

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97181; File No. SR-FINRA-2023-003)

March 21, 2023

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rules to Address Duplicative Requirements

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 March 10, 2023, 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, in light of member obligations relating to the Consolidated Audit Trail (“CAT”), to amend FINRA Rule 4590 (Synchronization of Member Business Clocks), amend FINRA Rule 6250 (Quote and Order Access Requirements), eliminate FINRA Rule 6431 (Recording of Quotation Information), and amend FINRA Rule 6439 (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

The National Market System Plan governing the Consolidated Audit Trail (the “CAT NMS Plan”)³ is intended to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source customer and order event information for orders in NMS securities⁴ and OTC equity securities,⁵ across all markets, from the time of order inception through routing, cancellation, modification, or execution.⁶ FINRA is filing the proposed rule change to amend FINRA rules in light of the CAT NMS Plan to eliminate duplicative requirements or otherwise clarify regulatory obligations. Specifically, FINRA is proposing amendments to: (1) clarify overlapping clock synchronization requirements for members; (2)

³ FINRA and the national securities exchanges filed the CAT NMS Plan with the Commission pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder, and it was approved by the SEC on November 15, 2016. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT Approval Order”).

⁴ See Rule 600(b)(54) of Regulation NMS.

⁵ See FINRA Rule 6420(f).

⁶ See e.g., Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

delete duplicative requirements relating to order and quote recording and reporting requirements in connection with the alternative display facility (“ADF”); (3) delete duplicative requirements relating to the reporting of quotation information for OTC equity securities; and (4) delete duplicative requirements relating to the submission of order-level quotation information for OTC equity securities.⁷

Synchronization of Member Business Clocks

FINRA Rule 4590 requires members to synchronize their business clocks, including computer system clocks and mechanical time stamping devices, that are used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA By-Laws or other FINRA rules. Rule 4590 further requires that business clocks, including computer system clocks and manual time stamp machines, be synchronized to within a one second tolerance of the National Institute of Standards (NIST) atomic clock, except that computer system clocks that are used to record events in NMS securities, including standardized options, and OTC equity securities, must be synchronized to within a 50-millisecond tolerance of the NIST clock. FINRA adopted Rule 4590 before the CAT NMS Plan was approved and before FINRA adopted Rule 6820.

FINRA Rule 6820 (Clock Synchronization)⁸ addresses clock synchronization obligations pursuant to the CAT NMS Plan and prescribes the requirements for industry members in synchronizing their business clocks. FINRA is therefore proposing amendments to clarify that Rule 4590 applies only where Rule 6820 does not. Therefore, Rule 6820, rather than Rule 4590, would apply to business clocks used to record events for NMS securities and OTC equity

⁷ The proposed rule change would also update cross-references in FINRA Rules 6220, 6275 and 6279, including updating citations to Rule 600(b) of Regulation NMS.

⁸ Rule 6820 falls under the CAT Compliance Rule Series.

securities, but Rule 4590 would apply to business clocks that record events in debt securities. This proposed rule change is intended solely to eliminate overlapping rule requirements and promote clarity.

Alternative Display Facility Quote and Order Access Requirements

FINRA Rule 6250 provides quoting and order access requirements for members that utilize FINRA's ADF to display quotes in an ADF-eligible security.⁹ Pursuant to Rule 6250, ADF Trading Centers¹⁰ must record and report to FINRA on a daily basis specified order information. Among other things, paragraph (b) of Rule 6250 requires an ADF Trading Center to record and report orders originated, received, transmitted, modified, canceled, or executed by other broker-dealers via direct or indirect access and paragraph (c) requires an ADF Trading Center to record and report to FINRA certain information for each order that is part of a displayed bid or offer on the ADF, or the execution details, if any, of each order that is part of a displayed bid or offer.

FINRA is proposing amendments to Rule 6250 to delete requirements that are duplicative of requirements under the CAT NMS Plan or that are otherwise unnecessary to oversee the ADF. Specifically, FINRA Rule 6830 (Industry Member Data Reporting)¹¹ requires members, including members meeting the definition of an ADF Trading Center, to comply with the reporting requirements of the CAT NMS Plan. Pursuant to Rule 6830(a), Industry Members

⁹ FINRA Rule 6220(a)(2) defines an "ADF-eligible security" as an NMS stock as defined by SEC Regulation NMS.

