

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60999; File No. SR-FINRA-2009-077)

November 13, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Restructuring of Quotation Collection and Dissemination 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 November 6, 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 a rule change to restructure quotation collection and dissemination for OTC Equity Securities.

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

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 is proposing to: (1) create a Quotation Consolidation Facility (“QCF”) for OTC Equity Securities for regulatory and transparency purposes that would serve as a data consolidator for all quote data in the over-the-counter equity market; (2) delete the FINRA Rule 6500 Series, which governs the operation of the OTC Bulletin Board Service (“OTCBB”);³ and (3) modify the position charge from \$6.00/security/month to \$4.00/security/month.

Background

The OTCBB and Pink OTC Markets Inc. (“Pink Sheets”) are the primary attributable quotation platforms for OTC Equity Securities.⁴ The OTC Equity Security class generally is comprised of: (i) securities quoted solely on the OTCBB (approximately 75 issues);⁵ (ii) securities quoted solely on the Pink Sheets (approximately 5,877 issues); (iii) securities quoted on both the Pink Sheets and the OTCBB (approximately 3,372 issues); and (iv) “Grey Market”

³ FINRA intends to cease operation of the OTCBB upon implementation of this proposed rule change.

⁴ “OTC Equity Security” means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. See FINRA Rule 6420(d).

⁵ To be eligible for quoting on the OTCBB, an issuer must generally not be listed on an exchange (or otherwise qualify for real-time trade reporting via the Consolidated Tape) and be a current, timely filer of periodic financial reports as set forth in FINRA Rule 6530.

securities (i.e., publicly traded, non-exchange listed securities that are not otherwise quoted on any inter-dealer quotation system (approximately 14,000 issues)).⁶

OTCBB quotation data, as well as OTC Equity Security trade report data, has historically been consolidated through FINRA into the Nasdaq Level 1 data feed.⁷ The Commission specifically approved the incorporation of this commingled data into Level 1 to ensure that it is widely disseminated for a reasonable cost to investors and market participants.⁸ FINRA believes that the creation of a consolidated OTC Equity Security national best bid or offer (“NBBO”) and last sale trade tape through the Level 1 data feed will continue to benefit market integrity, foster investor protection, and directly support the original intent of the Commission in approving the commingling of OTC Equity Security data with the Level 1 data feed.

FINRA notes that an increasing amount of quotation data is not made directly available through the Level 1 data feed for a variety of reasons. For example, some market makers are opting to utilize inter-dealer quotation systems other than the OTCBB Service for some or all of their quoting activity. In addition, certain classes of securities that are not currently eligible by

⁶ Notwithstanding that quotation activity in OTC Equity Securities occurs on both the Pink Sheets and on the OTCBB, trade reporting is centralized through the FINRA OTC Reporting Facility (“ORF”). Currently FINRA members are required to report substantially all trades in OTC Equity Securities to the ORF within 90 seconds of execution and FINRA disseminates this transaction information in real-time.

⁷ The Level 1 feed is a consolidated best bid or offer (“BBO”) data feed for Nasdaq-listed securities and OTCBB-eligible securities. The Level 1 feed is carried by virtually all trading firms and market data distributors.

⁸ See Securities Exchange Act Release No. 29616 (August 27, 1991), 56 FR 43826 (September 4, 1991) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-91-38); Securities Exchange Act Release No. 35054 (December 6, 1994), 59 FR 64225 (December 13, 1994) (Notice of Filing of File No. SR-NASD-94-70); and Securities Exchange Act Release No. 35217 (January 11, 1995), 60 FR 3890 (January 19, 1995) (Order Approving File No. SR-NASD-94-70). Pink Sheets quotation data is not currently included in this data feed but is sold as a proprietary product by Pink Sheets.

rule for quotation on the OTCBB have experienced significant growth in the recent past (e.g., unsponsored American Depository Receipts). In contrast to the market for OTC Equity Securities, the NMS consolidated data system ensures that investors, market participants, and regulators have ready access to consolidated real-time data for NMS stocks quoted and traded on an inter-market basis for a reasonable cost. Thus, FINRA believes a number of factors, including members' best execution obligations and the potential for future market fragmentation in the OTC Equity Security space, necessitate a widely available NBBO for over-the-counter quotations in OTC Equity Securities. Further to that point, a consolidated OTC Equity Security NBBO that is integrated in real time into FINRA regulatory systems will be beneficial for conducting surveillance for compliance with other FINRA rules. FINRA also notes that this proposal is consistent with the goals articulated in a separate filing proposing to extend selected Regulation NMS protections to the over-the-counter market.⁹

