

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63960; File No. SR-FINRA-2011-008)

February 24, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Require Public Disclosure of Any Access or Post-Transaction Fees for Executions Against a Public Quotation in an OTC Equity Security

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 18, 2011, 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 require members to disclose on the member’s website fees imposed against its published quotation in any OTC Equity Security consistent with FINRA Rule 6450 (Restrictions on Access Fees).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 22, 2010, the SEC approved, among other rules, new FINRA Rule 6450 (Restrictions on Access Fees).³ Rule 6450 provides that a firm may not impose, nor permit to be imposed, non-subscriber access or post-transaction fees against its published quotation in any OTC Equity Security that exceed or accumulate to more than:

- \$0.003 per share, if the published quotation is priced equal to or greater than \$1.00; or
- the lesser of (a) 0.3% of the published quotation price on a per share basis or (b) 30% of the minimum pricing increment under Rule 6434 relevant to the display of the quotation on a per share basis if the published quotation is less than \$1.00.

FINRA is filing the proposed rule change to add Supplementary Material .01 (the “disclosure rule”) to provide that a member must disclose on its website, in a clear and conspicuous manner, fees (and changes to fees) imposed against its published quotations as

³ See Securities Exchange Act Release No. 62359, 75 FR 37488 (June 29, 2010) (Order Approving File No. SR-FINRA-2009-054).

provided for in Rule 6450 at least three (3) business days in advance.⁴ Where a member makes multiple fee schedules available, the applicability of each schedule must be clear (e.g., volume discount tiers and rates). Members must maintain and preserve records of the fee schedules required to be made available pursuant to this disclosure rule for the period of time and accessibility specified in SEA Rule 17a-4(b) under the Exchange Act.

FINRA has requested that the Commission approve the proposed rule change on an accelerated basis, so that it may become effective as soon as possible. The effective date of the proposed rule change will be two weeks after Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁵ 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 the proposed rule change will provide transparency to members as to the level of non-subscriber access or post-transaction fees imposed against published quotations in OTC Equity Securities.

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 Exchange Act.

⁴ For purposes of the first three business days of the disclosure rule's operation, members would be in compliance with the advance notice requirement if they have posted the fees prior to 9:00 a.m. on the trading day upon which they impose the fee.

⁵ 15 U.S.C. 78o-3(b)(6).

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 45 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 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-008 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-2011-008. 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 10:00 am and 3:00 pm. 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-2011-008 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.⁶

Cathy H. Ahn
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).