

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65568; File No. SR-FINRA-2011-058)

October 14, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

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 October 6, 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, 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities).

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 6433 (Minimum Quotation Size Requirements For OTC Equity Securities) (the “Rule”) requires every member functioning as an OTC Market Maker³ in an OTC Equity Security⁴ that enters firm quotations into any inter-dealer quotation system that permits quotation updates on a real-time basis to honor those quotations for certain minimum sizes (“minimum quotation sizes”). Under the Rule, different minimum quotation sizes apply depending upon the price level of the bid or offer and, therefore, a different minimum quotation size can apply to each side of the market being quoted by the member in a given security.

FINRA is proposing changes to the minimum quotation sizes to, among other things, simplify the tier structure, facilitate the display of customer limit orders under new FINRA Rule 6460 (Display of Customer Limit Orders) (the “limit order display rule”)⁵ and expand the scope of the rule, as further discussed below.⁶

³ See FINRA Rule 6420(f).

⁴ “OTC Equity Security” means 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. See FINRA Rule 6420(e).

⁵ See Securities Exchange Act Release No. 62359 (June 22, 2010), 75 FR 37488 (June 29, 2010) (File No. SR-FINRA-2009-054; Order Approving NMS-Principled Rules for OTC Equity Securities) (“NMS-Principled Rules Approval Order”). FINRA Rule 6460 became effective on May 9, 2011.

⁶ The proposal also would incorporate the requirements of FINRA Rule 6434 (Minimum Pricing Increments for OTC Equity Securities) which, among other things, prohibits members from displaying a bid or offer in an OTC Equity Security in an increment smaller than \$0.01 if the bid or offer is priced \$1.00 or greater per share, or in an

Under the proposed approach, the minimum quotation size required for display of a quotation in an OTC Equity Security would fall into one of six tiers rather than nine tiers. Specifically, for OTC Equity Securities priced between \$0.51 and \$0.9999/share, the minimum quotation size would be 200 shares; between \$0.26 and \$0.5099/share, the minimum quotation size would be 500 shares; between \$0.02 and \$0.2599/share, the minimum quotation size would be 1,000 shares; and between \$0.0001 and \$0.0199/share, the minimum quotation size would be 10,000 shares.⁷ For quotations in securities priced at least \$1.00/share, the proposed rule generally would parallel the approach taken by the exchanges by setting the minimum quotation size at a round lot of 100 shares,⁸ except that, with respect to OTC Equity Securities priced at or above \$175.00/share, the minimum quotation size would equal the round lot size applicable to those securities, which is one (1) share.⁹

In addition to simplifying the tier structure, FINRA believes that the proposed revisions will benefit investors by facilitating display of customer limit orders under the limit order display rule, which generally requires that OTC Market Makers fully display better-priced customer limit orders (or same-priced customer limit orders that are at the best bid or offer and that

increment smaller than \$0.0001 if the bid or offer is priced below \$1.00. See FINRA Rule 6460(b)(8).

⁷ Under the proposed revisions, securities priced under \$0.02/share would be subject to a larger minimum quotation size than the current Rule. Increasing the minimum for quotations in this lower-priced tier should result in more substantive dollar-value commitments to the market. For securities priced at or above \$0.02/share, the minimum quotation size requirements would be reduced so that a greater percentage of customer limit orders priced in this range would be eligible for display, while continuing to recognize the utility of requiring that displayed quotations represent a minimum aggregate dollar value commitment to the market.

⁸ A round lot of 100 shares applies to most NASDAQ and NYSE listed securities.

⁹ The unit of trade for OTC Equity Securities traded at or above \$175.00/share is one (1) share (i.e., transactions in these securities for fewer than 100 shares no longer are considered “odd-lot transactions” for dissemination purposes). See Trade Reporting Notice, OTC Equity Security Transactions (April 21, 2008).

increase the OTC Market Maker's size by more than a de minimis amount).¹⁰ OTC Market Makers are not required to display a customer limit order unless doing so would comply with the minimum quotation sizes applicable to the display of quotations on an inter-dealer quotation system.¹¹ Therefore, although a customer limit order may otherwise have been required to be displayed under the limit order display rule because it improved price or size more than a de minimis amount, if the order is less than the minimum quotation size set forth in this Rule, the member is not required to display the order.