The Proposed Restructuring

As discussed above, data consolidation for OTC Equity Securities is currently in place for last sale trade reports through the FINRA ORF, but no readily available, complementary, consolidated system exists for quotations in OTC Equity Securities. Thus, FINRA is proposing to implement a new over-the-counter transparency structure by ceasing operation of the OTCBB and establishing an OTC Equity Security QCF.¹⁰

⁹ See Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) (Notice of Filing of File No. SR-FINRA-2009-054). The proposed rule change would: (1) restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders.

¹⁰ To ensure a smooth transition in connection with the launch of the QCF and the sale of the OTCBB, FINRA is actively engaged in an outreach campaign to inform investors, issuers, market participants, and the market data community regarding the initiative.

Under the proposal, FINRA would require: (1) members to submit contemporaneously to the QCF any quotation in an OTC Equity Security that is displayed directly by a member on an inter-dealer quotation system that permits updates on a real-time basis,¹¹ and (2) a member that is an ATS (as defined by Rule 300(a) of Regulation ATS) to submit contemporaneously to the QCF its highest displayed buy price and size and lowest displayed sell price and size (i.e., “top-of-book”), irrespective of whether it chooses to display its quotations on an inter-dealer quotation system.¹² Quotation information reported to the QCF must reflect all changes in quotations or quotation size displayed and the time any such change was effected.

Specifically, members would be required to report, at a minimum, the following information for every quotation displayed by the member during the trading day:

- Submitting firm;¹³
- Inter-dealer quotation system on which the quotation is displayed (if applicable);

¹¹ Rule 15c2-11(e)(2) under the Act defines “inter-dealer quotation system” as “any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.”

¹² The QCF reporting obligations apply to quotations in “OTC Equity Securities,” which may include certain exchange-listed securities (i.e., securities that are listed on a national securities exchange that do not meet the definition of “NMS stock” as that term is defined in Rule 600(b)(47) of Regulation NMS). However, FINRA is not proposing to require members to submit to FINRA quotations in OTC Equity Securities that are displayed on an exchange. Thus, the consolidated NBBO disseminated through the QCF will include quotations in certain exchange-listed, non-NMS stocks quoted over-the-counter on an inter-dealer quotation system (or ATS), but will not include quotations in those securities displayed on an exchange. This is consistent with current transaction dissemination whereby the Level 1 data feed includes all OTC transactions in OTC Equity Securities, but does not currently consolidate transactions in OTC Equity Securities reported on or through an exchange. With respect to quotations displayed by the QCF, FINRA will append a modifier to the symbol of each OTC Equity Security disseminated by the QCF that also is listed on an exchange in order to indicate that the QCF NBBO may not represent the complete best bid and offer for such security.

¹³ In the case that the submitting firm is an ATS, this field shall include the name of such ATS (rather than the identification of the member firm originating the trading interest).

- Quotation date;
- Time quotation displayed (expressed in hours, minutes and seconds);
- Security name and symbol;
- Bid and bid quotation size (if applicable) and offer and offer quotation size (if applicable);¹⁴ and
- Highest displayed buy price and size and lowest displayed sell price and size of an ATS (if applicable).¹⁵

Members must use the QCF to report quotation information on a real-time basis and the QCF will collect, consolidate and then disseminate the NBBO on a real-time basis for all over-the-counter quotations in OTC Equity Securities.¹⁶ Thus, the proposal will effectively ensure that all over-the-counter quotation data for OTC Equity Securities is submitted to FINRA for the purpose of creating a NBBO for dissemination through the Level 1 consolidated quote feed. Moreover, this centralized NBBO will be complemented with consolidated last sale trade report data through FINRA's operation of the existing ORF in concert with the QCF.¹⁷ Members would have the option of using a vendor (including an inter-dealer quotation system) to transmit

¹⁴ These fields are applicable only to a member that is not an ATS.

¹⁵ This field is applicable only to a member that is an ATS.