¹⁰ FINRA Rule 6220(a)(4) defines an "ADF trading center" as a registered reporting ADF market maker, or a registered reporting ADF electronic communications network that is a "trading center," as defined by SEC Regulation NMS, and that is certified, pursuant to Rule 6250, to display its quotations or orders through the ADF.

¹¹ Rule 6830 falls under the CAT Compliance Rule Series.

must report to the CAT Central Repository information with respect to orders originated, received, transmitted, modified, canceled, or executed by other broker-dealers, which is duplicative of the requirements currently specified in Rule 6250(b) and (c). Accordingly, FINRA is proposing to delete Rule 6250(b) and 6250(c) in their entirety to avoid unnecessary or duplicative regulatory requirements.¹²

FINRA has confirmed that the information required to be submitted by members pursuant to Rule 6830(a) is sufficient for FINRA oversight of the ADF. Specifically, the following items proposed to be deleted under Rule 6250(b)(1) are available in CAT data: unique order identifier; order entry firm; order side; order quantity; symbol; order price; time in force; order date; order time; minimal acceptable quantity; and ADF trading center. In addition, the following items proposed to be deleted under Rule 6250(b)(2) are available in CAT data: unique order identifier; order response time; quantity; and price. The following items proposed to be deleted under Rule 6250(c)(1) are available in CAT data: symbol; side; price; quantity; order date and time of receipt; order instructions; firm identifiers and capacity information; quote identifier; quote price; and quote time. Order response, which is proposed to be deleted under Rule 6250(b)(1), is derivable from CAT data, as CAT tracks all related events in the lifecycle of an order, such as cancellations, modifications, and order or route acceptances. FINRA notes that every order submitted to the CAT Central Repository is assigned a unique order identifier, which FINRA believes obviates the need for a separate internal order identifier as is currently required under Rule 6250(c)(1). FINRA also has access to information in the CAT Central Repository

¹² FINRA proposes to renumber Rules 6250(d), 6250(e), 6250(f), 6250(g) and 6250(h) as Rules 6250(b), 6250(c), 6250(d), 6250(e), and 6250(f) in light of the proposed deletion of Rules 6250(b) and 6250(c).

regarding whether an order is marked short sale exempt.¹³ With respect to the recordkeeping requirements of Rule 6250(b), FINRA notes that Rule 6890 (Recordkeeping) requires industry members to maintain and preserve records of the information required to be recorded under the CAT Compliance Rule Series for the period of time and accessibility specified in SEA Rule 17a-4(b) and SEA Rule 17a-4(f), obviating the need for the separate recordkeeping provisions of Rule 6250(b).¹⁴

Recording of Quotation Information in OTC Equity Securities

FINRA Rule 6431 was implemented in 2003 to provide FINRA with access to quotation data for “OTC equity securities,” as defined under FINRA Rule 6420 (Definitions),¹⁵ to facilitate FINRA’s oversight of members and, when necessary, reconstruct market activity.¹⁶ Rule 6431 generally requires OTC Market Makers¹⁷ that display quotations on a non-FINRA- or non-member-operated inter-dealer quotation system (“IDQS”) to record information about their quotations and to report the information to FINRA upon request, including, e.g., trade date, time

¹³ Rule 6250(c)(1) also requires members to submit to FINRA the reason for any short sale exemption as well as the identity of the clearing member. Neither of these items of information are currently available in the CAT Central Repository; however, obtaining this information through daily submissions is not necessary for FINRA to effectively oversee ADF activity. Should the facts and circumstances of any particular matter warrant obtaining additional insight into the reasons for a short sale exemption or the identity of a clearing member, FINRA would contact the relevant member to request the relevant information.

¹⁴ See Rule 6800 Series (Consolidated Audit Trail Compliance Rule).

¹⁵ See Rule 6420.