FINRA believes that the proposed modifications to the Rule's tiers will result in the display of a larger number of customer limit orders because more limit orders should meet the revised minimums than those currently in place under the Rule. Based upon a review of a sample of Order Audit Trail System data submitted over the past year in OTC Equity Securities, only approximately 50% of customer limit orders in the sample met the current Rule's thresholds and would have been eligible to be displayed. For example, the existing tiers apply a 2,500 share minimum to OTC Equity Securities priced between \$0.51 and \$1.00/share, resulting in minimum dollar commitments to the market that range from \$1,275.00 (for 2,500 shares priced at \$0.51/share) to \$2,500.00 (for 2,500 shares priced at \$1.00/share). In contrast, the proposed minimum quotation size of 200 shares applicable to quotes priced between \$0.51 and

¹⁰ The limit order display rule was adopted as part of a broader effort to extend certain protections in place for NMS stocks to quoting and trading in OTC Equity Securities. See NMS-Principled Rules Approval Order. As stated in the proposal for the limit order display rule, FINRA believes that applying the display requirements to OTC Equity Securities will improve transparency in the OTC equity market and advances the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation. See Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) (Notice of Filing File No. SR-FINRA-2009-054).

¹¹ See Regulatory Notice 10-42 (September 2010).

\$0.9999/share would have resulted in a significant increase in the number of limit orders that would have been eligible to be displayed – over 90% of the orders comprising the sample.

FINRA also is proposing to expand the scope of the Rule to apply to all quotations or orders displayed in an inter-dealer quotation system, including quotations displayed by alternative trading systems (ATSs) or those representing customer trading interest. The scope of the current rule is limited to quotations where the member “functions as a market maker in OTC Equity Securities.” Therefore, the Rule does not currently apply to quotes by ATSs (because they are not market makers) and quotes representing customer trading interest (e.g., customer limit orders). However, ATSs have become increasingly active in the over-the-counter market and FINRA believes that the minimum quotation size requirements should apply uniformly for any trading interest displayed on an inter-dealer quotation system by members, whether submitted by an OTC Market Maker or an ATS.¹² In addition, FINRA believes that expanding the scope of the Rule to include quotations representing customer limit orders will ensure that minimum quotation sizes are observed consistently by all members displaying quotations on an inter-dealer quotation system.

Of course, each member would continue to be required to honor its quotations to the full quantity displayed in accordance with Rule 5220 (Offers at Stated Prices), which generally provides that no member shall make an offer to buy or sell any security at a stated price unless such member is prepared to purchase or sell the security at such price and under such conditions

¹² While ATS quotes and quotes representing customer trading interest currently are not captured within the scope of the Rule, as a practical matter, members displaying any quotation on an inter-dealer quotation system often must post a size that is at least equal to this Rule’s minimums due to the systems requirements of inter-dealer quotation systems that program the size field consistent with this Rule.

as are stated at the time of such offer to buy or sell.¹³ Likewise, member obligations pursuant to Rule 5210 (Publication of Transactions and Quotations) continue to apply. Among other things, Rule 5210 generally prohibits members from publishing, circulating, or causing to be published or circulated, any quotation which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.¹⁴

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 180 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,¹⁵ 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.¹⁶ Section 15A(b)(11) 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.

FINRA believes that the proposed rule change meets these requirements by simplifying the tier structure and facilitating display of customer limit orders consistent with Rule 6460,

¹³ See also Rule 5220.01 (Firmness of Quotations).

¹⁴ See also Rule 5210.01 (Manipulative and Deceptive Quotations).

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78o-3(b)(11).

while still recognizing the utility of requiring that quotes in lower-priced securities represent a minimum dollar-value commitment to the market. FINRA believes that the proposed revisions to the minimum quotation sizes should benefit investors by increasing the percentage of customer limit orders that will be eligible for display under Rule 6460. This should improve transparency and enhance execution of customer limit orders. Finally, FINRA believes that the applicability of the minimum quotation sizes to all members posting quotations in an inter-dealer quotation system will promote consistency in the minimum quotation sizes displayed on an inter-dealer quotation system.

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 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-2011-058 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-2011-058. 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 on official business days between the hours of 10:00 a.m. and 3:00 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-2011-058, 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.¹⁷

Elizabeth M. Murphy
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).