¹⁶ Under the current proposal, FINRA intends to build QCF functionality such that the QCF's disseminated NBBO field will extend to four decimal places. FINRA recognizes that certain quotation mediums currently accommodate quotations in increments of smaller than \$0.0001; therefore, FINRA will work with members and vendors with regard to uniform and consistent normalization of quotation data for submission to the QCF. As with other FINRA rules, FINRA will oversee member conduct in its usual course with regard to compliance with its rules in the context of this quote normalization issue.

¹⁷ As would be the case with the QCF, data for OTC Equity Securities reported on or through an exchange currently is not included in the FINRA ORF. See supra note 12.

their quotation data to the QCF, but the member would remain ultimately responsible for the real time submission of their quotation data to the QCF. FINRA currently intends to disseminate the NBBO of each OTC Equity Security displayed by an ATS or by a member on an inter-dealer quotation system, but does not intend to disseminate depth of book quotation data through the QCF. Instead, mirroring the approach taken by the Commission in the NMS market, quotation mediums operating in the OTC Equity Security space would be free to create and sell data products related to depth of book data.

FINRA also is proposing to create an additional level of transparency related to OTC Equity Securities directly within the primary consolidated Level 1 quote feed. Specifically, FINRA is proposing to append a modifier to each symbol for every OTC Equity Security to indicate its financial reporting status. These appendages would be disseminated on the Level 1 consolidated data stream indicating whether the issuer of the OTC Equity Security is a timely financial reporting company, a delinquent financial reporting company, or a non-financial reporting company. FINRA views this enhanced issuer transparency as carrying significant benefits, including that it will provide more granular information regarding the status of an issuer of each OTC Equity Security directly through the consolidated Level 1 data feed.¹⁸

¹⁸ FINRA will track issuer reporting status in a substantially similar manner as is done with respect to securities for which quotations are posted on the OTCBB. See supra note 5. If a party believes that the modifier appended by FINRA reflects an error, such party may contact FINRA at no charge. Specific contact information will be provided by FINRA in the Regulatory Notice announcing the implementation date of these proposed rules. However, FINRA reserves the right to make the final determination as to the status of the issuer based on the sole reasonable discretion of the staff. In addition, consistent with current OTCBB procedures, because FINRA relies solely on publicly available data to track issuer reporting status (*i.e.*, FINRA does no independent verification of issuer filing status), issuer status changes will only be made in extraordinary cases and, generally, only if written notice of status change is received by FINRA directly from the Commission or other regulator, as applicable.

To account for its broader role as the operator of the QCF and for growing fragmentation in the market for OTC Equity Securities, FINRA is proposing to implement a new, broader approach to the application of the existing FINRA OTCBB position fee (currently \$6.00/security/month). FINRA is proposing that an OTC Equity Security-wide position fee should be established in place of the current OTCBB-specific position fee. The proposed fee would be a flat \$4.00/security/month and would be assessed upon any FINRA member that submits or is required to submit its quotations to the QCF, either directly or indirectly through a service provider.

FINRA will cease operation of the OTCBB concurrent with the implementation of the QCF and intends to provide ample time for investors and market participants to prepare for the transition. The effective date of the proposed rule change will, therefore, be no sooner than 60 days and no later than 365 days from Commission approval; provided, however, that the proposed rule change will not take effect prior to the cessation of operation of the OTCBB.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.¹⁹ Section 15A(b)(6) 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. The proposed rule change will prevent fraudulent and manipulative acts and practices by enhancing the transparency and accessibility of consolidated quotation information for over-the-counter quotations in OTC Equity Securities and will promote better compliance with FINRA rules

¹⁹ 15 U.S.C. 78o-3(b)(6).

applicable to quoting and trading in OTC Equity Securities including, among other things, members' best execution obligations.

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.²⁰ Section 15A(b)(11) requires that the rules of the association 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.

Consistent with the requirements of Section 15A(b)(11), FINRA believes that the implementation of a consolidated quote stream (in addition to the existing FINRA trade report data stream) represents an orderly system for collecting, distributing and publishing quotation and trade data for over-the-counter quotations and transactions in OTC Equity Securities, thereby providing the investing public and market participants with ready access to informative, consolidated trade and quotation information.

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.

²⁰ 15 U.S.C. 78q-3(b)(11).

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.

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 Exchange 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-2009-077 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-2009-077. 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,²¹ 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 10:00 am and 3:00 pm. Copies of the 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

²¹ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-077 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.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).