gain cost savings from no longer maintaining a connection.

Given the importance of compliance with the firm quote rule, FINRA would anticipate benefits to market integrity through improved oversight of firm quote rule compliance from requiring a member inter-dealer quotation system that does not automatically execute all orders presented for execution against quotations displayed on its platform to establish policies and procedures to address instances of subscriber unresponsiveness and report order and response message information to FINRA on a monthly basis.

FINRA expects that the proposed amendments would enhance investor protection in the OTC equity space through increased oversight of member inter-dealer quotation systems.

Because member inter-dealer quotation systems facilitate virtually all of the quoting activity in this market, the proposed amendments, and how they apply to member inter-dealer quotation systems with different functionalities, would potentially provide protection for clients of all types of member inter-dealer quotation systems. With respect to the proposed system integrity requirements, as noted above, FINRA believes these requirements would enhance FINRA's oversight of the systems a member inter-dealer quotation system uses, thereby promoting the reliability and availability of such systems.

Alternatives Considered

No other alternatives were considered for the proposed amendments.

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

FINRA previously proposed amendments substantially similar to certain aspects of the instant filing.⁴³ However, the previous rule filing was withdrawn as FINRA continued to consider what changes to the governance of the over-the-counter marketplace were appropriate. Below is a discussion of the comments FINRA previously received on the substantially similar items being re-proposed in the instant filing.

As it is proposing in the instant filing, FINRA previously proposed ceasing operation of the OTCBB and deleting the Rule 6500 Series and related rules. Commenters supported this aspect of the proposal.⁴⁴ For example, OTC Markets stated that "FINRA's OTCBB no longer

⁴³ See 2014 Filing, supra note 12.

⁴⁴ See Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Secretary, SEC, dated August 5, 2014 ("OTC Markets"); Letter from Barry Scadden, Vice President, Global OTC, to Kevin M. O'Neill, Deputy Secretary, SEC, dated October 10, 2014 ("Global OTC"); Letter from Michael R. Trocchio, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC, dated November 4, 2014 ("Sidley Austin on behalf of OTC Markets").

provides broker-dealers with an effective service for pricing securities, and market participants will be better served by FINRA regulating Qualifying IQSs instead of expending resources trying to operate the OTCBB.” Global OTC stated that it agreed “that OTCBB volume and relevance has dissipated over the last few years” and therefore did not object to closure of the OTCBB and related deletion of the Rule 6500 Series.

FINRA also previously proposed rules substantively similar to proposed Rules 6439(a) (relating to the collection and dissemination of quotation information) and (b) (relating to fair access standards). Commenters generally supported the proposal relating to the collection and dissemination of quotation information, and no commenters opposed this aspect of the proposal. For example, OTC Markets stated that this aspect of the proposal, among others, “has as its focus the improved fairness of the dissemination or availability of quotation information” and would “provide additional transparency to the market and ensure fair access to quotation related services and data.” Commenters also supported the proposal relating to fair access standards. For example, OTC Markets stated that it already had policies in place that it believed would satisfy the requirements of the proposed rule change because it was subject to the fair access provisions under SEC Regulation ATS. This commenter also noted that, because the proposal’s fair access requirements mirror those in SEC Regulation ATS, the requirements are appropriately tailored to ensure non-discriminatory availability of access to the system without unnecessarily burdening the ATS.

Finally, FINRA previously proposed a rule that required member inter-dealer quotation systems to provide FINRA with a written description of each quotation-related data product that

it offers, and all related pricing information.⁴⁵ Commenters supported this aspect of the proposal, and no commenters opposed this aspect of the proposal. For example, OTC Markets stated that this proposal would “ensure a baseline of reliable, accurate information available to all investors” and Global OTC noted that the information would provide more transparency to market participants, and pointed out that “similar requirements already exist in the exchange space.”

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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

⁴⁵ The instant proposal instead would require member inter-dealer quotation systems to post this information on their website page(s), rather than providing it to FINRA.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2020-031 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-2020-031. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available

publicly. All submissions should refer to File Number SR-FINRA-2020-031 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.⁴⁶

J. Matthew DeLesDernier
Assistant Secretary

⁴⁶ 17 CFR 200.30-3(a)(12).