¹⁶ See Securities Exchange Act Release No. 47587 (March 27, 2003), 68 FR 16328 (April 3, 2003) (Order Approving File No. SR-NASD-2000-042). See also Notice to Members 03-28 (June 2003).

¹⁷ FINRA Rule 6420(g) generally 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 IDQS, including any system that the SEC has qualified pursuant to Section 17B of the Act.

the quotation is displayed, security name and symbol. Rule 6431 does not require such information to be recorded or reported by the IDQSs themselves. Due to changes in the marketplace, members have not reported quotation data to FINRA pursuant to Rule 6431 for several years since the IDQS that previously was not a FINRA member became a FINRA member. Because Rule 6431 only applies to quotation activity occurring on a non-FINRA- or non-member-operated IDQS, members were not required to report quotation data that occurred on a member system pursuant to Rule 6431. Today, FINRA has access to quotation information occurring on an IDQS necessary to conduct its oversight functions because member IDQSs are subject to the CAT NMS Plan, which requires members to, among other things, report specified order and quote information to the CAT Central Repository. Accordingly, FINRA is proposing to delete Rule 6431.

Requirements for Member Inter-Dealer Quotation Systems

FINRA adopted Rule 6439 to, among other things, expand and enhance the obligations of member IDQSs that permit quotation updates on a real-time basis in OTC equity securities.¹⁸ Pursuant to Rule 6439(d), covered IDQSs must submit to FINRA on a monthly basis specified aggregate and order-level information for orders in OTC equity securities. FINRA is proposing to delete paragraph (d)(1)(B) of Rule 6439, which was adopted before comparable information for OTC equity securities was being reported to CAT. Rule 6439(d)(2) specifically provides that member IDQSs are not required to report to FINRA any of the items of information specified in Rule 6439(d)(1)(B) if, at a minimum, the items specified in Rule 6439 (d)(1)(B)(i) through (xi) are subject to reporting to the CAT under Rule 6830. The information specified in Rule 6439

¹⁸ See Securities Exchange Act Release No. 92105 (June 3, 2021); 86 FR 30663 (June 9, 2021) (Order Approving File No. SR-FINRA-2020-031).

(d)(1)(B)(i) through (xi) became subject to CAT reporting on December 31, 2021 and therefore Rule 6439(d)(1)(B), by its terms, does not apply to any FINRA members in light of CAT obligations. Therefore, FINRA is proposing to delete Rule 6439(d)(1)(B) because members currently are required to report comparable data pursuant to the CAT NMS Plan. Specifically, the following items proposed to be deleted under Rule 6439(d)(1)(B) are required to be reported to the CAT Central Repository: buy/sell; security symbol; price; size, all or none indicator; order entry firm identifier; order receipt time; time in force; and executed quantity. Response time and order response are derivable through CAT data, as CAT tracks all related events in the lifecycle of an order, such as cancellations, modifications, and order or route acceptances.

FINRA has filed the proposed rule change for immediate effectiveness.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁹ 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, and Section 15A(b)(9) of the Act,²⁰ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate. FINRA believes that the proposed rule change will eliminate overlapping, duplicative or otherwise unnecessary rule requirements and promote clarity and consistency regarding member obligations under FINRA rules.

FINRA believes that this proposed rule change is consistent with the Act because it implements, interprets or clarifies the provisions of the CAT NMS Plan, and is designed to assist

¹⁹ 15 U.S.C. 78o-3(b)(6).

²⁰ 15 U.S.C. 78o-3(b)(9).

FINRA and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the CAT NMS Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹ To the extent that the proposed rule change implements, interprets or clarifies the CAT NMS Plan and applies specific requirements to Industry Members, FINRA believes that the proposed rule change furthers the objectives of the CAT NMS Plan, as identified by the SEC, and is therefore consistent with the Act.

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. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

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 on this proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

²¹ See CAT Approval Order, supra note 4.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6) thereunder.²³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2023-003 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.

²² 15 U.S.C. 78s(b)(3)(A).

²³ In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement. 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-FINRA-2023-003. 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 a.m. and 3:00 p.m. 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. 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-2023-003 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.²⁴

Sherry R. Haywood,
Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).