

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60085; File No. SR-FINRA-2009-030)

June 10, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 6440 to Require Members to Create a Contemporaneous Record of Certain Customer and Order Information.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“SEA” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 22, 2009 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, II, and III 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 amend Rules 6440 and 6540 to, among other things, require members to create a contemporaneous record of certain customer and order information demonstrating eligibility for the unsolicited customer order exception of SEA Rule 15c2-11 when the member is relying on such exception.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

SEA Rule 15c2-11 sets forth the information review and maintenance requirements for broker-dealers that publish quotations³ in a quotation medium⁴ for certain over-the-counter equity securities (e.g., OTC Bulletin Board and Pink Sheets securities). Specifically, SEA Rule 15c2-11 prohibits a broker-dealer from publishing (or submitting for publication) a quotation for a 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. There are several exceptions to SEA Rule 15c2-11, including paragraph (f)(2) of the Rule, which excepts quotations that represent a customer’s unsolicited order or indication of interest (unsolicited customer order exception).

³ SEA Rule 15c2-11 defines “quotation” as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security.

⁴ “Quotation medium” means 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 security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell. “Inter-dealer quotation system” means any system of general circulation to brokers or dealers that regularly disseminates the quotations of identified brokers or dealers.

Rule 6440 sets forth the standards applicable to member firms for demonstrating compliance with SEA Rule 15c2-11, unless an exception applies. FINRA has found that member firms maintain varying levels of documentation for demonstrating eligibility for the unsolicited customer order exception and, in some cases, are unable to produce any proof that a quote in fact represented a customer's unsolicited order or indication of interest ("IOI"). While a member relying on this or any exception should be able to proffer evidence of its eligibility for and compliance with the exception, FINRA believes that providing specific recordkeeping requirements for demonstrating eligibility for the SEA Rule 15c2-11(f)(2) exception is appropriate and will promote more uniform recordkeeping and compliance with this exception.

Specifically, contemporaneous with the receipt of any unsolicited customer order or IOI, members would be required to record the following details: the identity of the associated person who receives the order or IOI directly from the customer, if applicable;⁵ the identity of the customer; the date and time the order or IOI was received; and the terms of the order or IOI that is the subject of the quotation (e.g., security name and symbol, size, side of the market, the duration (if specified) and, if priced, the price). To the extent a member is displaying a quote representing an unsolicited customer order or IOI that was received from another broker-dealer, the member is still required to create a contemporaneous record of the identity of the person from whom information regarding the unsolicited customer order or IOI was received, if applicable; the date and time the unsolicited customer order or IOI was received by the member displaying

⁵ In cases where a member is displaying a quote representing an unsolicited customer order or IOI that was received electronically, it is understood that there may not be a "person" associated with the receipt or submission of such unsolicited customer order or IOI. Thus, with respect to the requirement that members record (1) the identity of the associated person who received the unsolicited customer order or IOI; or (2) the identity of the person from whom information regarding the unsolicited customer order or IOI was received where the order or IOI is received from another broker-dealer, members are only required to record such information if applicable.

the quotation; and the terms of the order that is the subject of the quotation.⁶ The member displaying the quotation may rely on the information provided by the routing firm if the member has a reasonable basis for believing that the information is valid.

In addition, FINRA is amending Rule 6540 (Requirements Applicable to Market Makers) to delete footnote #1. Footnote #1 sets forth a summary of exemptive relief granted by the SEC from the requirements of SEA Rule 15c2-11 (subject to certain conditions). However, given that the SEC has since granted additional exemptive requests from the requirements of SEA Rule 15c2-11 that are not included in footnote #1 (and may continue to grant further requests in the future), FINRA is proposing to delete footnote #1 in its entirety and specify in Rule 6540 that members must demonstrate compliance with (or qualify for an exception or exemption from) SEC Rule 15c2-11.⁷

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date

⁶ It is critical that the member receiving an order be advised of and understand the terms of the order that are relevant to the exception so that the receiving member may reasonably and accurately rely on the unsolicited customer order exception. For example, if the customer order is a “day” order, the receiving member must be advised of that fact so that it can withdraw the quote upon the expiration of the order. Similarly, to the extent that the terms of the order change or other significant information is received by the firm routing the order (e.g., a “good-till-cancelled” order is cancelled or there is a change in the terms of the order), the firm routing such order must promptly update the member displaying the quote as to the change in the terms of the order. To the extent the firm routing the order is not a member, the member should make periodic inquiry as to whether the terms of the order have changed. Members may not rely on the unsolicited customer order exception where a displayed quote no longer accurately represents current unsolicited customer interest.

⁷ SEA Rule 15c2-11(h) sets forth the SEC’s exemptive authority with respect to the requirements of SEA Rule 15c2-11 and provides that SEA Rule 15c2-11 shall not prohibit any publication or submission of any quotation if the SEC, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of the rule.

will be 30 days following publication of the Regulatory Notice announcing 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,⁸ 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 believes that the proposed rule change will promote more uniform recordkeeping and compliance with SEA Rule 15c2-11's unsolicited customer order exception.

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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such proposed rule change, or

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

⁸ 15 U.S.C. 78q-3(b)(6).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-030 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2009-030. 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 Web site (<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 inspection and copying 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-2009-030 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).